



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL

OFFICE OF THE  
SECRETARY

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**Secretary's Order No.: 2018-A-0008**

**RE: Approving Final Revisions to Delaware's State Implementation Plan ("SIP"), to wit: (1) *Certification of Delaware's Non-Attainment New Source Review and Emissions Statement Programs*; and (2) *Negative Declaration for Emissions Sources Specified in the Oil and Gas Control Techniques Guidelines ("CTG")***

**Date of Issuance: February 12, 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, 6010, 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 the proposed Revisions to the Delaware State Implementation Plan ("SIP"), to wit: (1) *Certification of Delaware's Non-Attainment New Source Review and Emissions Statement Programs*; and (2) *Negative Declaration for Emissions Sources Specified in the Oil and Gas Control Techniques Guidelines ("CTG")*. Delaware is required by Section 110 of the federal Clean Air Act to submit to the U.S. Environmental Protection Agency ("EPA") a SIP that provides for the implementation, maintenance, and enforcement of the national ambient air quality

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standards established by EPA. Delaware submitted its initial SIP to EPA in 1972. Delaware periodically submits revisions to the SIP as required by the Clean Air Act. The Clean Air Act requires that any proposed SIP revision be made available for public comment, and presented at a public hearing prior to submitting to EPA for adoption.

At the public hearing held on October 25, 2017, the Department presented two proposed SIP revisions for public review and comment:

***1. Certification of Delaware's Non-attainment New Source Review and Emissions Statement Programs***

The first SIP revision is a certification that two existing Delaware programs currently contained in the SIP meet all requirements of the 2008 ozone national ambient air quality standard. On February 3, 2017, the EPA issued a Findings of Failure to 15 states and the District of Columbia to submit certain required SIP elements for 2008 8-hour ozone standard non-attainment areas. According to the EPA's action, Delaware failed to certify its Non-attainment New Source Review Program ("Non-attainment NSR Program") for the Seaford and Philadelphia-Wilmington-Atlantic City non-attainment areas for the 2008 ozone standard. EPA previously approved Delaware's Non-attainment NSR Program SIP revision on February 28, 2013 that covered all 2008 ozone standard non-attainment areas. The Department finds and certifies that no changes are necessary to the Non-attainment NSR Program to comply with the 2008 ozone standard non-attainment NSR requirements.

The Department further determined Delaware's Emissions Statement program should also be certified for adequately addressing the 2008 ozone national ambient air quality standards. EPA approved Delaware's Emission Statement program on April 29,

1996. The approved emission statement rule, in force for the 1997 8-hour ozone standard and the 1-hour ozone standard, covers all portions of Delaware's non-attainment areas for the 2008 ozone standard, and is sufficient for purposes of the emissions statement requirements for the 2008 ozone standard.

## ***2. Negative Declaration for Emission Sources in the Oil and Gas Control Techniques Guidelines ("CTG")***

Section 184(b) of the federal Clean Air Act requires Delaware, as part of the Ozone Transport Region, to revise its SIP to implement Control Techniques Guidelines ("CTG") to control volatile organic compound emissions for all sources applicable to the CTG. Regarding the oil and gas CTG, no applicable sources exist in Delaware. Therefore, the Department is proposing a negative declaration for implementing the 2016 Oil and Gas CTG.

The Department has the statutory basis and legal authority to act with regard to the proposed SIP revisions as referenced above, pursuant to 7 *Del.C.*, Chapter 60. The Department published the General Notice of the two proposed SIP revisions and the October 25, 2017 public hearing in the October 1, 2017 *Delaware Register of Regulations*. It should be noted that the EPA provided the Department with comments related to the proposed SIP revisions via email on September 22, 2017 and October 4, 2017. These comments were offered by EPA in order to provide additional clarity to the Department's proposed SIP revisions. The Department incorporated EPA's comments into its proposed SIP revisions prior to the public hearing. The *revised* proposed SIP revisions were then presented and fully vetted at the public hearing of 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.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated January 26, 2018 ("Report"). The Report documents the proper completion of the required SIP revision process, establishes the record, and recommends the adoption of the *revised* proposed SIP revisions 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 *revised* proposed Delaware SIP document is well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the same 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 the *revised* SIP document. The adoption of the *revised* SIP document will enable the Department to (1) provide certification that Delaware's Non-attainment New Source Review and Emissions Statement Programs meet all requirements of the 2008 ozone national ambient air quality standard; and (2) provide a negative declaration for emission sources specified in the oil and gas Control Techniques Guidelines issued by EPA.

The following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to its *revised* proposed SIP document, 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 this *revised* proposed SIP document as final;

3. The Department provided adequate public notice of the *revised* proposed SIP document, 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 *revised* proposed SIP document, 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. The Department's Hearing Officer's Report, including its established record and the aforementioned recommended *revised* proposed SIP document as set forth in Appendix "A", is hereby adopted to provide additional reasons and findings for this Order;

5. Promulgation of this *revised* proposed SIP document will enable the Department to (1) provide certification that Delaware's Non-attainment New Source Review and Emissions Statement Programs meet all requirements of the 2008 ozone national ambient air quality standard; and (2) provide a negative declaration for emission sources specified in the oil and gas Control Techniques Guidelines issued by EPA;

6. The Department's *revised* proposed SIP document, as published in the October 1, 2017 *Delaware Register of Regulations*, and as set forth in Appendix "A" as noted above, is adequately supported, is not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it is approved as a final SIP document, 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 this Order approving as final the *revised* proposed Delaware SIP document 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 Revisions to the Delaware State Implementation Plan ("SIP"):  
*Certification of Delaware's Non-Attainment New Source Review and Emissions Statement Programs; and Negative Declaration for Emissions Sources Specified in the Oil and Gas Control Techniques Guidelines ("CTG")*

**DATE:** January 26, 2018

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### **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 two proposed revisions to Delaware's State Implementation Plan ("SIP"), to wit: (1) *Certification of Delaware's Non-Attainment New Source Review and Emissions Statement Programs*; and (2) *Negative Declaration for Emissions Sources Specified in the Oil and Gas Control Techniques Guidelines ("CTG")*. Delaware is required by Section 110 of the federal Clean Air Act to submit to the U.S. Environmental Protection Agency ("EPA") a SIP that provides for the implementation, maintenance, and enforcement of the national ambient air quality standards established by EPA. Delaware submitted its initial SIP to EPA in 1972. Delaware periodically submits revisions to the SIP as required by the Clean Air Act. The Clean Air Act requires that any proposed SIP revision be made available for public comment, and presented at a public hearing prior to submitting to EPA for adoption.

At the public hearing held on October 25, 2017, the Department presented two proposed SIP revisions for public review and comment:

***1. Certification of Delaware's Non-attainment New Source Review and Emissions Statement Programs***

The first SIP revision is a certification that two existing Delaware programs currently contained in the SIP meet all requirements of the 2008 ozone national ambient air quality standard. On February 3, 2017, the EPA issued a Findings of Failure to 15 states and the District of Columbia to submit certain required SIP elements for 2008 8-hour ozone standard non-attainment areas. According to the EPA's action, Delaware failed to certify its Non-attainment New Source Review Program ("Non-attainment NSR Program") for the Seaford and Philadelphia-Wilmington-Atlantic City non-attainment areas for the 2008 ozone standard. EPA previously approved Delaware's Non-attainment NSR Program SIP revision on February 28, 2013 that covered all 2008 ozone standard non-attainment areas. Delaware finds and certifies that no changes are necessary to the Non-attainment NSR Program to comply with the 2008 ozone standard non-attainment NSR requirements.

The Department further determined Delaware's Emissions Statement program should also be certified for adequately addressing the 2008 ozone national ambient air quality standards ("NAAQS"). EPA approved Delaware's Emission Statement program on April 29, 1996. The approved emission statement rule, in force for the 1997 8-hour ozone standard and the 1-hour ozone standard, covers all portions of Delaware's non-attainment areas for the 2008 ozone standard, and is sufficient for purposes of the emissions statement requirements for the 2008 ozone standard.

## ***2. Negative Declaration for Emission Sources in the Oil and Gas Control Techniques Guidelines (“CTG”)***

Section 184(b) of the federal Clean Air Act requires Delaware, as part of the Ozone Transport Region, to revise its SIP to implement Control Techniques Guidelines (“CTG”) to control volatile organic compound emissions for all sources applicable to the CTG. Regarding the oil and gas CTG, no applicable sources exist in Delaware. Therefore, the Department is proposing a negative declaration for implementing the 2016 Oil and Gas CTG.

The Department has the statutory basis and legal authority to act with regard to the two proposed SIP revisions described herein, pursuant to 7 *Del.C.*, Chapter 60. The Department published the General Notice of the two proposed SIP revisions and the October 25, 2017 public hearing in the October 1, 2017 *Delaware Register of Regulations*. It should be noted that the EPA provided the Department with comments related to the proposed SIP revisions via email on September 22, 2017 and October 4, 2017. These comments were offered by EPA in order to provide additional clarity to the Department’s proposed SIP revisions. The Department incorporated EPA’s comments into its proposed SIP revisions prior to the public hearing. The *revised* proposed SIP revisions were then presented and fully vetted at the public hearing of 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 exhibits 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, David Fees, Engineer Program Manager, Division of Air Quality, developed the record with the relevant documents in the Department’s files.

As noted previously, the aforementioned *revised* proposed SIP revisions 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 *revised* proposed SIP document as presented at the October 25, 2017 public hearing 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 its *revised* proposed SIP document. 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 its *revised* proposed SIP document, 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 this *revised* proposed SIP document as final;

3. The Department provided adequate public notice of the *revised* proposed SIP document, 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 *revised* proposed SIP document, 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 this *revised* proposed SIP document will enable the Department to (1) provide certification that Delaware's Non-attainment New Source Review and Emissions Statement Programs meet all requirements of the 2008 ozone national ambient air quality standard; and (2) provide a negative declaration for emission sources specified in the oil and gas Control Techniques Guidelines issued by EPA;

5. The Department's *revised* proposed SIP document, as set forth in Appendix "A" hereto, is adequately supported, is not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final SIP revision, 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 *revised* proposed SIP document as a final SIP revision 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

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Attachments/Appendix:

Appendix A: *Revised* proposed SIP document

## **APPENDIX “A”**



*Proposal*

**Delaware State Implementation Plan Revision  
Under the 2008 Ozone National Ambient Air Quality Standard**

**Certification of Delaware's Non-attainment New Source Review  
(NNSR) and Emissions Statement Programs**

**Submitted To**

**U.S. Environmental Protection Agency**

**Submitted By**

**Delaware Department of Natural Resources and Environmental Control**



**September 12, 2017**

## 1. Introduction

On February 3, 2017 the EPA issued Findings of Failure to 15 states and the District of Columbia to submit certain required State Implementation Plan (SIP) elements for 2008 8-hour ozone standard nonattainment areas (82 FR 9158). According to EPA's action, Delaware failed to certify its Non-attainment New Source Review (NNSR) program for the Seaford, DE and Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment areas for the 2008 ozone National Ambient Air Quality Standards (NAAQS). **[EPAThe Department of Natural Resources and Environmental Control]** further determined Delaware's Emissions Statement program **[mustshould]** be certified for adequately addressing the 2008 ozone NAAQS.

## 2. Delaware Non-attainment Areas Designated Under the 2008 Ozone National Ambient Air Quality Standards (NAAQS)

EPA final designations under the 2008 ozone NAAQS for Delaware counties were finalized in April 2012. EPA included New Castle County in the marginal Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment area and established Sussex County as the stand-alone marginal Seaford nonattainment area.

On April 23, 2015, Delaware submitted the 2011 base year inventory of ozone precursors to EPA for New Castle and Sussex Counties. EPA issued a direct final rule approving Delaware's base year inventory on October 1, 2015. On April 12, 2015 Delaware submitted a RACT SIP revision certifying that Delaware, as part of the Ozone Transport Region, meets its obligation to establish RACT controls for VOC and NOx. On September 12, 2017, EPA published a proposal in the Federal Register (82 FR 42767) to approve Delaware's RACT SIP.

## 3. Certification of NNSR program

EPA previously approved a state-wide NNSR SIP revision on February 28, 2013 (78 FR 13496) which covered the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE and the Seaford, DE nonattainment areas for the 2008 ozone NAAQS. **[Delaware has not subsequently amended the SIP approved NNSR program. The NNSR program in Delaware's approved SIP has not been amended.]** Upon review of the [SIP-]approved NNSR program, Delaware finds and certify that no changes are necessary to comply with the 2008 ozone NAAQS NNSR requirements. The State of Delaware is certifying that its existing NNSR program is at least as stringent as the requirements at 40 CFR 51.165 for ozone and its precursors, as amended by the final rule titled *Implementation of the 2008 National Ambient Air Quality Standard for Ozone: State Implementation Plan Requirements* (80 FR 12264, March 6, 2015). **[Note that the emission offset provisions of 7 DE Admin Code 1125 approved by EPA into Delaware's SIP on October 2, 2012 (77 FR 60053) continue to apply to DE sources in nonattainment areas. EPA did not approve into the SIP the provisions in 7 DE Admin Code 1125 that DE adopted on December 11, 2016. Thus the provisions in the approved DE SIP remain applicable requirements, and offsets can only be obtained from the expanded area identified in the December 11, 2016 adoption if the offsets also meet the provisions in the SIP (i.e., they are generated in an area of equal to or higher nonattainment classification, and they are shown to directly impact the nonattainment area where the offsets are being used.)]**The requirements necessary to appropriately implement Delaware's NNSR program are included in Table 1.

#### 4. Certification of Emission Statement Program

Section 182(a)(3)(B) of the Clean Air Act (CAA) requires states with ozone nonattainment areas to develop emission statement programs for VOC and NOx sources. The required state program and associated regulation defines how states obtain emissions data directly from facilities and report it to the EPA. EPA approved Delaware's Emission Statement program on April 29, 1996 (61 FR 7415). The approved emission statement rule, in force for the 1997 ozone NAAQS and the 1-hour ozone NAAQS, covers all portions of Delaware's nonattainment areas for the 2008 ozone NAAQS, and is sufficient for purposes of the emissions statement requirements for the 2008 ozone NAAQS. Delaware has reviewed its previously approved emission statement rule and is certifying to EPA that it meets the emission statement requirements for the 2008 ozone NAAQS. The requirements necessary to appropriately implement Delaware's Emission Statement program are included in Table 1.

<b>Table 1: 2008 Ozone NAAQS SIP Requirements</b>	
<b>Non-attainment New Source Review</b>	
<b>40 CFR 51.165</b>	<b>Delaware Requirements</b>
(a)(1)(iv)(A)(1)(i)-(iv) and (2): Major source thresholds for ozone – VOC and NOx	7 DE Admin Code 1125 Section 2.2.
(a)(1)(iv)(A)(3): Change constitutes a major source by itself	7 DE Admin Code 1125 Section 2.2.3.
(a)(1)(v)I: Significant net emissions increase of Nox is significant for ozone	7 DE Admin Code 1125 Section 1.9, Definitions – “ <b>Major Modification</b> ”.
(a)(1)(v)(F): Any emissions change of VOC in Extreme area triggers NNSR	Not applicable since no Delaware nonattainment area is or has previously been designated as Extreme.
(a)(1)(x)(A)-(C) and I: Significant emissions rates for VOC and Nox as ozone precursors	7 DE Admin Code 1125 Section 1.9, Definitions – “ <b>Significant</b> ”.
(a)(3)(ii)(C)(1)-(2): Provisions for emissions reduction credits	7 DE Admin Code 1125 Section 2.5[ <b>as approved into Delaware's SIP on October 2, 2012. These SIP-approved provisions continue to apply to Delaware sources in nonattainment areas.</b> ]
(a)(8): Requirements for VOC apply to Nox as ozone precursors	7 DE Admin Code 1125 Section 2.2.4.
(a)(9)(i)-(iii): Offset ratios for VOC and Nox for ozone nonattainment areas [ <i>subparagraphs (a)(9)(i)-(iii) were changed to (a)(9)(ii)-(iv)</i> ]	7 DE Admin Code 1125 Section 2.4.3.
(a)(12): Anti-backsliding provision(s), where applicable	Sources in Kent and New Castle Counties remain subject to requirements and major source thresholds based on the Severe designation for the 1-hour ozone standard. Sussex County remains subject to

	requirements and major source thresholds based on the Moderate designation as part of an ozone transport region.
<b>Emission Statement Program</b>	
<b>CAA Section 182(a)(3)(B)</b>	<b>Delaware Requirements</b>
182(a)(3)(B)(i) – Submit yearly	7 DE Admin Code 1117 Section 7.3. [ <b>Annual emission statements due April 30 for the preceding calendar year.</b> ]
182(a)(3)(B)(i) – Source certification	7 DE Admin Code 1117 Section 7.2. [ <b>Certification statement contained on the Emission Statement to be signed by the Responsible Official.</b> ]
182(a)(3)(B)(ii) – Reporting thresholds	7 DE Admin Code 1117 Section 7.1. [ <b>Annual emissions of 25 tons/year of NOx or VOCs in nonattainment areas.</b> ]