

HEARING OFFICER'S REPORT

Regarding: Proposed Amendments to Subparts "T" and "RRR" of Regulation No. 1138 (Formerly Reg. No. 38), Emission Standards for Hazardous Air Pollutants for Source Categories

Lisa A. Vest
Hearing Officer

July 11, 2007

I. Background:

A public hearing was held on Thursday, June 21, 2007 in the DNREC auditorium located at 89 Kings Highway in Dover, Delaware, to receive public comment on proposed amendments to Subparts “T” and “RRR” of the State of Delaware’s Regulation No. 1138 (formerly Reg. No. 38), Emission Standards for Hazardous Air Pollutants for Source Categories. Delaware adopted by reference the federal Maximum Achievable Control Technology (MACT) standards applicable to halogenated solvent degreasers (40 CFR Part 63 Subpart “T”) and aluminum sweat furnaces (40 CFR Part 63 Subpart “RRR”) into Regulation No. 38 on November 1, 2001, and June 1, 2003, respectively. When Delaware adopted these standards, all sources subject to them were required to obtain a Title V operating permit. In December 2005, the EPA revised the Title V permitting requirements to permanently exempt the smaller area sources from needing a Title V permit.

The purpose of this proposed amendment to Subparts “T” and “RRR” of Regulation No. 38 is to, consistent with federal requirements, permanently exempt the smaller area sources from Title V permitting requirements. Additionally, Subparts “T” and “RRR” of Regulation No. 38 will be renumbered consistent with the Code of Delaware Regulations format, and the format of the regulation will be changed from the “adoption by reference” format to a format that will include the complete

regulatory text. This latter change will eliminate the need for the public or the regulated community to interpret between the “adopted by reference” federal standards and the changes the Department made upon adoption into Regulation No. 38.

It should be noted that there will be no change in emissions under this proposed action. The only change will be that operating permits will be required only under Regulation No. 1102, and not under both Regulation Nos. 1102 and 30, for area sources subject to Subparts “T” and “RRR” of Regulation No. 38. There are three known facilities subject to Subpart “T”. The last known aluminum sweat furnace subject to Subpart “RRR” was shutdown in 2003. The Department received no objection to these proposed amendments from either any businesses or members of the public during this regulatory promulgation.

It should further be noted that no members of the public (either from industries or individuals) were present at this public hearing on June 21, 2007, nor were any questions and/or comments received by the Department prior to the record formally closing on June 30, 2007. Proper notice of the hearing was provided as required by law.

II. Summary of Record:

Jim Snead, a senior engineer with the Department’s Division of Air and Waste Management – Air Quality Management Section (hereinafter referred to as “AQM”), gave a brief verbal presentation for the benefit of the record at the hearing on June 21, 2007 concerning this proposed

regulation. He also produced 35 exhibits on behalf of the Department, which the Hearing Officer formally entered into the record at the public hearing. For the benefit of the Secretary's review, these exhibits are attached hereto as Exhibit "A" and expressly incorporated herein.

Additionally, attached hereto as Exhibit "B" is a copy of the proposed amended regulation to be submitted to the Delaware Register of Regulations by the Department, should the Secretary decide to formally promulgate this regulation. This attachment is expressly incorporated into this Hearing Officer's report at this time as well.

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 amendments to Subparts "T" and "RRR" of the State of Delaware's Regulation No. 1138 (formerly Reg. No. 38), Emission Standards for Hazardous Air Pollutants for Source Categories, and that the final draft of these proposed regulations is reasonable and consistent with the record developed in this case. Therefore, I recommend that the same be promulgated in final form, in accordance with the customary and established rule-making procedure required by law.

I also recommend the following additional findings:

1. Proper notice of the hearing was provided as required by law.
2. The State of Delaware's adoption of the federal MACT standards applicable to halogenated solvent degreasers and

aluminum sweat furnaces into Regulation No. 38 on November 1, 2001 and June 1, 2003, respectively, required all sources subject to such standards to obtain a Title V operating permit.

3. In December 2005, the EPA revised the Title V permitting requirements to permanently exempt the smaller area sources from needing a Title V permit.

4. Promulgation of this proposed amendment to Subparts “T” and “RRR” of the State of Delaware’s Regulation No. 1138 (formerly Reg. No. 38), Emission Standards for Hazardous Air Pollutants for Source Categories, will permanently exempt the smaller area sources from Title V permitting requirements, thus bringing Delaware’s regulations in line with current federal guidelines.

5. Additionally, subparts “T” and “RRR” Regulation No. 1138 will be renumbered so as to be consistent with current Code of Delaware Regulations format, thereby eliminating the need for either the public or the regulated community to interpret between the “adopted by reference” federal standards and the changes made by the Department to this Regulation upon adoption, thus resulting in further clarity to the same.

6. In accordance with the Regulatory Flexibility Act, the Department believes that the proposed amendments to Subparts “T” and “RRR” of the State of Delaware’s Regulation No. 1138 (formerly Reg. No. 38), Emission Standards for Hazardous Air

Pollutants for Source Categories are lawful, feasible and desirable, and that the revisions as proposed should be applied to all Delaware citizens equally.

7. The proposed amendments to Subparts “T” and “RRR” of the State of Delaware’s Regulation No. 1138 (formerly Reg. No. 38), Emission Standards for Hazardous Air Pollutants for Source Categories, identified previously as Exhibit “B” and attached hereto, should be adopted as the Department’s final action, and be published as a Notice in the *Delaware Register of Regulations* in the next available issue.

In addition, I recommend issuing the attached Secretary’s Order to effectuate this purpose and adopting the Hearing Officer’s findings and conclusions as expressed hereinabove.

/s/ Lisa A. Vest
Lisa A. Vest
Public Hearing Officer