

Secretary's Order No.: **2008-A-0039**

RE: Proposed Adoption of Section 11.0: "Area Source Lead Acid Battery Manufacturing Standard" into existing Air Regulation 1138: *Emission Standards for Hazardous Air Pollutants for Source Categories*

Date of Issuance: September 10, 2008

Effective Date of the Amendment: October 11, 2008

I. Background:

A public hearing was held on Tuesday, July 29, 2008, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on the proposed adoption of Section 11.0, "Area Source Lead Acid Battery Manufacturing Standard" into existing Delaware Regulation 1138, Emission Standards for Hazardous Air Pollutants for Source Categories. To serve as a brief background for this promulgation, it should be noted that Congress sought to reduce cancer and non-cancer health risks due to the exposure to hazardous air pollutants (HAPs) in the 1990 Amendments to the Clean Air Act. Under Section 112(k) – Area Source Program, Congress mandated that the EPA identify 30 or more HAPs that posed the greatest threat to public health in urban areas, and to identify the small (i.e., "area") sources that emit any of those pollutants.

In 1999, the EPA identified 33 HAPs that posed the greatest threat to public health. Since that time, the EPA has identified over 60 area source categories for which standards are to be promulgated. The EPA promulgated its first of these area source standards in 2006, and they are under Court-ordered deadlines to complete all promulgations by June 2009. 40 CFR Part 63, Subpart PPPP constitutes the Department's starting point for the development of this State of Delaware proposed regulation.

In July 2007, the EPA promulgated its first area source standard affecting a Delaware source: the lead acid battery manufacturing standard. The Johnson Controls facility, located in Middletown, Delaware, is the only known Delaware source that will be subject to this standard. Representatives from that facility were in communication with the Department during the pre-hearing phase of this matter to learn more about this proposed regulatory action.

No members of the public attended this hearing on July 29, 2008, and no public comment or questions were received by the Department regarding this proposed action. Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared her report and recommendation in the form of a Hearing

Officer's Memorandum to the Secretary dated September 5, 2008, and that Report is expressly incorporated herein by reference.

II. Findings:

The Department has provided a reasoned analysis and a sound conclusion with regard to this proposed regulatory action, as reflected in the Hearing Officer's Memorandum of September 5, 2008, which again is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
3. The Department held a public hearing in a manner required by the law and regulations;
4. The Department considered all timely and relevant public comments in making its determination;
5. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and has determined that Johnson Controls does not qualify for the additional considerations that would be afforded to small business in such matters;

6. Promulgation of these proposed amendments would update Delaware's requirements to be consistent with the federal requirements, thus bringing Delaware into compliance with EPA standards;
7. The minor non-substantive changes make to this regulation will correct clerical errors which were contained in the initial regulatory language, and provide better clarity and a fuller understanding of the regulatory language contained within this regulation to the general public and the regulated community;
8. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
9. The Department's proposed regulation (with changes), as published in the July 1, 2008 *Delaware Register of Regulations* and set forth within Attachment "C" of the Hearing Office's Memorandum attached hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*;

10. The Department shall submit the proposed regulation as a final regulation to the Delaware Register of Regulation for publication in its next available issue, and shall provide written notice to those affected by the Order.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Report dated September 5, 2008, and expressly incorporated herein, it is hereby ordered that the proposed adoption of Section 11.0, "Area Source Lead Acid Battery Manufacturing Standard" into existing Delaware Regulation 1138, *Emission Standards for Hazardous Air Pollutants for Source Categories*, be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of Section 11.0 into State of Delaware Regulation 1138 will bring Delaware into compliance with Federal standards by updating Delaware's requirements, where appropriate, to be consistent with the same. Additionally, the minor non-substantive changes being made to this regulation will provide better clarity and a fuller understanding of the regulatory language contained within this regulation to the general public and the regulated community.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 Del. C., Ch. 60.

/s/ John A. Hughes
John A. Hughes
Secretary