

MEMORANDUM

TO: John A. Hughes, Secretary

FROM: Lisa A. Vest, Hearing Officer

RE: Regarding: Proposed Amendments to Regulation 1138:
“Emission Standards for Hazardous Air Pollutants
for Source Categories”, Section 6.0: Electroplating and
Anodizing Operations

DATE: October 12, 2007

I. Background:

A public hearing was held on Thursday, August 23, 2007, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to Subpart N of Delaware Regulation 1138, Emission Standards for Hazardous Air Pollutants for Source Categories, *Section 6.0: Chromium Electroplating and Anodizing Operations*. Historically, Delaware adopted by reference the federal Maximum Achievable Control Technology standard (hereinafter referred to as the MACT standard) applicable to chromium electroplating facilities as Subpart N on Delaware’s Regulation 38 on September 1, 1999. Delaware later amended Subpart N in October of 2000 when EPA issued a temporary extension to the Title V permitting deadline, and that extension was in effect until December 2005.

Since 2000, EPA has revised the chromium electroplating MACT standard several times. These changes included modifications to the standard’s emission limitations, work practices, and other compliance

provisions. In 2005, EPA permanently exempted the smaller area sources as we have here in Delaware from the obligation of obtaining a Title V permit. The Department's purpose in amending Subpart N at this time is to update Delaware's requirements, where appropriate, to be consistent with the federal requirements.

Of note is the fact that no members of the public attended this hearing on August 23, 2007 to voice their concerns with regard to the Department's proposed changes to these regulations. Neither were any comments received from the public during the post-hearing phase of this proceeding. Proper notice of the hearing was provided as required by law.

II. Summary of Hearing Record:

At the time of the hearing on August 23, 2007, Jim Snead, Engineer IV with the Division of Air Quality Management Section of DNREC, offered the Department's 31 exhibits pertaining to these proposed amendments, as well as a brief explanation with regard to the salient points of the proposed amendments to these regulations. Mr. Snead explained for the purposes of providing a formal record at this hearing that, following a thorough review of the federal changes since 2000, the Department decided to include most of the federal changes in the proposed amendment that appeared in the August 1, 2007 edition of the Delaware Register. For example, the Department has included the improved surface tension monitoring language, as well as permanently

exempting those small sources from the obligation of obtaining a Title V permit.

However, the Department found that some of EPA's revisions could likely lead to greater emissions of hexavalent chromium, which is a human carcinogen, thus amounting to a reduction in the public's protection. Additionally, the Department decided not to include the federal changes that relaxed the operating conditions for the composite mesh pad control devices, as it is believed that such a change is not in the public's best interest at this time. The Department does not expect this to create a problem for the Delaware sources either, as they have continued to demonstrate their ability to comply with the original, more protective, operating conditions. On yet another matter, the Department did not follow EPA's decision to limit the role of the start-up, shutdown, and malfunction plan in the operation of the processes for two reasons: (1) it is less health protective than what Delaware currently has today; and (2) EPA has incurred litigation as a result of their relaxation of this requirement. Thus, on all three of these matters, the public's best interests were greatly taken into consideration, and the same is reflected in the final proposed amendments to this regulation.

It should also be noted that the Department adhered to all appropriate Delaware statutes and the regulatory development process during the amendment of Subpart N to Regulation 1138, and that the Department has gone far beyond the standard required public noticing

obligations in this matter. For example, the Air Quality Management Section of the Department developed a web page specific to the Subpart N of Regulation 1138, which provides background and detailed and pertinent information throughout the regulatory process. The Department also sent letters to the three known affected sources in Delaware informing them of the Subpart N web page, and providing them with the scheduled dates for the planned public workshop and public hearing, as well as including a copy of the draft regulation for their review.

In addition to the changes being made in order for Delaware to be consistent with federal requirements, the Department is also renumbering Subpart N, now to be known as “Section 6.0”, in order to be consistent with the Delaware Administrative Code System. This is the same type of change that changed Regulation 38 to Regulation 1138. Lastly, the Department is also changing the format of the regulation from the prior adoption by reference, with change, to providing a full, complete regulatory text. This latter change will eliminate the need for the public and the regulatory community to interpret between the “adopted by reference language” and the changes the “Department felt necessary” as adopted into Regulation 1138.

For the Secretary’s review, Delaware’s proposed amendments to these regulations, as contained within the Department’s 31 exhibits entered into the record at the public hearing of this matter, are expressly

incorporated into this report and attached hereto as Attachment "A" for that purpose.

It should also be noted that the Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally.

III. Conclusions and Recommendations:

Based on the above discussion, I conclude that the Department has provided appropriate reasoning regarding the need for these proposed changes to Delaware's Regulation 1138, Section 6.0, and has thoroughly addressed any public health issues which some of these proposed changes would have created, and taken the steps necessary to protect the public health of the citizens of Delaware. Accordingly, I recommend promulgation of these proposed amendments in the customary manner provided by law.

Further, I recommend the following findings:

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 believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
6. Promulgation of these proposed amendments would update Delaware's requirements, where appropriate, to be consistent with the federal requirements, thus bringing Delaware into compliance with EPA standards;
7. In cases where the updated federal requirements would adversely affect the public health, those updates were not incorporated into these proposed amendments;
8. The styling and formatting changes to this regulation will make the Department consistent with the Delaware Administrative Code System, as well as provide better clarity and a fuller understanding of the regulatory language contained within this regulation to the general public and the regulated community;
9. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;

10. The Department's proposed regulation, as published in the August 1, 2007 *Delaware Register of Regulations* and set forth within Attachment "A" 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*;
11. 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 the persons affected by the Order.

 /s/ Lisa A. Vest
LISA A. VEST
Hearing Officer