

Amend Admin Code 1125 “Requirements for Preconstruction Review”
Offsets

DISCUSSION OF PROPOSAL

August 20, 2012

Acquisition of emissions offsets is increasingly difficult and this amendment will improve the ability of existing Delaware stationary sources and new sources intending to locate in Delaware to acquire the emissions offsets required by the Clean Air Act thus removing this impediment to economic growth.

Delaware is in non-attainment of the National Ambient Air Quality Standard (NAAQS) for ground-level ozone. Despite increased attention to enforcement of existing regulations controlling emissions of ozone precursors, and particularly in establishing new regulations governing these emissions from ever smaller emissions sources, Delaware remains in non-attainment.

EPA considered transport from upwind states of ground-level ozone and a precursor, NO_x, and recently finalized the Cross States Air Pollution Control Rule (CSAPR) (77 FR 10324 – 2/21/12) to address this and other problems. This final rule requires significant reductions in nitrogen oxides (NO_x) from power plants in the eastern half of the United States. NO_x reacts in the atmosphere to form ground-level ozone and is transported long distances, making it difficult for a number of states (including Delaware) to meet the ground-level ozone NAAQS that Congress directed EPA to establish to protect public health. In connection with this new transport rule, EPA demonstrated by modeling that Delaware’s unhealthy air was not caused by Delaware source emissions alone but was significantly impacted by emissions from sources over a broad area encompassing 15 other, upwind states. EPA required reductions in these 15 states, in accordance with the new rule, will help reduce Delaware ground-level ozone ambient air concentrations to the point that attainment is possible without extensive new Delaware emissions control regulations.

According to Delaware Regulation 1125, and the federal new source review rules, new or modified major stationary sources of criteria pollutant emissions in non-attainment areas must install pollution abatement controls and must secure emission offsets to provide a net air quality benefit. This approach ensures the non-attainment area moves toward attainment. Only emission reduction credits (ERC) meeting certain rigorous, standard requirements can be considered offsets. The ERC are emission reductions which could stem from the same source or a nearby source or from another non-attainment area (which could be in another state) which contributes to a violation of the NAAQS in the non-attainment area in which the source is located.

However, even with CSAPR’s approach toward emission transport reduction, obtaining offsets for new and /or newly modified stationary sources remains a problem and can be a deterrent to the location of new manufacturing facilities in Delaware. Many of the 15 states targeted in the EPA rule are in attainment of the ozone standard and as Regulation

1125 is now worded, Delaware sources adversely impacted by transported emissions from stationary sources in those states could not secure ERC from those states as the ERC might not be from a non-attainment area. We propose to make it clear in Regulation 1125 that, for the purposes of this regulation, any area in the 15 states will be considered as having the same non-attainment classification as the area of Delaware where the offsets are to be used.