



STATE OF DELAWARE  
**DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL**

OFFICE OF THE  
SECRETARY

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DOVER, DELAWARE 19901

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**Secretary's Order No.: 2013-A-0059**

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 1125,  
*Requirements for Preconstruction Review, Section 1.9 ("Definitions")***

**Date of Issuance: December 17, 2013**

**Effective Date of the Amendment: January 11, 2014**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

**Background and Procedural History**

This Order considers proposed regulations to amend 7 DE Admin. Code 1125, Requirements for Preconstruction Review: Section 1.9 ("Definitions"). The Department's Division of Air Quality commenced the regulatory development process with Start Action Notice 2012-18. The Department published its initial proposed Regulation Amendments in the October 1, 2013 *Delaware Register of Regulations*, and held a public hearing on October 28, 2013. It should be noted that no comment was received by the Department in this matter.

The proposed amendments to 7 DE Admin. Code 1125 will enable the Department to revise Section 1.9 of Regulation 1125 to restore language inadvertently

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removed previously, thus re-establishing the agreement between the Delaware New Source Review (“NSR”) regulation and the federal NSR rule in this regard.

When determining NSR applicability under Section 3.0, “Prevention of Significant Deterioration of Air Quality” for a stationary source modification, the procedure requires comparing projected source pollutant emissions to that pollutant’s significance level shown in the table in Part (a) under the definition of “Significant” in Section 1.9, “Definitions”. The federal NSR Rule, 40 CFR 51.166 (b)(23), has always listed a nitrogen oxides significance level of 40 TPY. In past years, so did the Delaware NSR regulation. The Department has recently discovered that sometime in the early 1990’s, that entry in the Delaware regulation was inadvertently removed.

This proposed action will rectify that omission and restore agreement between the federal and EPA NSR rules. It should be noted that, since Delaware’s air quality is adequately protected through the regulation of NO<sub>x</sub> emissions under Section 2.0 of 7 DE Admin. Code 1125, this omission has not caused any decrease in air quality.

The Department’s presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer’s Report dated December 10, 2013 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

### **Findings and Discussion**

I find that the proposed Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department’s experts developed the record and drafted the proposed Amendments. I find that the Department’s experts in the Division of Air Quality fully developed the

record to support adoption of these Amendments. With the adoption of this Order, Delaware will be enabled to revise Section 1.9 of Regulation 1125 to rectify the current omission of the listing of the nitrogen oxides significance level of 40 TPY in the Delaware NSR regulation, thus restoring agreement between the federal and EPA NSR rules

In conclusion, the following findings and conclusions are entered:

1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;

2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at the public hearing held on October 28, 2013;

3.) The Department held a public hearing on October 28, 2013 in order to consider public comment before making any final decision;

4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendments, as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;

5.) The recommended Amendments should be adopted as final regulation Amendments because Delaware will be able to (1) revise Section 1.9 of Regulation 1125 to rectify the current omission of the listing of the nitrogen oxides significance level of 40 TPY in the Delaware NSR regulation; (2) restore agreement between the federal and EPA NSR rules; and, lastly, because (3) the amendments are well supported by documents in the record;

6.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

A handwritten signature in black ink, appearing to read "Collin P. O'Mara", written over a horizontal line.

Collin P. O'Mara  
Secretary

## MEMORANDUM

**TO:** The Honorable Collin P. O'Mara  
Cabinet Secretary, Dept. of Natural Resources and Environmental Control

**FROM:** Lisa A. Vest   
Public Hearing Officer, Office of the Secretary  
Department of Natural Resources and Environmental Control

**RE:** Proposed Amendments to 7 DE Admin. Code 1125, Requirements for Preconstruction Review: Section 1.9: Definitions ("Significant")

**DATE:** December 10, 2013

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### **I. Background:**

A public hearing was held on Monday, October 28, 2013, at 6:00 p.m. at the Department of Natural Resources and Environmental Control ("DNREC", "Department"), 89 Kings Highway, Dover, Delaware to receive comment on proposed amendments to 7 DE Admin. Code 1125, Requirements for Preconstruction Review: Section 1.9: Definitions ("Significant"). The Department proposes to revise Section 1.9 of 7 DE Admin. Code 1125, specifically, to revise the Delaware New Source Review ("NSR") regulation to restore language inadvertently removed previously, thus re-establishing the agreement between the Delaware and the federal NSR rule in this regard.

When determining NSR applicability under Section 3.0, "Prevention of Significant Deterioration of Air Quality" for a stationary source modification, the procedure requires comparing projected source pollutant emissions to that pollutant's significance level shown in the table in Part (a) under the definition of "Significant" in Section 1.9, "Definitions". The federal NSR Rule, 40 CFR 51.166 (b)(23), has always

listed a nitrogen oxides significance level of 40 TPY. In past years, so did the Delaware NSR regulation. The Department has recently discovered that sometime in the early 1990's, that entry in the Delaware regulation was inadvertently removed.

This proposed action will rectify that omission and restore agreement between the federal and EPA NSR rules. It should be noted that, since Delaware's air quality is adequately protected through the regulation of NO<sub>x</sub> emissions under Section 2.0 of 7 DE Admin. Code 1125, this omission has not caused any decrease in air quality.

As noted above, the Department held a public hearing regarding this proposed promulgation on Monday, October 28, 2013, however, no comment was received by the Department concerning this matter. Proper notice of the hearing was provided as required by law.

## **II. Summary of Hearing Record:**

At the time of the aforementioned public hearing, Gene Pettingill, an Environmental Engineer in the Planning Branch of the Department's Division of Air Quality ("DAQ") offered the Department's four (4) exhibits pertaining to these proposed amendments, and this Hearing Officer entered them into the formal hearing record developed in this matter. Included within those Departmental exhibits were copies of the Start Action Notice for this promulgation (SAN2013-24), copies of the legal notices regarding the holding of this public hearing, and copies of the actual proposed amendments to the aforementioned affected sections of 7 DE Admin. Code 1125. Mr. Pettingill then offered a brief summary regarding this proposed promulgation (see Section I for the same).

For the Secretary's review, and in order for the Secretary to gain a thorough understanding of this proposed promulgation, copies of the above-referenced proposed amendments are attached hereto as Appendix "A", and the same are expressly incorporated into this Hearing Officer's Report.

It should be noted that the Department adhered to all appropriate Delaware statutes and the regulatory development process in this matter, and that the Department has met the required public notice obligations regarding these proposed amendments. It should also be noted that the Department has reviewed this proposed promulgation in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally.

### **III. Conclusions and Recommendations:**

Based on the record developed in this matter, I conclude that the Department has provided appropriate reasoning regarding the need for the proposed amendments to 7 DE Admin. Code 1125, Requirements for Preconstruction Review: Section 1.9 ("Definitions"). I also recommend the adoption of the proposed regulatory amendments, based upon the reasoning as set forth by the Department's Division of Air Quality. Accordingly, I recommend promulgation of these proposed amendments in the customary manner provided by law.

Further, I recommend the following findings:

1. The Department has jurisdiction under its statutory authority, 7 Del.C., Chapter 60, to make a determination in this proceeding;

2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
3. The Department held a public hearing in a manner required by the law and regulations;
4. The Department has reviewed these proposed amendments in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
5. The aforementioned proposed amendments to 7 DE Admin. Code 1125 will enable Delaware to revise Section 1.9 of Regulation 1125 to rectify the current omission of the listing of the nitrogen oxides significance level of 40 TPY in the Delaware NSR regulation, thus restoring agreement between the federal and EPA NSR rules;
6. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
7. The Department's proposed amendments to these regulations, as published in the October 1, 2013 *Delaware Register of Regulations* and set forth within Appendix "A" hereto, are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as a final regulation, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and

8. The Department shall submit the proposed regulation amendments as final to the Delaware *Register of Regulations* for publication in its next available issue, and shall provide written notice to the persons affected by the Order.



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LISA A. VEST  
Public Hearing Officer



**APPENDIX "A"**



**TITLE 7 NATURAL RESOURCES & ENVIRONMENTAL CONTROL  
DELAWARE ADMINISTRATIVE CODE**

1

**1100 Air Quality Management Section**

**1125 Requirements for Preconstruction Review**

08/11/12 xx/xx/xx

**1.0 General Provisions**

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**1.9 Definitions - For the purposes of this regulation**

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**“Significant”**

(a) “Significant” means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (TPY)

Nitrogen oxides: 40 TPY

Sulfur dioxide: 40 TPY

Particulate matter: 25 TPY

Ozone:

New Castle and Kent Counties - 25 TPY of either volatile organic compounds or nitrogen oxides \*

Sussex County - 40 TPY of either volatile organic compounds or nitrogen oxides \*

Lead: 0.6 TPY

Asbestos: 0.007 TPY

Beryllium: 0.0004 TPY

Mercury: 0.1 TPY

Vinyl chloride: 1 TPY

Fluorides: 3 TPY

Sulfuric acid mist: 7 TPY

Hydrogen sulfide (H<sub>2</sub>S): 10 TPY

Total reduced sulfur (including H<sub>2</sub>S): 10 TPY

Reduced sulfur compounds (including H<sub>2</sub>S): 10 TPY

PM<sub>10</sub> particulate: 15 TPY

PM<sub>2.5</sub>: 10 TPY of direct PM<sub>2.5</sub> emissions; 40 TPY of sulfur dioxide emissions; 40 TPY nitrogen oxide emissions.

\*Note: Increases in net emissions shall not exceed 25 tons per year in New Castle and Kent Counties, or 40 tons per year in Sussex, when aggregated with all other net increases in emissions from the source over any period of five consecutive calendar years which includes the calendar year in which such increases occur. No part of the five consecutive years shall extend before January 1, 1991.

(b) “Significant” means, in reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the CAA that (a) does not list, any emissions rate.

(c) Notwithstanding (a), “significant” means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within ten kilometers of a Class I area, and have an impact on such area equal to or greater than one µg/m<sup>3</sup>, (24-hour average).

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*EXHIBIT 2  
REQ 1125 - NOT SIGNIFICANT  
PROPOSED REQ*

