

Amend 7 DE Admin Code 1125 “Requirements for Preconstruction Review”
Incorporation of the Federal Biogenic Deferral Rule

DISCUSSION OF PROPOSAL

The Division of Air Quality (DAQ) of the Department proposes to revise Delaware 7 DE Admin Code 1125 (Regulation 1125) to incorporate federal rule language contained in the EPA three-year deferral rule to exempt new source review permitting of facilities emitting biogenic sourced carbon dioxide.

At a public hearing on June 25, 2012, revising Regulation 1125 to clarify that a major source for any pollutant subject to regulation under the CAA is subject to PSD review for all pollutants emitted at greater than the significance level, the Delaware Solid Waste Authority (DSWA) proposed that in addition to DNRECs proposed changes, Regulation 1125 also be revised to incorporate EPA’s Biogenic Deferral (“the deferral”) which was finalized by the EPA on July 20, 2011 (see 76 FR 43490). DSWA is the only stationary source in Delaware impacted by the federal deferral rule.

When EPA finalized the deferral, DAQ informed DSWA that Delaware would honor the deferral but that we would not revise Regulation 1125 as the federal rule did not seem to require such action. Based upon the DSWA comment and after considerable internal discussion and review of the federal deferral rule including discussion with EPA, the DAQ agreed with the DSWA to propose to incorporate the deferral language into Regulation 1125. However, the DAQ did not believe that change could be made at that time because the change was not related to the subject matter of the June 25 hearing and the deferral had not been subject to an opportunity for public review and comment.

A public hearing is scheduled for Thursday September 27, 2012 in the Richardson and Robbins Building auditorium starting at 6:00pm.

8/15/12