

PURPOSE OF REVISION

The recent revision to Regulation 1125 for greenhouse gas permitting contained language in the definitions section that could be misinterpreted. This current revision is to correct that language.

In December of 2010, in keeping with regulatory changes made by the EPA to regulate the emissions of greenhouse gases (GHG), Delaware revised Regulation 1125. These revisions included a new definition, "Subject to Regulation", under Section 1.9 Definitions, as shown below:

"Subject to Regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by EPA, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that GHG shall not be subject to regulation except as follows:

- (a) Beginning January 2, 2011, the pollutant GHG shall be subject to regulation if:
- The stationary source is a new major stationary source for any pollutant subject to regulation under the CAA that is not GHG and also will emit or will have the potential to emit 75,000 tpy CO₂e or more; or
 - The stationary source is an existing major stationary source for any pollutant subject to regulation under the CAA that is not GHG and also will have an emissions increase of that pollutant and an emissions increase of 75,000 tpy CO₂e or more: and, in addition,
- (b) Beginning July 1, 2011, the pollutant GHG also shall be subject to regulation:
- At a new stationary source that will emit or have the potential to emit 100,000 tpy CO₂e: or
 - At an existing stationary source that emits or has the potential to emit 100,000 tpy CO₂e when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO₂e or more.

The term emissions increase, as used above, shall mean that both a significant emissions increase and a significant net emissions increase occur.

The language in the highlighted area may be read to provide that Prevention of Significant Deterioration (PSD) review is required only for pollutants that are emitted in major amounts. This proposed change will 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.

This clarification is required to enable the EPA to approve the earlier revision to our State Implementation Plan (SIP) to enable permitting for facilities emitting GHG.

This revision will not add any new requirements, is consistent with program interpretation and will mirror federal requirements. As such, a public hearing will be sufficient for public education, review and comment.

Because SIP approval has been delayed by the need for this revision, we will request that EPA parallel process the federal SIP approval process with this DE rule making.