

Secretary's Order No.: 2010-A-0039

**RE: Approving Final Amendment to 7 DE Admin. Code 1140,
Delaware Low Emission Vehicle Program (DEL LEV)**

Date of Issuance: November 9, 2010

Effective Date of the Amendment: December 11, 2010

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Background and Procedural History

This Order considers the proposed regulatory amendment to 7 DE Admin. Code 1140, Delaware Low Emission Vehicle Program. The primary purpose of this promulgation is to reduce vehicle emissions from new vehicles in Delaware, beginning with model year 2014. Considerable benefits to human health and the environment will be realized under this program in the long term by the adoption of California's emissions standards, which are more stringent than the current federal standards. The Low Emission Vehicle ("LEV") Program reduces emissions of ozone precursors, particulates, toxic air pollutants, and greenhouse gases.

The Department's Division of Air Quality (DAQ) commenced the regulatory development process with Start Action Notice 2009-33. The Department published the proposed regulatory amendment in the October 1, 2010 *Delaware Register of Regulation* and held a public hearing on October 22, 2010. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated November 5, 2010 (Report). The Report recommends certain findings and the adoption of the proposed Amendment as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendment is well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendment. Throughout the entire regulatory development process regarding this promulgation, the Department received public comments from the regulated community, as noted in the Report, and considered and responded to all timely and relevant public comments in making its determination.

I find that the Department's DAQ expert fully developed the record to support adoption of this Amendment. The adoption of the regulation amendment to 7 DE Admin. Code 1140, Delaware Low Emission Vehicle Program, will formally establish the Delaware Low Emission Vehicle Program (DEL LEV). The inclusion of Delaware into California's Low Emission Vehicle Program (CAL LEV) will allow additional reductions of motor vehicle emissions from new vehicles (less than 7,500 miles) transferred (i.e., sold, delivered, purchased, leased, rented, acquired, received, and/or

registered) into Delaware, beginning with model year 2014, as the proposed program is more stringent than the current federal rule.

The amendments to 7 DE Admin. Code 1140 will also provide increased protection for Delaware citizens against a variety of potential adverse health effects linked to long-term exposure to particulate matter (PM), volatile organic compounds (VOCs), nitrogen oxide (NOx), and greenhouse gases (GHGs). This implementation proposes to adopt requirements that are at least as health protective as requirements of the existing Federal Tier 2 standards.

In conclusion, the following findings and conclusions are entered:

1.) The Department has jurisdiction under its statutory authority to issue an Order adopting this proposed Amendment as final;

2.) The Department provided adequate public notice of the proposed Amendment, and provided the public with an adequate opportunity to comment on the proposed Amendment, including at a public hearing;

3.) The Department held a public hearing on October 22, 2010 on the proposed Amendment in order to consider public comments before making any final decision, and fully considered and responded to all timely and relevant comments received from the regulated community concerning this matter;

4) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendment as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;

5.) The recommended Amendment does not reflect any substantive change to either the intent or content of the proposed regulation Amendment as published in the October 1, 2010, *Delaware Register of Regulations*;

6.) The recommended Amendment should be adopted as final regulation Amendment because Delaware will then be enabled to (1) provide for additional reductions of motor vehicle emissions from new vehicles (less than 7,500 miles) transferred (i.e., sold, delivered, purchased, leased, rented, acquired, received, and/or registered) into Delaware, beginning with model year 2014, as the proposed program is more stringent than the current federal rule; and (2) provide increased protection for Delaware citizens against potential adverse health effects linked to long-term exposure to particulate matter (PM), volatile organic compounds (VOCs), nitrogen oxide (NOx), and greenhouse gases (GHGs). This implementation proposes to adopt requirements that are at least as health protective as requirements of the existing Federal Tier 2 standards. Moreover, the regulation amendment is well supported by documents in the record; and

7.) The Department shall submit this Order approving the final regulation 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.

/s/ Collin P. O'Mara .
Collin P. O'Mara
Secretary