

Secretary's Order No.: **2007-A-0010**

RE: Proposed Amendments to the State of Delaware
Regulation No. 1113: Open Burning

Date of Issuance: March 15, 2007

Effective Date of the Amendment: April 11, 2007

I. Background:

A public hearing was held on Wednesday, January 31, 2007 in the DNREC auditorium located at 89 Kings Highway in Dover, Delaware, to receive public comment on proposed amendments to the State of Delaware's Regulation No. 1113, i.e., the Open Burning Regulation. This regulation revision is primarily proposed to: (1) expand the open burning ban window from June 1st through August 31st in the current regulation, to May 1st through September 30th; (2) expand the burning ban from only New Castle and Kent counties to statewide; and (3) clarify the prohibitions in the existing regulation and their interaction with other applicable laws and regulations.

On April 15, 2004, the United States Environmental Protection Agency designated Delaware's Sussex County as non-attainment for meeting the 8-hour national ambient air quality standard for ozone. The

Department's proposed revisions now intend to include Sussex County in the Ozone Season Open Burning Ban. Due to the expansion of the burning ban statewide, the format of the entire regulation required significant changes since the prohibitions attributable to certain areas would no longer exist. As a result, the approach taken to the amendment by the Department was to delete the existing regulation in its entirety and propose an adoption of a new version at this time. Except for the expansions detailed above, the intent of the proposed changes made are to clarify the implementation of the regulation, based on experience of Departmental staff, and are not intended to be more stringent than the existent regulation.

Numerous members of the public were present at this public hearing on January 31, 2007, including, but certainly not limited to, Michael Valenti, Assistant Forestry Administrator for the Delaware Forest Service, Burt Messick of the Sussex County Farm Bureau, numerous private citizens, and Alan Muller, Executive Director of Green Delaware. Questions and comments from those in attendance at the hearing, along with the Department's responses to the same, were fully addressed by the Department's Response Document dated March 6, 2007, which was expressly incorporated into the Hearing Officer's Report dated March 13, 2007. Proper notice of the hearing was provided as required by law.

II. Findings:

The Department has carefully considered all relevant public input regarding its proposed regulation, and has provided a reasoned analysis and a sound conclusion with regard to the response given to each such comment, as reflected in the Hearing Officer's Report of March 13, 2007, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
2. Sussex County, Delaware, has recorded 8-hour ozone standard exceedances since 1997. Moreover, Sussex County has yet to record three (3) successive years without an 8-hour ozone exceedance.
3. The Clean Air Act (CAA), Section 110, requires states with areas that fail to meet the National Ambient Air Quality Standards (NAAQS) to develop a State Implementation Plan (SIP), describing how the state will attain and maintain the NAAQS. SIPs must include a description of control strategies or measures to control pollution. The Ozone SIP submittal is due USEPA in June 2007, and the attainment demonstration deadline is 2010. While the Department respects the opinion of various citizens and/or agencies, it believes the inclusion of Sussex County in the Ozone

Season Burning Ban will aide the State of Delaware in attaining compliance with the Ozone National Ambient Air Quality Standard.

4. The Response Document from AQM dated March 6, 2007 provided to the Hearing Officer provides a thorough, accurate and balanced summary of the record developed in this matter, by addressing all of the issues, presenting the evidence, providing a reasoned analysis, and offering a recommended course of action, and is therefore expressly incorporated herein for that purpose.

5. In accordance with the Regulatory Flexibility Act, the Department believes that the clarifications made in response to the public comments received in this matter are lawful, feasible and desirable, and that the revisions as proposed should be applied to all Delaware citizens equally in order to create a sufficient reduction toward Delaware's progress to achieving the NAAQS attainment for ozone and particulate matter.

6. The proposed Regulation No. 1113, in its revised final version, is supported by the record developed in this matter, and should be adopted as the Department's final action and be published as a Notice in the *Delaware Register of Regulations* in the next available issue.

7. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Report dated March 13, 2007, and expressly incorporated herein, it is hereby ordered that the State of Delaware Regulation No. 1113 be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons

The promulgation of Regulation No. 1113, specifically, the inclusion of Sussex County in the Ozone Season Burning Ban, will aide the State of Delaware in attaining compliance with the Ozone National Ambient Air Quality Standard. Additionally, this rulemaking represents careful, deliberate and reasoned action by this agency to address the air quality issues affecting Delaware at this time. In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and wide array of public concerns surrounding the same, in furtherance of the policy and purposes of 7 Del. C., Ch. 60.

/s/ John A. Hughes

John A. Hughes
Secretary