



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

Office of the
Secretary

Phone: (302) 739-9000
Fax: (302) 739-6242

Secretary's Order No.: 2018-A-0071

RE: Approving Final Regulations to Amend 7 DE Admin. Code 1101, Section 2.0, *Definitions and Administrative Principles*; 7 DE Admin. Code 1102, Appendix A, Section 15.0, *Outdoor Painting and Sand Blasting Equipment*; and a proposed new Source Category Permit, *Removal of Lead-Containing Coatings from Outdoor Water Tanks by Dry Abrasive Blasting*

Date of Issuance: December 17, 2018

Effective Date of the Amendment: January 11, 2019

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 all other relevant statutory authority, 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 1101, Section 2.0, *Definitions and Administrative Principles*; 7 DE Admin. Code 1102, Appendix A, Section 15.0, *Outdoor Painting and Sand Blasting Equipment*; and a proposed new Source Category Permit, *Removal of Lead-Containing Coatings from Outdoor Water Tanks by Dry Abrasive Blasting* ("Permit").

The Amendments proposed for Appendix A, Section 15.0 of 7 DE Admin. Code 1102 will qualify that outdoor dry abrasive blasting of water tanks with lead-containing coatings are no longer exempt from obtaining a permit from the Department. In further support of these proposed Amendments and Permit, the Department is adding three definitions to Section 2.0 of 7 DE Admin. Code 1102 for “dry abrasive blasting,” “lead-containing coating,” and “water tank.”

As set forth in 7 DE Admin. Code 1102, *Permits*, Appendix A contains a list of equipment for which an air permit for installation, alteration, or operation is not required. Section 15.0 of that Appendix relates to outdoor painting and sand blasting equipment. Water tanks, such as those containing potable drinking water, are often coated with lead-containing coatings. Removal of these coatings must be accomplished under conditions that protect people and nearby properties from the known harmful impacts of lead. Although dry abrasive blasting cleans the tank surface well in preparation for subsequent successful recoating, it is a difficult process to control, as it tends to disperse blasting residue with lead-containing particles over a broad area. Using a containment system to contain blasting residue and allow subsequent collection and safe disposal, will provide the necessary protection of people and property.

Many tank owners, both in Delaware and in other locations across the United States, use the aforementioned containment approach. However, as is the case in Delaware, this approach is made without regulatory supervision. To ensure all such projects will have DNREC’s regulatory oversight, the Department proposes to establish a new Source Category for outdoor water tanks with lead-containing coatings to be removed by dry abrasive blasting, and to issue a new Source Category Permit to the tank owner for a tank refurbishment project prior to the project commencing. Such Permits would be applicable to a specific project, and would be canceled upon completion of the project.

To further support this action, the Department has proposed a new Source Category for projects that perform dry abrasive blasting of water tanks that have lead-containing coatings. A Source Category, as set forth in Section 2.0 of 7 DE Admin. Code 1130, *Title V State Operating Permit Program*, is defined as follows:

“Source Category” means sources which may have the same or similar operations, emissions, activities; which may emit the same type of regulated air pollutants; which are subject to the same or similar standards, limitations and operating requirements; or which may be subject to the same or similar monitoring requirements.

The proposed new Permit is not a regulation, however, for transparency purposes, the Department published the same in the General Notices Section of the June 1, 2018 edition of the *State of Delaware Register of Regulations*, along with the aforementioned proposed Amendments. Additionally, the proposed new Permit language incorporates tank containment practices generally accepted by tank owners, and includes specific requirements as set forth in the Society of Protective Coatings (“SSPC”), Guide No. 6, “Guide for Containing Surface Preparation Debris Generated During Paint Removal Operations,” a copyrighted document.

The proposed new Permit was also reviewed in consultation with the State of Delaware Department of Public Health. As a result of that review, the Department is revising the proposed new Permit, to add under Section 7.0, *Public Notification and Reporting Requirements*, a requirement that a lead fact sheet would be made available to the public.

Subsequent to finalizing this Permit, the Department will prepare and make available to tank owners permit application forms for water tank refurbishing projects. As is the case for all projects that require a permit, the Department’s proposal to issue a permit must be advertised to afford public review and comment.

The Department has the statutory basis and legal authority to act with regard to promulgation of the above proposed Amendments and the proposed new Permit, pursuant to 7 *Del. C. Ch. 60* and 7 DE Admin. Code 1130, *Title V State Operating Permit Program*. As noted previously, the Department published its initial proposed regulatory Amendments and Permit in the June 1, 2018 *Delaware Register of Regulations*. Thereafter, the public hearing regarding this matter was held on July 12, 2018. Members of the public attended the aforementioned public hearing, with comment being received by the Department 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 receipt of public comment. The hearing record formally closed for comment in this matter at the close of business on July 27, 2018, with the Department having received comment from the public prior to, during, and subsequent to the hearing on July 12, 2018.

After the comment period formally closed on July 27, 2018, the Department performed a thorough review of the record, including all of the comments received on the proposed Amendments. The full range of comments contained in the formal hearing record includes not only those from members of the public, but from other contributors as well, such as Artesian Water Company, Tidewater Utilities, and the Sierra Club. It should be noted that all noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Written comment was submitted to the Department prior to, during, and subsequent to the hearing by the following persons: (1) Dr. Amy Roe and Sarah Bucic, R.N., jointly; (2) Sarah Bucic, R.N.; (3) Dr. Frank Malone, a citizen residing in the community of Ardentown, Delaware; (4) Alan Muller, Executive Director, Green Delaware; and (5) Tom Coleman, P.E., Acting City Manager, City of Newark. Additionally, the following persons offered verbal comment at the time of the public hearing held on July 12, 2018: (1) Sarah Bucic, R.N.; (2) Joseph DuNunzio, Executive Vice President, Artesian Water Company; (3) Sheila Shannon, Director of Water Quality, Tidewater Utilities; (4) Sandy Spence, a citizen residing in Lewes, Delaware; (5) Coralie Pryde, a citizen residing in Wilmington, Delaware; (6) Dr. Frank Malone; and (7) Stephanie Herron, representing the Delaware Chapter of the Sierra Club.

With regard to the comments received by the Department in this matter, it should be noted that all comments concerning the proposed amendments to both 7 DE Admin. Code 1101 and 7 DE Admin. Code 1102 were supportive in nature. Other comments received from the public concerned either the non-regulatory aspects of the Department's proposed actions, or referred to activities not germane to the subject matter of the public hearing held on July 12, 2018. Nevertheless, the Department's Division of Air Quality addressed those comments in its Technical Response Memorandum ("TRM") as well.

One commenter pointed out a non-substantive clerical error contained in subsection 4.1.9 of the Permit. The Department has now corrected this error, and the revised version of this Permit will be published, along with the finalized aforementioned Amendments, in the next available edition of the *Register of Regulations*. It should be noted that no changes were made to the Department's proposed Amendments during the post-hearing phase of this promulgation, and thus no additional public vetting or re-publication of the same is required in this matter.

At the request of the presiding Hearing Officer, the aforementioned TRM was prepared by the Department's Division of Air Quality staff to serve as a comprehensive summary of the comment received in this matter. The Department's TRM not only provides a thorough discussion of the comment received in this matter, but also provides the Department's responses and recommendations concerning the same.

Hearing Officer Vest prepared a Hearing Officer's Report dated December 10, 2018 ("Report"), which expressly incorporated both the Department's proposed Amendments, proposed new Source Category Permit, and the aforementioned TRM into the hearing record generated in this matter. The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments and new Source Category Permit, as attached to the Report as Appendices A through C, respectively.

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 Amendments and proposed new Source Category Permit are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments, along with the proposed new Source Category Permit, be promulgated as final. I further find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of the same.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code 1101, Section 2.0, *Definitions and Administrative Principles*; 7 DE Admin. Code 1102, Appendix A, Section 15.0, *Outdoor Painting and Sand Blasting Equipment*; and the proposed new Source Category Permit, *Removal of Lead-Containing Coatings from Outdoor Water Tanks by Dry Abrasive Blasting*, 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 Amendments and proposed new Permit as final;
3. The Department provided adequate public notice of the initial proposed Amendments and proposed new Permit, and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed Amendments and proposed new Permit, including at the time of the public hearing held on July 12, 2018, and during the 15 days subsequent to the hearing (through close of business on July 27, 2018), before making any final decision;

4. Promulgation of the aforementioned proposed Amendments and proposed new Permit will qualify that outdoor dry abrasive blasting of water tanks with lead-containing coatings is no longer exempt from obtaining a permit from the Department. In further support of these proposed Amendments and Permit, the Department's addition of three definitions to Section 2.0 of 7 DE Admin. Code 1102 for "dry abrasive blasting," "lead-containing coating," and "water tank," will provide greater clarity to the regulated community and the public with regard to this matter;

5. Moreover, the establishment of a new Source Category for outdoor water tanks with lead-containing coatings to be removed by dry abrasive blasting, and the requirement of a new Source Category Permit to be issued to the tank owner for such projects prior to such work commencing (which will require the use of a containment system to contain blasting residue and allow subsequent collection and safe disposal), will provide the necessary protection of people and property in the locations where such activity will take place, and will ensure that all such projects are under regulatory oversight;

6. The Department has reviewed the proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and has selected Exemption B1, as this regulation is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses;

7. The Department's Hearing Officer's Report, including its established record and the recommended proposed Amendments and proposed new Source Category Permit, as set forth in Appendices A through C thereto, are hereby adopted to provide additional reasons and findings for this Order;

8. The Department's proposed regulatory Amendments and proposed new Source Category Permit, as initially published in the June 1, 2018 *Delaware Register of Regulations*, and as set forth in Appendices A through C 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 and a final new Source Category Permit, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and

9. The Department shall submit the proposed Amendments as final regulatory amendments to 7 DE Admin. Code 1101, Section 2.0, *Definitions and Administrative Principles*, and 7 DE Admin. Code 1102, Appendix A, Section 15.0, *Outdoor Painting and Sand Blasting Equipment*, as well as the proposed new Source Category Permit, *Removal of Lead-Containing Coatings from Outdoor Water Tanks by Dry Abrasive Blasting*, 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

MEMORANDUM

TO: The Honorable Shawn M. Garvin
Cabinet Secretary, Dept. of Natural Resources and Environmental Control

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

RE: **Proposed Regulation Amendments to 7 DE Admin. Code 1101, Section 2.0, *Definitions and Administrative Principles*; 7 DE Admin. Code 1102, Appendix A, Section 15.0, *Outdoor Painting and Sand Blasting Equipment*; and a proposed new Source Category Permit, *Removal of Lead-Containing Coatings from Outdoor Water Tanks by Dry Abrasive Blasting***

DATE: December 10, 2018

I. Background:

A public hearing was held on Thursday, July 12, 2018, at 6:00 p.m. at the Kent County Administrative Building, 555 S. Bay Road, Dover, Delaware to receive comment on proposed amendments (“Amendments”) to 7 DE Admin. Code 1101, Section 2.0, *Definitions and Administrative Principles*; 7 DE Admin. Code 1102, Appendix A, Section 15.0, *Outdoor Painting and Sand Blasting Equipment*; and a proposed new Source Category Permit, *Removal of Lead-Containing Coatings from Outdoor Water Tanks by Dry Abrasive Blasting* (“Permit”). The Amendments proposed for Appendix A, Section 15.0 of 7 DE Admin. Code 1102 will qualify that outdoor dry abrasive blasting of water tanks with lead-containing coatings are no longer exempt from obtaining a permit from the Department. In further support of these proposed Amendments and Permit, the Department is adding three definitions to Section 2.0 of 7 DE Admin. Code 1102 for “dry abrasive blasting,” “lead-containing coating,” and “water tank.”

As set forth in 7 DE Admin. Code 1102, *Permits*, Appendix A contains a list of equipment for which an air permit for installation, alteration, or operation is not required. Section 15.0 of that Appendix relates to outdoor painting and sand blasting equipment. Water tanks, such as those containing potable drinking water, are often coated with lead-containing coatings. Removal of these coatings must be accomplished under conditions that protect people and nearby properties from the known harmful impacts of lead. Although dry abrasive blasting cleans the tank surface well in preparation for subsequent successful recoating, it is a difficult process to control, as it tends to disperse blasting residue with lead-containing particles over a broad area. Using a containment system to contain blasting residue and allow subsequent collection and safe disposal, will provide the necessary protection of people and property.

Many tank owners, both in Delaware and in other locations across the United States, use the aforementioned containment approach. However, as is the case in Delaware, this approach is made without regulatory supervision. To ensure all such projects will have DNREC's regulatory oversight, the Department proposes to establish a new Source Category for outdoor water tanks with lead-containing coatings to be removed by dry abrasive blasting, and to issue a new Source Category Permit to the tank owner for a tank refurbishment project prior to the project commencing. Such Permits would be applicable to a specific project, and would be canceled upon completion of the project.

To further support this proposed action, the Department has proposed a new Source Category for projects that perform dry abrasive blasting of water tanks that have lead-containing coatings. A Source Category, as set forth in Section 2.0 of 7 DE Admin. Code 1130, *Title V State Operating Permit Program*, is defined as follows:

“Source Category” means sources which may have the same or similar operations, emissions, activities; which may emit the same type of regulated air pollutants; which are subject to the same or similar standards, limitations and operating requirements; or which may be subject to the same or similar monitoring requirements.

The proposed new Permit is not a regulation, however, for transparency purposes, the Department published the same in the General Notices Section of the June 1, 2018 edition of the *State of Delaware Register of Regulations*, along with the aforementioned proposed Amendments. Additionally, the proposed new Permit language incorporates tank containment practices generally accepted by tank owners, and includes specific requirements as set forth in the Society of Protective Coatings (“SSPC”), Guide No. 6, “Guide for Containing Surface Preparation Debris Generated During Paint Removal Operations,” a copyrighted document.

The proposed new Permit was also reviewed in consultation with the State of Delaware Department of Public Health. As a result of that review, the Department is revising the proposed new Permit, to add under Section 7.0, *Public Notification and Reporting Requirements*, a requirement that a lead fact sheet would be made available to the public.

Subsequent to finalizing this Permit, the Department will prepare and make available to tank owners permit application forms for water tank refurbishing projects. As is the case for all projects that require a permit, the Department’s proposal to issue a permit must be advertised to afford public review and comment.

The Department has the statutory basis and legal authority to act with regard to promulgation of the above proposed Amendments and the proposed new Permit, pursuant to 7 *Del. C.* Ch. 60 and 7 DE Admin. Code 1130, *Title V State Operating Permit Program*. As noted previously, the Department published its initial proposed regulatory Amendments and Permit in the June 1, 2018 *Delaware Register of Regulations*. Thereafter, the public hearing regarding this matter was held on July 12, 2018. Members of the public attended the aforementioned public hearing, with comment being received by the Department 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 receipt of public comment. The hearing record formally closed for comment in this matter at the close of business on July 27, 2018, with the Department having received comment from the public prior to, during, and subsequent to the hearing on July 12, 2018.

After the comment period formally closed on July 27, 2018, the Department performed a thorough review of the record, including all of the comments received on the proposed Amendments. The full range of comments contained in the formal hearing record includes not only those from members of the public, but from other contributors as well, such as Artesian Water Company, Tidewater Utilities, and the Sierra Club. It should be noted that all 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; (2) twenty-six (26) documents introduced by Department staff at the public hearing held on July 12, 2018, and marked by this Hearing Officer accordingly as Department Exhibits 1-26; (3) written comment submitted by Dr. Frank Malone in support of his verbal comment offered at said public hearing, and marked by this Hearing Officer accordingly as “Malone Ex. #1”; and (4) Technical Response Memorandum (“TRM”) provided to this Hearing Officer by Gene Pettingill, Engineer III with the Department’s Division of Air Quality, dated November 30, 2018.

The Department’s person primarily responsible for the drafting and overall promulgation of these proposed Amendments and Proposed New Source Category Permit, Mr. Pettingill, developed the record with the relevant documents in the Department’s files. As stated previously, members of the public attended the aforementioned July 12, 2018 hearing.

A significant amount of comment was received by the Department concerning this proposed regulatory action, not only at the time of the hearing itself, but also during both the pre-hearing and post-hearing phases of this promulgation. At the request of this Hearing Officer, a Technical Response Memorandum (“TRM”) was prepared by the Department’s Division of Air Quality staff to serve as a comprehensive summary of the comment received in this matter.

Written comment was submitted to the Department prior to, during, and subsequent to the hearing by the following persons: (1) Dr. Amy Roe and Sarah Bucic, R.N., jointly; (2) Sarah Bucic, R.N.; (3) Dr. Frank Malone, a citizen residing in the community of Ardentown, Delaware; (4) Alan Muller, Executive Director, Green Delaware; and Tom Coleman, P.E., Acting City Manager, City of Newark. Additionally, the following persons offered verbal comment at the time of the public hearing held on July 12, 2018: (1) Sarah Bucic, R.N.; (2) Joseph DuNunzio, Executive Vice President, Artesian Water Company; (3) Sheila Shannon, Director of Water Quality, Tidewater Utilities; (4) Sandy Spence, a citizen residing in Lewes, Delaware; (5) Coralie Pryde, a citizen residing in Wilmington, Delaware; (6) Dr. Frank Malone; and (7) Stephanie Herron, representing the Delaware Chapter of the Sierra Club.

With regard to the comments received by the Department in this matter, it should be noted that all comments concerning the proposed amendments to both 7 DE Admin. Code 1101 and 7 DE Admin. Code 1102 were supportive in nature. Other comments received from the public concerned either the non-regulatory aspects of the Department’s proposed actions, or referred to activities not germane to the subject matter of the public hearing held on July 12, 2018. Nevertheless, the Department addressed those comments in the TRM as well.

One commenter pointed out a non-substantive clerical error contained in subsection 4.1.9 of the Permit. The Department has now corrected this error, and the revised version of this Permit will be published, along with the finalized aforementioned Amendments, in the next available edition of the *Register of Regulations*. It should be noted that no changes were made to the Department's proposed Amendments during the post-hearing phase of this promulgation, and thus no additional public vetting or re-publication of the same is required in this matter.

The Department's TRM not only provides a thorough discussion of the comment received in this matter, but also provides the Department's responses and recommendations concerning the same. Again, all comment received with regard to the proposed Amendments was supportive in nature. All other comment received with regard to the proposed new Permit was fully addressed and responded to by the Department in its aforementioned TRM. Accordingly, the Department's proposed Amendments to both 7 DE Admin. Code 1101 and 7 DE Admin. Code 1102, the proposed new Source Category Permit, and the aforementioned TRM are hereby expressly incorporated into the hearing record generated in this matter, and are attached hereto for the Secretary's review as Appendices A, B, C and D, respectively.

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 amendments to 7 DE Admin. Code 1101, Section 2.0, *Definitions and Administrative Principles*; 7 DE Admin. Code 1102, Appendix A, Section 15.0, *Outdoor Painting and Sand Blasting Equipment*; and the proposed new Source Category Permit, *Removal of Lead-Containing Coatings from Outdoor Water Tanks by Dry Abrasive Blasting*, as noted above. 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 amendments to 7 DE Admin. Code 1101, Section 2.0, *Definitions and Administrative Principles*; 7 DE Admin. Code 1102, Appendix A, Section 15.0, *Outdoor Painting and Sand Blasting Equipment*; and the proposed new Source Category Permit, *Removal of Lead-Containing Coatings from Outdoor Water Tanks by Dry Abrasive Blasting*, 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 Amendments and proposed new Permit as final;

3. The Department provided adequate public notice of the initial proposed Amendments and proposed new Permit, and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed Amendments and proposed new Permit, including at the time of the public hearing held on July 12, 2018, and during the 15 days subsequent to the hearing (through close of business on July 27, 2018), before making any final decision;

4. Promulgation of the aforementioned proposed Amendments and proposed new Permit will qualify that outdoor dry abrasive blasting of water tanks with lead-containing coatings is no longer exempt from obtaining a permit from the Department. In further support of these proposed Amendments and Permit, the Department's addition of three definitions to Section 2.0 of 7 DE Admin. Code 1102 for "dry abrasive blasting," "lead-containing coating," and "water tank," will provide greater clarity to the regulated community and the public with regard to this matter.

5. Moreover, the establishment of a new Source Category for outdoor water tanks with lead-containing coatings to be removed by dry abrasive blasting, and the requirement of a new Source Category Permit to be issued to the tank owner for such projects prior to such work commencing (which will require the use of a containment system to contain blasting residue and allow subsequent collection and safe disposal), will provide the necessary protection of people and property in the locations where such activity will take place, and will ensure that all such projects are under regulatory oversight;

6. The Department has reviewed the proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and has selected Exemption “B1,” as this regulation is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses;

7. The Department’s proposed regulatory Amendments and proposed new Source Category Permit, as initially published in the June 1, 2018 *Delaware Register of Regulations*, and as set forth in Appendices A through C 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 and a final new Source Category Permit, 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 Amendments as final regulatory amendments to 7 DE Admin. Code 1101, Section 2.0, *Definitions and Administrative Principles*, and 7 DE Admin. Code 1102, Appendix A, Section 15.0, *Outdoor Painting and Sand Blasting Equipment*, as well as the proposed new Source Category Permit, *Removal of Lead-Containing Coatings from Outdoor Water Tanks by Dry Abrasive Blasting*, 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: Proposed Reg. Amendments to Section 2.0, 7 DE Admin. Code 1101

Appendix B: Proposed Reg. Amendments to Appendix A, Section 15.0, 7 DE Admin. Code 1102

Appendix C: Proposed new Source Category Permit

Appendix D: DAQ TRM (11/30/18)

APPENDIX "A"

PROPOSED REGULATIONS

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

None.

6. NOTICE OF PUBLIC COMMENT:

There will be a hearing on this proposed amendment on July 12, 2018 beginning at 6pm at the Kent County Levy Court, 555 S. Bay Road, Room 220, Dover, DE 19901. Interested parties may present oral or written comments regarding the proposed changes at the public hearing or in writing to David Fees, Division of Air Quality, DNREC, State Street Commons, 100 West Water Street, Suite 6A, Dover, DE 19904, or by email to david.fees@state.de.us. The hearing record will remain open until July 27, 2018.

7. PREPARED BY:

David Fees david.fees@state.de.us (302) 739-9402
May 13, 2018

***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/june2018/proposed/21 DE Reg 957RFA 06-01-18.pdf>

1101 Definitions and Administrative Principles

(Break in Continuity of Sections)

42/41/2016 xx/xx/2018

2.0 Definitions

(Break in Continuity Within Section)

"Dry abrasive blasting" means propelling an abrasive material under dry, pressurized conditions against a surface to remove coatings or contaminants or to prepare for subsequent coating. Dry sandblasting is included within this definition.

(Break in Continuity Within Section)

"Lead-containing coating" means a coating that contains lead or lead compounds.

(Break in Continuity Within Section)

"Water tank" means a storage vessel, elevated or at ground level, that holds potable or non-potable water for use in including, but not limited to, a potable water system, a manufacturing process or other type of process, or for fighting fires.

***Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

[1101 Definitions and Administrative Principles](#)

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C. Ch. 60)
7 DE Admin. Code 1102

REGISTER NOTICE

SAN #2017-18

1102 Permits

1. TITLE OF THE REGULATION:

7 DE Admin. Code 1102: Permits

6.0 Unreasonable and Discriminatory Compensation Prohibited

- 6.1 No carrier or TPA shall discriminate against or unreasonably deny a doctor of chiropractic compensation for a chiropractic service rendered by that doctor of chiropractic if the carrier would otherwise compensate a provider who is not licensed as a doctor of chiropractic but who is otherwise licensed to perform that same or substantially similar service.
- 6.2 Every carrier or TPA shall utilize nondiscriminatory cost containment and managed care payment strategies to provide payment for chiropractic care or services, regardless of whether the care or services were delivered by a licensed doctor of chiropractic or by a provider who is not licensed as a doctor of chiropractic but who is otherwise licensed to perform the same or substantially similar service.

7.0 Reasonable and Nondiscriminatory Provisions

Nothing in this regulation shall prohibit a carrier or a TPA from implementing reasonable and nondiscriminatory cost containment or managed care provisions as permitted by 24 Del.C. §716(b).

8.0 Waiver not permitted

The provisions of this regulation may not be waived, voided, or nullified by contract.

9.0 Causes of Action

This regulation shall not create a private cause of action for any person or entity other than the Commissioner against a carrier or its representative based upon a violation of 24 Del.C. §716 or any provision of this regulation.

10.0 Effective Date

This regulation shall become effective on January 1, 2019.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF AIR QUALITY**

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C. Ch. 60)
7 DE Admin. Code 1101

**REGISTER NOTICE
SAN #2018-06****1101 Definitions and Administrative Principles****1. TITLE OF THE REGULATION:**

7 DE Admin. Code 1101: Definitions and Administrative Principles

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

The purpose of this action is to add three definitions in 7 DE Admin. Code 1101 needed for the new Source Category Permit "Removal of Lead-containing Coatings from Outdoor Water Tanks by Dry Abrasive Blasting"

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 60 Environmental Control

APPENDIX “B”

PROPOSED REGULATIONS

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

None.

6. NOTICE OF PUBLIC COMMENT:

There will be a hearing on this proposed amendment on July 12, 2018 beginning at 6pm at the Kent County Levy Court, 555 S. Bay Road, Room 220, Dover, DE 19901. Interested parties may present oral or written comments regarding the proposed changes at the public hearing or in writing to David Fees, Division of Air Quality, DNREC, State Street Commons, 100 West Water Street, Suite 6A, Dover, DE 19904, or by email to david.fees@state.de.us. The hearing record will remain open until July 27, 2018.

7. PREPARED BY:

David Fees david.fees@state.de.us (302) 739-9402
May 13, 2018

*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/june2018/proposed/21 DE Reg 957RFA 06-01-18.pdf>

1101 Definitions and Administrative Principles

(Break in Continuity of Sections)

42/11/2016 xx/xx/2018

2.0 Definitions

(Break in Continuity Within Section)

"Dry abrasive blasting" means propelling an abrasive material under dry, pressurized conditions against a surface to remove coatings or contaminants or to prepare for subsequent coating. Dry sandblasting is included within this definition.

(Break in Continuity Within Section)

"Lead-containing coating" means a coating that contains lead or lead compounds.

(Break in Continuity Within Section)

"Water tank" means a storage vessel, elevated or at ground level, that holds potable or non-potable water for use in including, but not limited to, a potable water system, a manufacturing process or other type of process, or for fighting fires.

*Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:

[1101 Definitions and Administrative Principles](#)

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C. Ch. 60)
7 DE Admin. Code 1102

REGISTER NOTICE

SAN #2017-18

1102 Permits

1. TITLE OF THE REGULATION:

7 DE Admin. Code 1102: Permits

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

The purpose of this action is to revise 7 DE Admin. Code 1102, Section 15.0 "Outdoor painting and sand blasting equipment" of Appendix A to qualify that removal of lead-containing coatings from water tanks by dry abrasive blasting is no longer exempt from obtaining a permit.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 60 Environmental Control

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL

None.

6. NOTICE OF PUBLIC COMMENT:

There will be a hearing on this proposed amendment on July 12, 2018 beginning at 6pm at the Kent County Levy Court, 555 S. Bay Road, Room 220, Dover, DE 19901. Interested parties may present oral or written comments regarding the proposed changes at the public hearing or in writing to David Fees, Division of Air Quality, DNREC, State Street Commons, 100 West Water Street, Suite 6A, Dover, DE 19904, or by email to david.fees@state.de.us. The hearing record will remain open until July 27, 2018.

7. PREPARED BY:

David Fees david.fees@state.de.us (302) 739-9402
May 8, 2018

***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/june2018/proposed/21 DE Reg 958RFA 06-01-18.pdf>

1102 Permits***(Break in Continuity of Sections)***

06/11/2006 (xx/xx/xxxx)

Appendix A

(For the applicability of Appendix A, see 2.2 of this regulation)

(Break in Continuity Within Section)

15.0 Outdoor painting and sand blasting equipment except for the removal of lead-containing coatings from outdoor water tanks by dry abrasive blasting.

defined in 7 DE Admin. Code 1144.

***Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

1102 Permits

APPENDIX "C"

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C. Ch. 60)

REGISTER NOTICE

Source Category Permit for Outdoor Dry Abrasive Blasting of Water Tanks that have Lead-Containing Coatings

1. TITLE OF PERMIT:

Source Category Permit for outdoor dry abrasive blasting of water tanks that have lead containing coatings under 7 DE Admin Code 1102, Permits.

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

The Department is proposing to establish a Source Category Permit under existing provisions of 7 DE Admin Code 1102, "Permits". This action is the result of the Department's proposal to revise 7 DE Admin Code 1102, Section 15.0 "Outdoor painting and sand blasting equipment" of Appendix A to qualify that removal of lead-containing coatings from water tanks by dry abrasive blasting is no longer exempt from obtaining a permit.

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:

There will be a hearing on this proposed amendment on July 12, 2018 beginning at 6pm at the Kent County Levy Court, located at 555 S. Bay Road, Room 220, Dover, DE 19901. Interested parties may present oral or written comments regarding the proposed changes at the public hearing or in writing to David Fees, Division of Air Quality, DNREC, State Street Commons, 100 West Water Street, Suite 6A, Dover, DE 19904, or by email to david.fees@state.de.us. The hearing record will remain open until July 27, 2018.

7. PREPARED BY:

David Fees david.fees@state.de.us (302) 739-9402
May 13, 2018

REMOVAL OF LEAD-CONTAINING COATINGS FROM OUTDOOR WATER TANKS BY DRY ABRASIVE
BLASTING

SOURCE CATEGORY PERMIT

DRAFT 5/11/2018

1.0 General Provisions

- 1.1 Dry abrasive blasting of an outdoor water tank with a lead-containing coating shall be carried out in accordance with the project as described in the application submitted by the tank owner or operator that served as the basis for the project being permitted under this source category.

GENERAL NOTICES

- 1.2 Nothing in this permit relieves the permittee from the obligation to comply with all applicable federal, state, county, and municipal statutes, regulations, ordinances and policies.
- 1.3 The owner or operator shall not install, construct or alter any equipment or facility or air contaminant control device which will emit or prevent the emission of an air contaminant prior to submitting an application to the Department pursuant to 7 DE Admin. Code 1102, and, when applicable 7 DE Admin. Code 1125, and receiving approval of such application from the Department; except as exempted in 7 DE Admin. Code 1102 Section 2.2.
- 1.4 Representatives of the Department may, at any reasonable time, inspect this facility.
- 1.5 This permit may not be transferred to another location or to another person, owner, or operator of an outdoor water tank.

2.0 Emission Limitations

- 2.1 No person shall cause or allow sandblasting or related abrasion operations unless sufficient containment measures are taken to prevent the sand or abrasive material from traveling beyond the property line where the operation is being conducted, or traveling beyond the containment system should the containment system be located, in whole or in part, beyond the property line.
- 2.2 No person shall cause or allow the emission of any visible air contaminant.
- 2.3 There shall be no measurable emissions of lead or lead-containing particles, compared to a previously determined background level, when measured in the ambient air at the water tank owner's property line, or beyond where the containment operation is being conducted if the containment operation, in whole or in part, extends beyond the property line.

3.0 Operational Limitations

- 3.1 Dry abrasive blasting shall not be operated unless the containment system ventilation, as described in condition 3.3.3 of this permit, is operating properly, and:
 - 3.1.1 if a Type A1 - Rigid system, as described in 3.3.1.1 of this permit, is maintaining a negative pressure of at least 0.03 inch of water relative to ambient conditions as measured by a manometer or magnehelic gage, or
 - 3.1.2 if a Type A2 -flexible system, as described in 3.3.1.1 of this permit, is maintaining a negative pressure throughout the containment system enclosure as determined by visual observation of the concave nature of the shrouding employed while taking into account wind effects.
- 3.2 For every start or restart of dry abrasive blasting, observe all areas of the containment system for visible emissions from the containment enclosure and from the exhaust stack. If emissions are observed which cannot be immediately controlled, dry abrasive blasting shall cease until the cause of emissions is found and corrected.
- 3.3 Containment and Ventilation Systems
 - 3.3.1 Containment shall be Class 1A, as described in Table A "Abrasive Blast Cleaning" of the Society for Protective Coatings (SSPC) Technology Guide No. 6 "Guide for Containing Surface Preparation Debris Generated During Paint Removal Operations", dated May 4, 2015. The required components of the Containment System shall be as follows:
 - 3.3.1.1 Containment Materials shall be Type A1 - Rigid or Type A2 - Flexible, as described in section 5.3.1.1 or 5.3.1.2 respectively, of SSPC 6,
 - 3.3.1.2 Penetrability shall be Type B1 - Air Impenetrable, as described in section 5.3.2.1 of SSPC 6,
 - 3.3.1.3 Support Structure shall be Type C1 - Rigid or Type C2 - Flexible, as described in section 5.3.3.1 or 5.3.3.2 respectively, of SSPC 6,
 - 3.3.1.4 Joints shall be Type D1 - Full Seal, as described in section 5.3.4.1 of SSPC 6, and
 - 3.3.1.5 Entryway shall be Type E1 - Airlock or Type E2 - Resealable, as described in section 5.3.5.1 or 5.3.5.2 respectively, of SSPC 6.

- 3.3.2 Thorough cleanup of the containment system, the water tank exterior surface and all equipment within the containment system shall be performed prior to dismantling or moving any part of the containment system to a new location, lowering, or ceasing dry abrasive blasting operations at the end of the day,
- 3.3.2.1 with a vacuum equipped with a high efficiency particulate air filter that is capable of removing 99.97 percent of airborne particulate matter with a size of 0.3 microns or larger; or alternatively,
 - 3.3.2.2 with dry, low pressure compressed air (150 psi or less) from a hose to blow off deposited dust and coating chips on contaminated areas described in condition 3.3.2 of this permit, making such dust and chips airborne so the air flow through the containment area will pass these contaminants through the exhaust air filtration system.
- 3.3.3 Ventilation shall be Class 1A, as described in Table A "Abrasive Blast Cleaning" of the Society for Protective Coatings (SSPC) Technology Guide No. 6 "Guide for Containing Surface Preparation Debris Generated During Paint Removal Operations", dated May 4, 2015. The required components of the Ventilation System shall be as follows:
- 3.3.3.1 Air Makeup shall be Type F1 - Controlled, as described in section 5.4.1.1 of SSPC 6,
 - 3.3.3.2 Input Air Flow shall be Type G1 - Forced or Type G2 - Natural, as described in section 5.4.2.1 or 5.4.2.2 respectively, of SSPC 6,
 - 3.3.3.3 Air Pressure Inside Containment shall be Type H1 - Instrument Verification or Type H2 - Visual Verification, as described in section 5.4.3.1 or 5.4.3.2 respectively, of SSPC 6,
 - 3.3.3.4 Air Movement shall be Type I1 - Minimum Specified, as described in section 5.4.4.1 of SSPC 6, and
 - 3.3.3.5 Exhaust Air Filtration shall be Type J1 - Filtration, as described in section 5.4.5.1 of SSPC 6, where all air in the containment system is a forced flow into dust collectors followed by a high efficiency particulate air filter that is capable of removing 99.97 percent of airborne particulate matter with a size of 0.3 microns or larger and the filtered air is then exhausted through a stack.
- 3.3.4 The containment system shall be inspected daily, as well as when the system is raised, lowered, or moved prior to conducting any dry abrasive blasting activity. The inspection shall ensure the containment system is free of tears and holes and all seals are in working order.
- 3.3.5 The fan, moving containment system air into, and located just before, the exhaust air filtration system, shall be equipped with an outlet static pressure sensor and the dry abrasive blasting system shall be immediately shut down whenever static pressure is noted to have been lost, such as in the case of a fan failure.
- 3.3.6 The discharge of the exhaust air filtration system shall be directed away from buildings, personnel working in the area, air intakes to the containment system, and the clean compressed air supply for dry air for the dry abrasive blasting equipment.
- 3.3.7 No fugitive emissions shall be generated as a result of removing collected dust from the exhaust air filtration system or any vacuums used in cleanup or as a result of subsequent handling of the collected dust on-site or during off-site transit.

4.0 Site Emergency and Release Response Plan

- 4.1 The water tank owner or operator shall submit a Site Emergency and Release Response Plan to the Department a minimum of thirty (30) days prior to the start of on-site work. This plan shall include all aspects of foreseeable events likely causing environmental hazards to the public, describing proposed resolution, and including notification of the public likely to be impacted. Considerations must be site specific and should include, at a minimum:
- 4.1.1 Contractor's Lead and Health safety program;
 - 4.1.2 Contractor's procedures to address a release or discharge;
 - 4.1.3 Activities in response to a suspected or impending severe weather event;
 - 4.1.4 Notification tree (including phone numbers and email addresses);

GENERAL NOTICES

- 4.1.5 Procedures to be implemented to ensure adequate clean-up of off-site and on-site environmental consequences of event;
- 4.1.6 Procedures to be implemented to review system performance to ensure prevention of future similar environmental events;
- 4.1.7 List of on-site equipment to be used for clean-up;
- 4.1.8 Addresses and contact information for the lab used for certified air monitoring analyses; and,
- 4.1.9 Post-incident report to be submitted to the Department.

5.0 Monitoring Requirements

5.1 The Department reserves the right to require the owner or operator to perform emission tests using methods approved in advance by the Department. The owner or operator may submit a request to the Department to use a different method.

5.2 Visible Emission Observations

- 5.2.1 Upon initiation of dry abrasive blasting, observe all areas of the containment system for visible fugitive emissions and emissions from the stack(s) of the exhaust air filtration system. The observation shall be conducted using a trained observer in EPA Method 22 (EPA 40 CFR 60, Appendix A) for a period of at least five minutes. If visible emissions are observed from any point, the dry abrasive blasting operation shall cease until the cause is determined and corrected. A list of trained observers shall be posted on site.
- 5.2.2 Observations shall be recorded to include the date, name of observer, time, and the presence or absence of visible emissions. In the event that emissions are observed, record the actions taken to eliminate the emissions. Upon resumption of dry abrasive blasting, record observations until a successful startup is attained.
- 5.2.3 Observations of the containment system shall continue throughout the day so that for every two hour period of continuous dry abrasive blasting there is a recorded observation of at least five minutes in duration. If visible emissions are observed at any time, the dry abrasive blasting operation shall cease until the cause is determined and corrected.

5.3 Air Monitoring

- 5.3.1 Prior to initial startup of dry abrasive blasting, background air monitoring for lead shall be conducted for at least a three-day period as described in section 9.5 "Background Monitoring" of SSPC Technology Update No.7 "Conducting Ambient Air, Soil, and Water Sampling of Surface Preparation and Paint Disturbance Activities", dated May 4, 2015. The determination of the type and number of monitors and the locations and height above ground of each monitor shall be based on SSPC Technology Update No. 7. Operation of these same monitor sites shall be continued during dry abrasive blasting activity. This activity requires the use of a laboratory certified under the National Lead Laboratory Accreditation Program (NLLAP) of the EPA or an equivalent independent national accreditation program, to set-up the monitors, start and stop operation and analyze for lead in air monitor and HEPA filters. The laboratory report shall contain evidence of certification and limit of detection for each analysis performed.
- 5.3.2 The set of air monitors established in condition 5.3.1 of this permit shall be operated continuously during dry abrasive blasting and shall include a half hour prior to the start of dry abrasive blasting and a half hour following the termination of dry abrasive blasting, and during periods when lowering the shroud and until the area exposed by lowering the shroud has been cleaned of blasting debris.
- 5.3.3 The water tank owner or operator shall use either EPA 40 CFR Part 50, Appendix B method for high volume air sampling or 40 CFR Part 50, Appendix G method for low volume air sampling.
- 5.3.4 Air monitor filters shall be replaced daily when in operation. Filters shall be analyzed for lead by EPA Method 7010 "Graphite Furnace Atomic Absorption Spectrophotometry" or EPA Method 6020 A "Inductively Coupled Plasma Mass Spectrometry". The analysis shall be performed by an EPA accredited lead air monitor analysis laboratory. Upon initial startup of dry abrasive blasting for the first time (or after an extended shutdown of more than two weeks), the performance of the

containment system, as described in conditions 2.0, 3.0 and 5.2 of this permit, shall be closely observed for compliance and if all systems are found to be performing as required and there are no visible emissions over a two-hour period of operation, then that day's air monitor samples shall be submitted for analysis on a standard sample turnaround basis. Subsequent samples may be accumulated for up to one week before submission for analysis on a standard sample turnaround basis. If the system is shut down due to any system upset or visible fugitive emissions, start-up of abrasive blasting shall be closely observed to ensure all operating parameters are under control for two hours and the air monitor samples for that day's operation shall be submitted for analysis on an expedited basis. Any samples found to contain lead above the background level shall require the dry abrasive blasting operation to cease until the cause is determined and corrected.

5.4 Static Pressure Monitoring

- 5.4.1 A visual observation, or instrument verification, of the negative pressure inside the containment enclosure shall be recorded every two hours during dry abrasive blasting on a data sheet and the times negative pressure is lost due to restricted air flow through the exhaust air filtration system or significant fugitive air loss noted along with any dry abrasive blasting shutdown and startup times.
- 5.4.2 A static pressure reading of the exhaust air filtration system shall be recorded every two hours of dry abrasive blasting on a data sheet or through the use of a recording monitor. Each instance when static pressure is lost and dry abrasive blasting is shut down shall be recorded on the data sheet.

6.0 Recordkeeping and Reporting Requirements

- 6.1 Records produced as required by Section 5.0 of this permit shall be maintained on-site for the duration of the project.
- 6.2 Analytical results of the filters from air monitoring, as required by condition 5.3 of this permit, shall be maintained on-site for the duration of the project. Test results showing the presence of lead above the background level shall be reported to the Department within two business days. If lead above background levels is detected in the samples, dry abrasive blasting shall be shut down until the cause is determined and corrected, unless such action has already been taken.
- 6.3 The owner or operator of the water tank shall maintain all records as required by Section 5.0 of this permit and any other records necessary for determining compliance with this permit for three years after completion of the project and shall make these records available to the Department upon written or verbal request.

7.0 Public Notification and Reporting Requirements

- 7.1 No less than thirty (30) days prior to commencement of initial dry abrasive blasting the owner or operator of the water tank shall prepare and distribute a notice to the Department and to the public located within one-thousand feet of the water tank, including, but not limited to, residences, schools, child care facilities, businesses and social service providers. The notice shall contain, at a minimum, the following items:
 - 7.1.1 a summary of the activities which are proposed to take place on the site;
 - 7.1.2 expected start and end dates of the overall project and expected dates of dry abrasive blasting;
 - 7.1.3 water tank owner company name;
 - 7.1.4 contact information for the tank owner and project contractor;
 - 7.1.5 the DNREC complaint line (1-800-662-8802);
 - 7.1.6 air quality permit issuance date,
 - 7.1.7 the presence of lead in the coatings to be removed;
 - 7.1.8 steps taken to protect the public;
 - 7.1.9 disposition of blasting waste generated;
 - 7.1.10 the Department website address for dry abrasive blasting of water tanks; and,
 - 7.1.11 the location of the water tank.

GENERAL NOTICES

- 7.2 Delays in the project timeline of one month or more shall be communicated to the Department and to the public receiving notice per condition 7.1 of this permit.
- 7.3 Any complaints received by the water tank owner, operator or project contractor related to dry abrasive blasting shall be relayed to the Department by contacting the complaint line at 1-800-662-8802 as soon as practical.
- 7.4 Emissions in excess of any permit condition or emissions that create a condition of air pollution shall be reported to the Department upon discovery by calling the complaint line at 1-800-662-8802.
- 7.5 One original and one copy of all required reports shall be sent to the address below:
Division of Air Quality Attn. Division Director
State Street Commons
100 West Water Street, Suite 6A
Dover, Delaware 19904

8.0 Administrative Conditions

- 8.1 This permit shall be made available on the premises.
- 8.2 Failure to comply with the conditions of this permit may be grounds for suspension or revocation.
- 8.3 This permit will expire within one year of issuance unless the water tank owner submits a request to the Division of Air Quality (DAQ) for an extension within 45 days of the expiration date, with an explanation of why the extension is needed. The DAQ may approve one such extension of six months, after which, if the project is not completed, the permit will be closed. A new application will be required to restart the project.

9.0 Completion of Dry Abrasive Blasting

- 9.1 Within thirty (30) days of completion of dry abrasive blasting, the water tank owner or operator shall submit to the Department a post-project checklist certifying all conditions of this permit have been met and all citizen complaints, if any, have been addressed. The post-project checklist shall be signed by a responsible official of the company owning the water tank. Upon acceptance of the checklist, the Department shall close this permit.
-

APPENDIX "D"



MEMORANDUM

To: Lisa Vest

Through: David Fees AS
Valerie Gray VAG

From: Gene Pettingill



Subject: **Technical Response Memorandum – July 12, 2018 Public Hearing; Proposed Revisions to: Section 2.0 Definitions of 7 DE Admin. Code 1101 “Definitions and Administrative Principles”; Section 15.0 Outdoor painting and sand blasting equipment of Appendix A of 7 DE Admin. Code 1102 “Permits”; and a New Proposed Source Category Permit, “Removal of Lead-Containing Coatings from Outdoor Water Tanks by Dry Abrasive Blasting.”**

Date: November 30, 2018

This memorandum is to provide a formal response to 57 comments received from ten commenters concerning the documents reviewed at the July 12, 2018 hearing.

Written comments were submitted prior to, during, and after the hearing by, Dr. Amy Roe and Sarah Bucic, RN, both citizens of Delaware; Sarah Bucic; Dr. Frank Malone, a citizen residing in the community of Ardentown, Delaware; Alan Muller, Executive Director, Green Delaware; and Tom Coleman PE, Acting City Manager, City of Newark.

In addition, the following spoke at the hearing; Sarah Bucic; Joseph DiNunzio, Executive Vice President of Artesian Water Company; Sheila Shannon, Director of Water Quality, Tidewater Utilities; Sandy Spence, a Delaware citizen residing in Lewes; Coralie Pryde, a Delaware citizen residing in Wilmington; Dr. Frank Malone; and, Stephanie Herron, representing the Delaware Chapter of the Sierra Club. All verbal comments were recorded in the Transcript of Proceedings.

All comments concerning the proposed revisions to 7 DE Admin. Codes 1101 and 1102 were supportive of the changes.

Other comments refer to non-regulatory aspects of the program and were included in the comments to which the Division of Air Quality (DAQ) responds in Sections A through G of this memorandum.

Comments supportive of the DAQ proposal or which refer to activities considered not the subject of the hearing (a total of 29 comments) are summarized in the table in Section II on page 9, of this memorandum.

The comment documents referred to herein are listed below and each document is appended and marked showing individual comments with the comment number used in this memorandum:

- (1) Email to Lisa Vest, Hearing Officer, from Amy Roe, Ph.D. Newark, DE and Sarah Bucic, RN, Wilmington, DE “Removal of Lead Containing Coatings from Outdoor Water Tanks by Dry Abrasive Blasting DNREC Regulations 1101, 1102, and Source Category Permit, Public Hearing July 12, 2018”, dated July 12, 2018.
- (2) Transcript of Proceedings, Thursday, July 12, 2018, starting at 6 pm at the Kent County Building in Dover, Wilcox & Fetzer, Ltd., 1330 King Street, Wilmington, DE 19801.
- (3) Email to Lisa Vest, Hearing Officer, from Sarah Bucic, RN, Wilmington, DE, no title, dated July 12, 2018, also submitted at hearing.
- (4) Hearing handout from Dr. Frank Malone titled “DNREC Division of Air Quality Public Hearing: 12, July 2018” with photograph on reverse.
- (5) Email to Lisa A. Vest and David F. Fees (DNREC), from Alan Muller, Executive Director, Green Delaware, “Removal of Lead Containing Coatings from Outdoor Water Tanks by Dry Abrasive Blasting DNREC Regulations 1101, 1102, and Source Category Permit, Public Hearing July 12, 2018” with above reference document (1) attached, dated July 12, 2018.
- (6) Email to Lisa A. Vest and David F. Fees (DNREC), from Alan Muller, Executive Director, Green Delaware, “Removal of Lead Containing Coatings from Outdoor Water Tanks by Dry Abrasive Blasting DNREC Regulations 1101, 1102, and Source Category Permit, Public Hearing July 12, 2018”, no attachments, dated July 27, 2018.
- (7) Letter sent to the State of Delaware, DNREC, DAQ, at 100 W. Water Street, Dover, DE 19904, from Tom Coleman, PE, Acting City Manager, City of Newark, “Source Category Permit”, dated July 25, 2018.

A - Reference 1

Dr. Amy Roe and Sarah Bucic presented a number of extensive comments in writing which are discussed below and in Section H, of this memorandum.

Comment 1-1 *Commenters ask Source Category Permit provisions in Section 3.0 include “...dry abrasive blasting should be halted whenever wind speeds render the curtain and above ground cover ineffective...”*

DAQ Response to Comment 1-1 Section 3.0 and subsection 4.1.3 of the source category permit covers this situation adequately.

Comment 1-2 *Commenters ask SSPC guidelines, which the Source Category Permit relies heavily upon, be made available to the public.*

DAQ Response to Comment 1-2 The SSPC guidelines are copyrighted and not freely distributed. They were available to interested parties to view (not copy) before and during the hearing. Members of the public still may view these documents by contacting DAQ. They also are available for purchase from the Society for Protective Coatings (SSPC), 800 Trumbull Drive, Pittsburg, PA 15205, phone, 1-877-281-7772, website www.sspc.org. One also may join the

organization for an annual fee and have free access to many of their guidelines. In either case, copyright restrictions for printing or distributing copies of their publications apply.

Comment 1-3 *Commenters ask Source Category Permit provisions in Section 4.0 specify the Site Emergency and Release Response Plan be submitted to DAQ 60 days before start of work instead of 30 days, as it would allow DAQ and the public adequate time to review the plan for any necessary changes prior to beginning site work.*

DAQ Response to Comment 1-3 The source category permit specifies what should be included in the Site Emergency and Release Response Plan. DAQ will review the plan to ensure it conforms to the permit requirements and deems the 30-day period adequate.

Comment 1-4 *Commenters ask Source Category Permit provisions in Section 4.0 specify all dry abrasive blasting work should stop when a breach occurs and not commence until the Site Emergency and Release Response Plan is fully implemented.*

DAQ Response to Comment 1-4 Dry abrasive blasting is required to be terminated in the following provisions of the source category permit: 3.2, 3.3.5, 5.2, 5.3, 5.3.4, and 6.2, and remain so until the cause of release is determined and corrected. Stating dry abrasive blasting be shut down in the Plan is not needed nor should fully implementing the Plan be the requirement for restarting dry abrasive blasting. Many of the Plan requirements may be carried out while dry abrasive blasting is underway. The sole requirement for resumption of blasting in this instance should be correction of the problem that caused the release.

Comment 1-5 *Commenters ask a spelling error in subsection 4.1.9, of the source category permit be corrected.*

DAQ Response to Comment 1-5 We thank commenters for informing us of the error, which will be corrected.

Comment 1-6 *Commenters ask Source Category Permit provision 5.1 for requests to use a different method of air monitoring must be just as rigorous as those described in Section 5.0.*

DAQ Response to Comment 1-6 It is counter-productive and not in keeping with the intent of the source category permit to approve a different method of air monitoring if it were not as stringent as or more stringent than the method specified in the source category permit. It is not necessary to so state in the permit. As the permitting authority, DAQ has the right to deny any request for an alternative air monitoring method should DAQ deem the method inadequate for the intended purpose.

Comment 1-7 *Commenters ask Source Category Permit provision 5.3.2 should require air monitors be operated on a daily basis.*

DAQ Response to Comment 1-7 Subsection 5.3.2, of the source category permit, specifies air monitors be in operation a half-hour prior to the start of dry abrasive blasting and remain in operation until a half-hour following the termination of dry abrasive blasting; during periods when

lowering the shroud; and, until the area exposed by lowering the shroud has been cleaned of blasting debris. Dry abrasive blasting represents a minor part of the time a project is underway and it would not be productive to require air monitoring when dust producing operations are not in operation.

Comment 1-8 *Commenters ask Source Category Permit provision 5.3.4 be modified to show “Analysis of air filters should be conducted as soon as practical (5.3.4). Currently, there is no timeline for when the filters should be tested, which could lead to the filters not being tested until well after the project is completed”.*

DAQ Response to Comment 1- 8 The text in 5.3.4 clearly requires samples to be analyzed on an expedited basis when needed and on a standard turnaround basis for more routine situations. In no case could the text be interpreted to allow analyses to be returned after the project is completed.

Comment 1- 9 *Commenters ask Source Category Permit provision 5.0 be revised to require surface soil sampling prior to and upon completion of dry abrasive blasting to establish a baseline of lead contamination in the soil and data points to compare following dry abrasive blasting.*

DAQ Response to Comment 1- 9 Soil sampling is not an air quality requirement and is not an appropriate requirement in an air permit. This position does not prevent the tank owner or contractor from choosing to perform soil sampling.

Comment 1-10 *Commenters ask Source Category Permit provision 6.0 specify “All records should be turned over to DNREC and preferably scanned and put on the DNREC website.”*

DAQ Response to Comment 1-10 In keeping with other DAQ document retention times, the source category permit requires the tank owner retain all records required in subsections 5.2.2, 5.2.3, 5.4.1, 5.4.2, and 6.2, and those necessary for determining compliance with the permit, for at least three years after completion of the project as shown in subsection 6.3 of the permit, and make these records available to DAQ upon request. Also, DAQ requires submission of all required reports in subsection 7.5, of the permit.

Comment 1-11 *Commenters ask Source Category Permit subsection 6.2 be amended as follows “Analytical results of the filters from air monitoring, as required by condition 5.3 of this permit, shall be maintained on-site for the duration of the project. Test results showing the presence of lead above the background level shall be reported to the Department ~~within two business days~~ immediately. If lead above background levels is detected in the samples, dry abrasive blasting shall be shut down immediately until the cause is determined and corrected, unless such action has already been taken.” This will prevent delays in reporting lead levels in air monitoring results above background levels and protect public health in the event of a breach of containment.*

DAQ Response to Comment 1-11 There are two considerations regarding the detection of lead above background levels in air samples, (1) the problem was already identified and corrected and lead above the background level was anticipated, or (2) elevated lead in a sample was not anticipated. Under (1), due to a known event, dry abrasive blasting would have been shut down; the problem diagnosed and corrected; the Department contacted upon discovery of the release as

required by subsection 7.4 of the source category permit, and dry abrasive blasting restarted. Under (2), if a sample analysis is received that shows lead above the background level and there was no prior discovery and correction, the source category permit requires, in subsection 5.3.4, that dry abrasive blasting be shut down until the cause is determined and corrected. Section 7.4 also requires that emissions in excess of any permit condition be reported upon discovery by calling the complaint line at 1-800-662-8802.

Comment 1-12 *Commenters support Source Category Permit provisions in Section 7.0, especially subsection 7.1, however, they ask the public health notice include a Public Health statement describing lead health hazards and commenters presented suggested text for such a notice.*

DAQ Response to Comment 1-12 The Division of Public Health was consulted and is preparing a lead fact sheet that will include health hazards of lead.

Comment 1-13 *Commenters ask Source Category Permit provisions in subsection 7.1 be amended to add that the Public Notice be ADA accessible and in Spanish and/or other languages. They also ask a copy of the notice be mounted in an easily visible area at the works site for the duration of the project.*

DAQ Response to Comment 1-13 The source category permit does not require a sign to be erected at the work site as work sites vary considerably. The intent is for the public notice to be mailed to those within the required notification area and that the tank owner will exercise judgement in supplementing the public notice, described in Section 7.0, of the source category permit, with posters, carrying the same message, in various areas in the 1000 ft. diameter area surrounding the tank, depending upon the nature of the surrounding facilities and the number of transient people. It is not necessary to use other languages for the public notice unless the area is noted for having a large number of non-English speakers, a situation that would be addressed on a case-by-case basis.

Comment 1-14 *Commenters ask Source Category Permit clarify in Section 8.0 contractors and subcontractors are held to the same standards as water tank owners and operators.*

DAQ Response to Comment 1-14 Section 1.0, of the source category permit, requires the tank owner or operator to be responsible to DAQ for compliance with the permit. Owner or operator is defined in Regulation 7 DE Admin Code 1101 "Definitions and Administrative Principles" as any person including a corporation, **contractor** [emphasis added], supplier, installer, etc. which seems to include all the persons involved in the refurbishing operation.

Comment 1-15 *Commenters ask Source Category Permit subsection 8.2 clarify the outcomes or alternatives for those not complying with permit conditions. More specific information should be included about what would occur during suspension or revocation of a permit.*

DAQ Response to Comment 1-15 The Department has the authority to issue notices of violation and other legal actions against a permit holder found to be in non-compliance with the permit, to include suspension or revocation of the permit.

Comment 1-16 Commenters ask Source Category Permit subsection 9.1 be modified to require the post-project checklist be accompanied by all records verifying the project was completed according to the terms of the permit, including air monitoring results, soil monitoring results and daily inspection reports.

DAQ Response to Comment 1-16 DAQ requires submission of all reports identified in subsection 7.5, of the source category permit. The post-project checklist requires the owner or operator to certify that all conditions of the permit have been met and all citizen complaints have been addressed. The DAQ may request additional information if it is not satisfied with the post-project certification.

Comment 1-17 Commenters ask that a new section be added to the source category permit requiring a Lead and Health Fact Sheet be made available to each person who files a complaint about a dry abrasive blasting project, whether by the 800 number, or any other format. This Lead and Health Fact Sheet should include details about dangers of exposure to lead, steps that can be taken to reduce the likelihood of exposure (don't cut grass, don't run air conditioners), and information about how and where to have their blood tested.

DAQ Response to Comment 1-17 The lead fact sheet provided by the Division of Public Health will be placed on the DAQ website dedicated to the permitting of dry abrasive blasting of water tanks.

B - Reference 2 (Transcript) & Reference 3 (Bucic)

Sarah Bucic hearing comments (Reference 2, pages 11 through 15) and submitted comments (Reference 3) are discussed below and in Section H, of this memorandum.

Comment 2-1 Commenter asked that DNREC "...incorporate the changes Dr. Roe and I have suggested..".

DAQ Response to Comment 2.1 DAQ Responses to Comments of Dr. Roe and Sarah Bucic may be found in Section A, Comments 1-1 through 1-17, pages 2 – 6, and in Section H, of this memorandum.

C – Reference 2 (Transcript) (DiNunzio)

Mr. Joseph DiNunzio, Executive Vice President, Artesian Water Company, comments (Reference 2, pages 16 through 19) are presented below and in Section H, of this memorandum.

Comment 2-2 Commenter stressed that the regulation should not prohibit the use of containment methods other than shrouding of tanks. There is a system called "Faster Blaster" that is a hand held, wireless, remotely-controlled blaster, magnetically attached to the tank surface, that can be shut down any time a problem appears. Mr. DiNunzio believes this technology is permissible under the regulations and proposed permit. Other, better, technologies may arise in the future and Mr. DiNunzio believes tank owners should have the option of using them if they provide even better protection.

DAQ Response to Comment 2-2 Control technologies other than shrouding will be evaluated as an appropriate alternative to shrouding as those technologies are proposed. Alternate technology projects, such as the use of the Faster Blaster, will be evaluated against the applicability of the source category permit. If the technology is not considered applicable under the source category permit, but is deemed comparable or better than shrouding, such projects would receive a permit specific to the technology. The alternate technology permit could contain many of the applicable requirements contained in the source category permit.

Comment 2-3 *Commenter wanted us to clarify the effective date. To paraphrase Mr. DiNunzio; preparing a water tank refurbishing project takes considerable time to scope out the requirements, select an engineering consultant and prepare a package of detailed requirements for a contractor to follow, send the package out to a number of contractors to bid on, select the contractor, hire subcontractors, make a detailed plan and mobilize for the project. After many months of this activity the actual project may only take a few months. Projects for late 2018 may already be in the advanced planning stage.*

DAQ Response to Comment 2-3 DAQ expects the effective date of the regulation requiring a permit for the dry abrasive blasting of water tanks that contain lead coatings will be January or February of 2019.

D- Reference 2 (Transcript) (Spence)

Ms. Sandy Spence, a citizen of Lewes, Delaware, (Reference 2, pages 20 through 23), said her expertise in this area stemmed from eight years in the nineties as the Executive Director of the Society of Glass and Ceramic Decorators.

Comment 2-4 *Commenter pointed out, in her experience, when lead or lead-containing products got into the soil it stayed there a very long time and could migrate into aquifers. Ms. Spence believes alternative technologies should be supported if they were better than shrouding.*

DAQ Response to Comment 2-4 DAQ agrees with Ms. Spence, but alternate technologies may require a different type of permit.

Comment 2-5 *Commenter supports comments made by Amy Roe and Sarah Bucic.*

DAQ Response to Comment 2-5 DAQ Responses to Comments of Dr. Roe and Sarah Bucic may be found in Section A, Comments 1-1 through 1-17, pages 2 – 6, and in Section H, of this memorandum.

E – Reference 2 (Transcript) (Herron)

Ms. Stephanie Herron, a citizen of Wilmington, Delaware, represented the Delaware Chapter of the Sierra Club, (Reference 2, pages 28 through 29).

Comment 2-6 *Commenter supports comments made by Dr. Roe and Sarah Bucic.*

DAQ Response to Comment 2-6 DAQ Responses to Comments of Dr. Roe and Sarah Bucic may be found in Section A, Comments 1-1 through 1-17, pages 2 – 6, and in Section H, of this memorandum.

F – Reference 5 (Muller)

This Muller document also transmits Reference 1.

Comment 3-1 *Commenter supports comments submitted by Amy Roe and Sarah Bucic as Reference 1.*

DAQ Response to Comment 3-1 DAQ Responses to Comments of Dr. Roe and Sarah Bucic may be found in Section A, Comments 1-1 through 1-17, pages 2 – 6, and in Section H, of this memorandum.

G – Reference 6 (Muller)

Comment 3-2 *Commenter says, in reference to Mr. DiNunzio's comments about the Faster Blaster alternative technology, that it seems as yet undefined and Mr. DiNunzio offered no evidence its containment is equivalent to shrouding, and, although looking useful, should not be considered a part of this source category permit.*

DAQ Response to Comment 3-2 See DAQ Response to Comment 2-2 on the same subject, on page 7, of this memorandum.

Comment 3-3 *Commenter says he supports using two levels of containment, presumably the method described in the source category permit and the alternative technology; the "Faster Blaster" mentioned by Mr. DiNunzio. This support is based upon (a) shrouding sometimes blows off and (b) protection of workers.*

DAQ Response to Comment 3-3 DAQ will permit the standard industry containment practice of shrouding through issuing a source category permit, or alternatively allowing the use of an alternate technology that is comparable or better than shrouding through issuing a permit specific to the alternate technology.

Comment 3-4 *Commenter referred to Mr. DiNunzio's comment on page 19 of the transcript wherein he implies that some tank jobs would be "grandfathered".*

DAQ Response to Comment 3-4 The effective date for the source category permit is based upon when the regulatory process is completed, and currently expected to be January or February of 2019. Any applicable projects after the effective date will require a permit.

Comment 3-5 *Commenter supported the need for a Lead Fact Sheet proposed by Dr. Amy Roe and Sarah Bucic in their comment 1-17, on page 6, of this memorandum, and offered to review the draft.*

DAQ Response to Comment 3-5 See DAQ Response to Comment 1-17 on page 6, of this memorandum, and subsection 7.1.10 of the source category permit.

H – Other Comments Table

This table summarizes, by commenter and by class of comments; (1) support DAQ for Register documents, (2) all outdoor structures regulated, (3) include soil sampling, and (4) refers to current or past incidents. Each comment class has a common response shown below the table.

COMMENTS NAME	CLASS 1 SUPPORT DAQ FOR REGISTER DOCUMENTS	CLASS 2 ALL OUTDOOR STRUCTURES REGULATED	CLASS 3 INCLUDE SOIL SAMPLING	CLASS 4 REFERS TO CURRENT OR PAST INCIDENTS
Bucic	H-1	H-2	H-3	H-4
Coleman	H-5			
DiNunzio	H-6			
Herron	H-7	H-8	H-9	H-10
Malone	H-11	H-12		
Muller-5	H-13	H-14	H-15	H-16
Muller – 6	H-17			
Pryde	H-18	H-19	H-20	
Roe & Bucic	H-21	H-22	H-23	H-24
Shannon	H-25			
Spence	H-26	H-27	H-28	H-29

The following refer to comments shown in the Section H table.

- **DAQ Response to Class 1 Comments:** DAQ appreciates the support of our efforts to establish a permit process for the dry abrasive blasting of water tanks that are coated with lead-containing coatings.
- **DAQ Response to Class 2 Comments:** DAQ, through this action, is establishing a permitting process for the dry abrasive blasting of outdoor water tanks that are coated with lead-containing coatings. Comments directed to other activities are outside the scope of this proposal.
- **DAQ Response to Class 3 Comments:** DAQ, through this action, is establishing a permitting process for the dry abrasive blasting of outdoor water tanks that are coated with lead-containing coatings. Comments directed to performing soil sampling are outside the scope of this proposal.
- **DAQ Response to Class 4 Comments:** In regard to past incidents involving dry abrasive blasting activities, DAQ finds such comments beyond the scope of the proposal to require

permits for the dry abrasive blasting of water tanks that are coated with lead-containing coatings.