



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL

OFFICE OF THE  
SECRETARY

89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

PHONE: (302) 739-9000  
FAX: (302) 739-6242

**Secretary's Order No.: 2018-A-0005**

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 1136:  
*Acid Rain Program***

**Date of Issuance: February 1, 2018**

**Effective Date of the Amendment: March 11, 2018**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 *Del.C.* §§6006 and 6010, and the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

**Background, Procedural History and Findings of Fact**

This Order relates to proposed regulation amendments ("Amendments") to 7 DE Admin. Code 1136, *Acid Rain Program*. This public hearing was held pursuant to 29 *Del.C.* §10407, which directs all State of Delaware executive branch agencies to conduct a periodic review of regulations promulgated by such agency to determine which regulations, if any, should be modified or eliminated. The current regulatory review process commenced on January 1, 2016, at which time the Department performed a focused review of its existing, older regulations, with the purpose to identify and remove regulatory hurdles, and modernize and streamline any regulations that may be outdated or

*Delaware's Good Nature depends on you!*

unnecessarily burdensome, while maintaining the state's commitment to improving public health and environmental performance.

Among the considerations of the Department's review of its existing regulations was to ensure that all regulations continue to serve the original purpose for which they were adopted, and to provide for improvements. To that end, the Department's Division of Air Quality identified 7 DE Admin. Code 1136, *Acid Rain Program*, as an existing, older regulation which requires revision.

In reviewing this regulation (and its corresponding Federal requirements), the Department determined that there have been a number of updates to portions of 40 CFR Parts 72 – 78 (Acid Rain Program provisions) which should be adopted. These proposed Amendments will (1) clarify the Federal Acid Rain Program regulatory requirements that Electric Generating Units in Delaware are subject to by incorporating the provisions of 40 CFR Parts 72 – 78 into 7 DE Admin. Code 1136, *Acid Rain Program*, by reference; and (2) update the Federal reference date in 7 DE Admin. Code 1136 to reflect the revision date of the most recently published annual edition of the Code of Federal Regulations.

The Department's Division of Air Quality commenced the regulatory development process with Start Action Notice #2017-10 (July 3, 2017). The Department published its initial proposed regulation Amendments in the October 1, 2017 *Delaware Register of Regulations*. The Department then held a public hearing on October 25, 2017. Members of the public attended that hearing, however, no comment was received by the Department at that time. Consistent with 29 *Del.C.* §10118(a), the public hearing

record remained open for public comment through November 10, 2017. No comment was received from the public during the post-hearing phase of this promulgation.

Hearing Officer Vest prepared a Hearing Officer's Report dated January 18, 2018 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "A".

### **Reasons and Conclusions**

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory amendments to 7 DE Admin. Code 1136, *Acid Rain Program*, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of these regulatory Amendments. The adoption of these regulatory Amendments will enable the Department to (1) clarify the Federal Acid Rain Program regulatory requirements that Electric Generating Units in Delaware are subject to by incorporating the provisions of 40 CFR Parts 72 – 78 into 7 DE Admin. Code 1136, *Acid Rain Program*, by reference; and (2) update the Federal reference date in 7 DE Admin. Code 1136 to reflect the revision date of the most recently published annual edition of the Code of Federal Regulations.

The following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed regulatory amendments to 7 DE Admin. Code 1136, *Acid Rain Program*, pursuant to 7 *Del.C.*, Ch. 60;

2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.*, Ch. 60, to issue an Order adopting these proposed regulatory Amendments as final;

3. The Department provided adequate public notice of the proposed regulatory Amendments, and all proceedings associated with the same, in a manner required by the law and regulations. The Department provided the public with an adequate opportunity to comment on the proposed repeal, including at the time of the public hearing held on October 25, 2017, and held the record open through close of business on November 10, 2017, consistent with 29 *Del.C.* §10118(a), in order to consider public comment on the same before making any final decision;

4. Promulgation of the proposed regulatory amendments to 7 DE Admin. Code 1136, *Acid Rain Program* will enable the Department to (1) clarify the Federal Acid Rain Program regulatory requirements that Electric Generating Units in Delaware are subject to by incorporating the provisions of 40 CFR Parts 72 – 78 into 7 DE Admin. Code 1136, *Acid Rain Program*, by reference; and (2) update the Federal reference date in 7 DE Admin. Code 1136 to reflect the revision date of the most recently published annual edition of the Code of Federal Regulations;

5. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and has selected Exemption “B5” regarding same, as this proposed promulgation involves regulations that are required by federal law, and/or have already complied with the federal Regulatory Flexibility Act, 5 U.S.C. §601 *et seq.*;

6. The Department’s Hearing Officer’s Report, including its established record and the recommended proposed regulatory Amendments as set forth in Appendix “A”, are hereby adopted to provide additional reasons and findings for this Order;

7. The Department’s proposed regulatory Amendments, as published in the October 1, 2017 *Delaware Register of Regulations*, and as set forth in Appendix “A” as noted above, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory Amendments, 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 this Order approving as final the proposed Amendments to 7 DE Admin. Code 1136, *Acid Rain Program*, 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.

  
Shawn M. Garvin  
Secretary



## HEARING OFFICER'S REPORT

**TO:** The Honorable Shawn M. Garvin  
Cabinet Secretary, Department 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 Regulatory Amendments to 7 DE Admin. Code 1136, *Acid Rain Program* (pursuant to 29 *Del.C.* § 10407, *DNREC Regulatory Review of 2016*)

**DATE:** January 18, 2018

---

### **I. BACKGROUND AND PROCEDURAL HISTORY:**

A public hearing was held on Wednesday, October 25, 2017, 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 the proposed regulatory amendments (“Amendments”) to 7 DE Admin. Code 1136, *Acid Rain Program*. This public hearing was held pursuant to 29 *Del.C.* §10407, which directs all State of Delaware executive branch agencies to conduct a periodic review of regulations promulgated by such agency to determine which regulations, if any, should be modified or eliminated. The current regulatory review process commenced on January 1, 2016, at which time the Department performed a focused review of its existing, older regulations, with the purpose to identify and remove regulatory hurdles, and modernize and streamline any regulations that may be outdated or unnecessarily burdensome, while maintaining the state’s commitment to improving public health and environmental performance.

Among the considerations of the Department's review of its existing regulations was to ensure that all regulations continue to serve the original purpose for which they were adopted, and to provide for improvements. To that end, the Department's Division of Air Quality identified 7 DE Admin. Code 1136, *Acid Rain Program*, as an existing, older regulation which requires revision.

In reviewing this regulation (and its corresponding Federal requirements), the Department determined that there have been a number of updates to portions of 40 CFR Parts 72 – 78 (Acid Rain Program provisions) which should be adopted. The proposed Amendments will enable the Department to (1) clarify the Federal Acid Rain Program regulatory requirements that Electric Generating Units in Delaware are subject to by incorporating the provisions of 40 CFR Parts 72 – 78 into 7 DE Admin. Code 1136, *Acid Rain Program*, by reference; and (2) update the Federal reference date in 7 DE Admin. Code 1136 to reflect the revision date of the most recently published annual edition of the Code of Federal Regulations.

The Department has the statutory basis and legal authority to act with regard to the proposed regulatory amendments of 7 DE Admin. Code 1136, pursuant to 7 *Del.C.*, Chapter 60. The Department's Division of Air Quality commenced the regulatory development process with Start Action Notice #2017-10 (July 3, 2017). The Department published its initial proposed regulation Amendments in the October 1, 2017 *Delaware Register of Regulations*. The proposed Amendments were then presented and thoroughly vetted by the Department at the public hearing on October 25, 2017.

Members of the public attended that hearing, but no public comment was received by the Department with regard to this matter. It should also be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

**II. SUMMARY OF THE PUBLIC HEARING RECORD:**

The public hearing record consists of the following documents: (1) a verbatim transcript; and (2) eleven documents introduced by responsible Department staff at the public hearing held on October 25, 2017, and marked by this Hearing Officer accordingly as “Department Exhibits 1-11”. The Department’s person primarily responsible for the drafting and overall promulgation of these proposed Amendments, Renae Held, Environmental Scientist, Division of Air Quality, developed the record with the relevant documents in the Department’s files.

As noted previously, the aforementioned proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on October 25, 2017. No comment was received by members of the public at that time. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing for the purpose of allowing additional public comment to be received regarding this proposed promulgation. The hearing record closed for comment in this matter on November 10, 2017, with no public comment having been received by the Department regarding this matter.

For the Secretary’s review, a copy of the Department’s proposed Amendments as published in the October 1, 2017 *Delaware Register of Regulations* is attached hereto as Appendix “A”. Again, all proper notification and noticing requirements concerning this proposed promulgation were met by the Department in this matter.

### **III. RECOMMENDED FINDINGS AND CONCLUSIONS:**

Based on the record developed, I find and conclude that the Department has provided appropriate reasoning regarding the need for the proposed regulatory amendments to 7 DE Admin. Code 1136, *Acid Rain Program*. Accordingly, I recommend promulgation of the same in the customary manner provided by law.

Further, I recommend the Secretary adopt the following findings and conclusions:

1. The Department has the statutory basis and legal authority to act with regard to the proposed regulatory amendments to 7 DE Admin. Code 1136, *Acid Rain Program*, pursuant to 7 *Del.C.*, Ch. 60;

2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.*, Ch. 60, to issue an Order adopting these proposed regulatory Amendments as final;

3. The Department provided adequate public notice of the proposed regulatory Amendments, and all proceedings associated with the same, in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed promulgation, including at the time of the public hearing held on October 25, 2017, and held the record open through close of business on November 10, 2017, consistent with 29 *Del.C.* §10118(a), in order to consider public comment on the same before making any final decision;

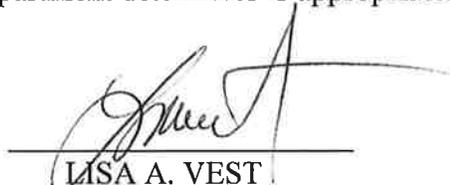
4. Promulgation of the proposed regulatory amendments to 7 DE Admin. Code 1136, *Acid Rain Program* will enable the Department to (1) clarify the Federal Acid Rain Program regulatory requirements that Electric Generating Units in Delaware are subject to by incorporating the provisions of 40 CFR Parts 72 – 78 into 7 DE Admin. Code 1136, *Acid Rain Program*, by reference; and (2) update the Federal reference date in 7 DE Admin. Code 1136 to

reflect the revision date of the most recently published annual edition of the Code of Federal Regulations;

5. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and has selected Exemption “B5” regarding same, as this proposed promulgation involves regulations that are required by federal law, and/or have already complied with the federal Regulatory Flexibility Act, 5 U.S.C. §601 *et seq.*;

6. The Department’s proposed regulatory Amendments, as published in the October 1, 2017 *Delaware Register of Regulations*, and as set forth in Appendix “A” hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory Amendments, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and

7. The Department shall submit the proposed regulatory Amendments as final regulatory amendments to 7 DE Admin. Code 1136, *Acid Rain Program*, 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.

  
\_\_\_\_\_  
LISA A. VEST  
Public Hearing Officer

\\ahear\Reg Amend.1136 RegReview16..2018

Attachments/Appendix:

Appendix A: Proposed Reg. Amendments



## **APPENDIX “A”**



---

# PROPOSED REGULATIONS

---

277

## DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C. Ch. 60)  
7 DE Admin. Code 1136

### REGISTER NOTICE SAN # 2017-10

#### 1136 Acid Rain Program

**1. TITLE OF THE REGULATIONS:**

7 DE Admin Code 1136, Acid Rain Program

**2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**

7 DE Admin Code 1136 adopts the federal acid rain regulations by reference. Pursuant to an HB-147 review DNREC has determined that there have been a number of updates to portions of 40 CFR Parts 72 -78 (Acid Rain Program provisions) that should be adopted. The purpose of this action is to update 7 DE Admin. Code 1136 to adopt the current federal requirements.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

None.

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

7 Del.C. Ch. 60 Environmental Control

**5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:**

N/A

**6. NOTICE OF PUBLIC COMMENT:**

A public hearing on the proposed amendment will be held on October 25, 2017 beginning at 6:00PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Individuals may present oral or written comments regarding the proposed changes at the public hearing, or via email to Lisa.Vest@state.de.us or via USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. The hearing record will remain open until November 9, 2017.

**7. PREPARED BY:**

Renae Held                      Renae.Held@state.de.us                      (302) 739-9402

**\*Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/october2017/proposed/21 DE Reg 277RFA 10-01-17.pdf>

#### 1136 Acid Rain Program

~~09/11/1996~~ xx/xx/2017

The provisions of Parts 72 through 78, of Title 40 of the Code of Federal Regulations, dated July 1, ~~1996~~ 2017, are hereby incorporated into this regulation by reference. Within this regulation, the term permitting authority shall mean the Secretary of Delaware Department of Natural Resources & Environmental Control.

