

HEARING OFFICER'S REPORT

Regarding: Proposed Adoption of New Regulation No. 1144, "Control of Stationary Generator Emissions" and Corresponding Amendments to Regulation No. 1102, "Permits"

Lisa A. Vest
Public Hearing Officer

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I. Background:

On Thursday, August 25, 2005, a public hearing was held at 6:00 p.m. in the DNREC Auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware, to receive comment on the planned adoption of a new Air Quality regulation, Regulation No. 1144, "Control of Stationary Generator Emissions", and corresponding amendments to Regulation No. 1102, "Permits". Regulation No. 1144 will impact any owner of a stationary generator, except the owner of the following: any mobile generator; residential generator for emergency use only; certain generators whose emissions are already well controlled; or generators with a standby power rating of 10 kW or less. The amendments to Regulation No. 1102 will clarify the permitting requirements for owners of stationary generators.

Delaware is not in compliance with Federal Air Quality standards for ground-level ozone and fine particulate matter (PM_{2.5}). Among other things, the purpose of Regulation No. 1144 is to help ensure that the air emissions from new and existing stationary generators do not cause or contribute to these existing air quality problems. Regulation No. 1102 is being amended to clarify construction and operation permitting requirements as they apply to stationary generators.

Oral comments were received from members of the public that attended this hearing back in August, as well as written comments, which were received by the Department prior to the close of the public record regarding these proposed regulatory promulgations. The Department provided satisfactory responses to the questions posed by the public at the hearing in August, and also provided a Response Memorandum to the written comments entered into the record of this matter. The same will be discussed in further detail below. Proper notice of the hearing was provided as required by law.

II. The Record:

A. Exhibits:

Mark Prettyman from the Air Quality Management Section of the Department provided a brief summary of what the proposed amendments to Regulation 1102 (“Permits”) entail, as well as explaining why the Department wishes to adopt new Regulation No. 1144 (“Control of Stationary Generator Emissions”) to those that attended the public hearing that night. Additionally, Mr. Prettyman entered into the record fifty-eight (58) exhibits regarding the aforementioned proposed regulatory actions. These exhibits were available to the public for review, both prior to and at the actual hearing. A summary sheet identifying each of these exhibits entered into the record at the time of this public hearing is attached hereto as Exhibit “A”, and expressly incorporated hereinto this Hearing Officer’s Report. Also entered into the record at the public

hearing were the following: (1) a letter from Jim Cubbage on behalf of the Delaware Volunteer Fireman's Association, requesting an exemption from proposed Regulation No. 1144; (2) comments from Joe Suchecki on behalf of the Engine Manufacturer's Association. These documents were entered into the record by the Hearing Officer as Exhibits #1 and #2, respectively.

B. Factual Findings:

As stated above, the Department is proposing the adoption of Regulation No. 1144, "Control of Stationary Generator Emissions", and corresponding amendments to Regulation No. 1102, "Permits". During the Department's presentation offered to the public by Mark Prettyman, it was explained that it is the responsibility of the Air Quality Management's Airshed Evaluation and Planning Group to identify, develop and implement strategies to control air emissions in a way that continuously improves the ambient air quality of the State of Delaware and protects public health, safety and welfare. Part of this responsibility is developing regulations that reduce a risk to the public health caused by the emissions of pollutants from sources in Delaware.

As noted previously, Delaware is not in compliance with the National Ambient Air Quality Standards for ground-level ozone and fine particulate matter. As an outcome of the Delaware Energy Task Force, and because of Delaware's non-attainment status for these standards, DNREC developed a proposed regulation to control the air emissions

from on-site electric generating units such as emergency generators, as well as generators typically known as distributed generation, or “DG” units. DG is typically thought of as smaller, on-site, fossil fuel-fired units, though DG can encompass a much larger world of electric generation. These fossil fuel-fired generators emit much higher rates of air contaminants per kilowatt hour, and contribute to the formation of ground-level ozone and fine particulate matter. Among other things, the purpose of Regulation No. 1144 is to help ensure that the air emissions from new and existing stationary generators do not cause or contribute to these existing air quality problems.

This new regulation will impact any owner of a stationary generator, except for the owner of a mobile generator, residential generator for emergency use only, certain generators whose emissions are already well controlled, or generators with a standby power rating of ten kilowatts or less. Regulation No. 1144 establishes operating requirements, fuel sulfur content limits, and record keeping requirements for stationary generators. The regulation will also require stationary generators which operate at times other than during emergencies for testing or for maintenance to meet certain emission standards to reduce their emissions.

Regulation No. 1144 is based on the Regulatory Assistance Project model rule for DG and was drafted by those persons who participated in the Distributed Generation Regulation Development Workgroup

meetings. Once a final draft was complete, public workshops were held in order to notify the public of the draft regulation and to obtain comments and thoughts from the public on its requirements. Three separate workshops were held by the Department concerning this proposed regulation (one in each county) in May of 2005, in order to give the public adequate opportunity to learn about the regulation and to provide feedback to the Department concerning this matter.

Another outcome of the Distributed Generation Regulation Development Workgroup meetings was the decision to amend AQM's Regulation No. 1102 on permitting. The applicability of Regulation No. 1102 to stationary generators, as it currently stands, is somewhat unclear. Thus, the Department proposes to amend this regulation in order to clarify construction and operating permit requirements as they apply to stationary generators.

C. Comments/Response:

In addition to the oral comments provided to the Department for the record at the actual public hearing on August 25, 2005, written comments were received by the Department prior to the close of the public record regarding these proposed regulatory actions. All comments received by the Department during the course of the record remaining open in this matter (i.e., whether they were received prior to the hearing, at the hearing itself, or up to the closing of the record for public comment on August 31, 2005) were given significant review and consideration by

AQM, and thoroughly addressed in the Department's formal Response Memorandum dated December 6, 2005, and received by the Hearing Officer on December 9, 2005.

AQM's Response Document encompasses the full range of comment contained in the record. Each comment was organized according to its source (i.e., the letter from which each comment originated), followed by a thorough and rational discussion of the issue based on the record developed in this matter. In addition, AQM offered its recommendation as to how each of these issues should be resolved. After reviewing this Response Document, it is my view that AQM has done an excellent job of identifying all of the relevant issues and discussing them in a thorough and balanced manner which accurately reflects the information in the record. Therefore, the Secretary may get an in-depth understanding of the record by reading AQM's Response Memorandum, which is attached hereto as Exhibit "B" and expressly incorporated into this report for that purpose.

III. Conclusions and Recommended Findings:

On the basis of the record developed in this matter, it appears that AQM has provided a sound basis for the proposed regulatory actions with regard to new Regulation No. 1144 and the amendments to existing Regulation No. 1102. Furthermore, I believe that the Department has given careful and serious consideration to all comments provided by the public with respect to this issue, and have found the dimensions of the

