



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

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Secretary's Order No.: 2019-A-0037

RE: Approving Final Regulations to Amend 7 DE Admin. Code 1150: *Outer Continental Shelf Air Regulations*

Date of Issuance: September 11, 2019

Effective Date of the Amendment: October 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 1150: *Outer Continental Shelf Air Regulations*. Specifically, the Department proposes to amend existing 7 DE Admin. Code 1150 to incorporate updates made to the federal Outer Continental Shelf ("OCS") regulations at 40 CFR 55. The federal regulations were updated by the Environmental Protection Agency ("EPA") subsequent to Delaware's adoption of its OCS Regulations in 2010.

The Department proposes to incorporate the provisions of 40 CFR 55, specifically, the Outer Continental Shelf (“OCS”) technical changes of 81 Fed. Reg. 71613(October 2016) and 84 Fed. Reg. 13132 (April 4, 2019), into Delaware’s existing OCS Regulations. Subsequent to the federal Outer Continental Shelf Regulations Section 40 CFR 55, promulgated by the United States Environmental Protection Agency (“EPA”), Delaware adopted the OCS Regulations mandating newspaper notices as the sole source of a public notification for draft air permits, as well as certain other program actions. The Department is proposing the above Amendment to incorporate updates made to the federal Outer Continental Shelf Regulations at 40 CFR 55 in October 2016 (81 FR 71613) to include the option of e-notices as a source for public notification. For consistency purposes, the Amendment to incorporate 84 Fed. Reg. 13132 (April 4, 2019) shall ensure that the incorporation of the subsequent updates to DAQ regulations are referenced into Appendix A of Part 55 under the EPA. The Amendment to this section allows DAQ to write permits for OCS sources based upon the most recent versions of DAQ’s regulations. This action is being taken by the Department to enable Delaware to effectively regulate air emissions pursuant to the EPA’s regulations codified at 40 CFR 55, which were issued under Section 328(a)(1) of the federal Clean Air Act.

The EPA’s regulations apply to all sources of air emissions from within the OCS. For Delaware, the OCS is the area that is within 25 miles of Delaware’s coastal boundaries along the Atlantic Ocean. Air emissions from within the OCS are regulated by the Department in the same manner as if the source was located on Delaware land. This regulation authorizes the Department to issue Air Quality permits for any source regulated under 40 CFR 55, thereby effectively regulating air pollutants emitted in the OCS, consistent with all state and federal laws and regulations.

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these proposed Amendments, pursuant to 7 *Del.C.* §6010(a) and (c). The Department published its initial proposed regulation Amendments in the May 1, 2019 *Delaware Register of Regulations*. Thereafter, the public hearing regarding this matter was held on May 22, 2019. There was no public attendance at the public hearing. Pursuant to Delaware law, the hearing record (“Record”) remained open for fifteen (15) additional days subsequent to the date of the public hearing for receipt of public comment. The Record formally closed with regard to public comment at close of business on June 6, 2019, with no comment having been received by the Department during any phase of this proposed regulatory promulgation.

It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Hearing Officer Theresa Newman prepared her Report dated August 28, 2019 (“Report”), which expressly incorporated the Department’s proposed Amendments into the hearing record (“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 as attached to the Report as Appendix “A.”

Reasons and Conclusions

Based on the Record developed by the Department’s experts in the Division of Air Quality, and established by the Hearing Officer’s Report, I find that the proposed regulatory Amendments to 7 DE Admin. Code 1150: *Outer Continental Shelf Air Regulations*, are well-supported. I further find that the Department’s experts in the Division of Air Quality fully developed the Record to support adoption of these Amendments. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments be promulgated as final.

The following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to this regulatory promulgation, pursuant to 7 *Del. C.* §6010(a) and (c);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Ch.60, to issue an Order adopting these proposed Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on May 22, 2019, and during the 15 days subsequent to the hearing (through June 6, 2019), before making any final decision;
4. Promulgation of the proposed Amendments to 7 DE Admin. Code 1150: *Outer Continental Shelf Air Regulations*, will enable the Department to incorporate the updates made to the federal Outer Continental Shelf Regulations at 40 CFR 55, as noted above;
5. 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 “A” as this regulation does not apply to small business or individuals;
6. The Department’s Hearing Officer’s Report, including its established Record and the recommended proposed Amendments as set forth in Appendix “A,” are hereby adopted to provide additional reasons and findings for this Order;
7. The Department’s proposed regulatory Amendments, as initially published in the May 1, 2019 *Delaware Register of Regulations*, and as set forth in Appendix “A” hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and

8. The Department shall submit this Order approving the proposed Amendments as final regulatory amendments 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