

Secretary's Order No.: 2012-A-0040

**RE: Approving Final Amendment to 7 DE Admin. Code 1120,
New Source Performance Standards, to Repeal of Section 29,
“Standards of Performance for Hospital/Medical/Infectious Waste Incinerators”.**

Date of Issuance: November 9, 2012

Effective Date of the Amendment: December 11, 2012

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control (“Department” or “DNREC”) the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Background and Procedural History

This Order considers the proposed regulatory amendments to 7 DE Admin. Code 1120, New Source Performance Standards, to repeal of Section 29, “Standards of Performance for Hospital/Medical/Infectious Waste Incinerators”.

On September 15, 1997, the EPA adopted a New Source Performance Standard and Emission Guideline at 40 CFR Part 60, Subparts Ec and Ce, which were applicable to both new and existing hospital, medical, and infectious waste incinerator (HMIWI) units, respectively. At the same time, the EPA published a related emissions guideline to assist the States in developing their “Section 129 Plan” for existing sources under 40 CFR Part

60 Ce. EPA's September 15, 1997 promulgation called for Delaware to submit its "Section 129 Plan" within one year.

Over the next twelve months, the Department determined that there were three HMIWI units in Delaware: The DuPont Experimental Station in Wilmington; Kent General Hospital in Dover; and Nanticoke Memorial Hospital in Seaford. DNREC then drafted its proposed Section 29 of Regulation 1120, as well as its "Section 129 Plan", and conducted both a public workshop and public hearing regarding this matter. As required under the Clean Air Act, Delaware subsequently adopted Section 29, "Standards of Performance for Hospital/Medical/Infectious Waste Incinerators" into Regulation 1120 on September 1, 1998. Accordingly, the Department submitted its "Section 129 Plan" to the EPA, and EPA approved Delaware's plan on April 14, 2000.

In 2007, the EPA completed its review for its aforementioned hospital, medical and infectious waste incinerator regulation, and determined that revisions to the same were warranted. In October of 2009, the EPA revised the New Source Performance Standard applicable to newly-built sources and published a revised emissions guideline for existing sources to assist the States in revising their "Section 129 Plan". Once again, EPA's revision to its emissions guideline called for Delaware to submit its revised "Section 129 Plan" within one year.

Upon the Department's review of its "Section 129 Plan", DNREC found that the three existing sources referenced above had since shut down and dismantled their incinerators, and that no newly-built hospital, medical or infectious waste incinerators had been installed. Thus, it was unnecessary to revise Delaware's "Section 129 Plan". On June 17, 2010, the Department submitted a request to EPA Region 3 to have

Delaware's "Section 129 Plan" withdrawn, and on November 30, 2010, the EPA formally withdrew Delaware's plan.

Delaware is now proposing to repeal Section 29 of Regulation 1120, as its inherent regulatory requirements are currently outdated, and its continuance is no longer justified, due to the fact that there is no hospital, medical or infectious waste incinerator in Delaware that are subject to it. Should a facility wish to construct a *new* HMIWI unit in the future, such installation would be regulated under the amended 40 CFR Part 60, Subpart Ec, which EPA formally adopted on October 6, 2009.

The Department's Division of Air Quality commenced the regulatory development process with Start Action Notice 2012-10. The Department published the proposed regulatory amendment in the August 1, 2012 *Delaware Register of Regulation* and held a public hearing on August 22, 2012. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated October 9, 2012 (Report). The Report recommends certain findings and the adoption of the proposed Amendment as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendment is well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendment. As noted in the aforementioned Hearing Officer's Report, no members of the public attended the aforementioned hearing on August 22, 2012, nor were any comments received from the public by the Department, either at the time of the hearing or prior to the record formally closing in this matter on September 6, 2012.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of these Amendments. Promulgation of the aforementioned proposed amendment to 7 DE Admin. Code 1120 will repeal Section 29, as its inherent regulatory requirements are currently outdated, and its continuance is no longer justified, due to the fact that there is no hospital, medical or infectious waste incinerator in Delaware subject to it. Should a facility wish to construct a *new* HMIWI unit in the future, such installation would be regulated under the amended 40 CFR Part 60, Subpart Ec, which EPA formally adopted on October 6, 2009.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendment, and provided the public with an adequate opportunity to comment on the proposed Amendment, including at a public hearing;
- 3.) The Department held a public hearing on the proposed Amendment on August 22, 2012;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendment as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended Amendment does not reflect any change from the proposed regulation Amendment as published in the August 1, 2012, *Delaware Register of Regulations*;

6.) Promulgation of the aforementioned proposed amendment to 7 DE Admin. Code 1120 will repeal Section 29, as its inherent regulatory requirements are currently outdated, and its continuance is no longer justified, due to the fact that there is no hospital, medical or infectious waste incinerator in Delaware subject to it. Should a facility wish to construct a *new* HMIWI unit in the future, such installation would be regulated under the amended 40 CFR Part 60, Subpart Ec, which EPA formally adopted on October 6, 2009; and

7.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

/s/ Collin P. O'Mara

Collin P. O'Mara

Secretary