



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**
RICHARDSON & ROBBINS BUILDING
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

OFFICE OF THE
SECRETARY

PHONE
(302) 739-9000

Secretary's Order No.: 2019-A-0046

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 1125:
 *Requirements for Preconstruction Review***

Date of Issuance: December 06, 2019

Effective Date of the Amendment: January 11, 2020

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 1125: *Requirements for Preconstruction Review*. Specifically, the Department proposes to amend regulations for 7 DE Admin. Code 1125: *Requirements for Preconstruction Review* to adopt provisions, by incorporating by reference, the most recent revisions to the *Guideline on Air Quality Models* ("Guideline") as published by the United States Environmental Protection Agency ("EPA"), as set forth in Appendix W to 40 CFR Part 51 — *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*. This action will enable the Department to be consistent with the updates to the aforementioned EPA *Guideline* by updating the air quality models and databases for use in air quality assessments.

The Clean Air Act (CAA), established by Congress in 1977, mandated consistency and encouraged the standardization of air quality models for regulatory purposes. To satisfy the requirements of the CAA, the EPA initially published its *Guideline* in April of 1978. The *Guideline* specifies air quality models, while providing guidance for their use, and a common basis for estimating the air quality concentrations of criteria pollutants used in assessing control strategies and developing emissions limits.

Most recently, the EPA promulgated revisions to the *Guideline* effective February 16, 2017. The revisions to the *Guideline* provide a consistent basis for the most accurate models and databases for use in air quality assessments. Appendix W to 40 CFR Part 51 provides the EPA's preferred models and other recommended techniques, as well as guidance for their use in estimating ambient concentrations of air pollutants. In addition, Appendix W to 40 CFR Part 51 includes enhancements to the formulation and application of the EPA's preferred near-field dispersion modeling system, (the American Meteorological Society/EPA Regulatory Model), and the incorporation of a tiered demonstration approach to address the secondary chemical formation of ozone and fine particulate matter (PM_{2.5}) associated with precursor emissions from single sources.

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 Amendments to 7 DE Admin. Code 1125 reflect the most recent updates to Title 40 of the Code of Federal Regulations – *Protection of the Environment*, specifically at Appendix W to 40 CFR Part 51, as published in the Federal Register, dated July 1, 2018.

The Department published its initial proposed regulation Amendments in the September 1, 2019 *Delaware Register of Regulations*. Thereafter, the public hearing regarding this matter was held on September 25, 2019. There were no members of the public in attendance at the public hearing. Pursuant to 29 *Del.C.* §10118(a), the hearing record remained open for receipt of additional written comment for 15 days following the public hearing. The hearing record formally closed for comment in this matter at close of business on October 10, 2019, with no comment having been received by the Department during any phase of this formal 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 November 6, 2019 (“Report”), which expressly incorporated the Department’s proposed Amendments 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 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 1125: *Requirements for Preconstruction Review*, are well-supported. I further find that the Department’s Air Quality experts 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 proposed 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 September 25, 2019, and during the 15 days subsequent to the hearing (through October 10, 2019), before making any final decision;

4. Promulgation of the proposed Amendments to 7 DE Admin. Code 1125: Requirements for Preconstruction Review, will enable the Department to incorporate the updates made to the federal Requirements for Preconstruction Review 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.* §104, and has selected Exemption “B”, as this revision is a requirement of federal law, established by the EPA, to which the EPA’s impact evaluation provides that the revisions herein would not have a significant economic impact on a substantial number of small entities;
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 September 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 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