

HEARING OFFICER'S REPORT

TO: The Honorable Shawn M. Garvin
Cabinet Secretary, Dept. of Natural Resources and Environmental Control

FROM: Theresa Newman, Regulatory Specialist, Office of the Secretary,
Dept. of Natural Resources and Environmental Control

RE: Proposed Revision to the Delaware State Implementation Plan ("SIP")
to establish Delaware's 2017 base year emissions inventory to meet the
requirements according to Section 182(a)(1) of the Clean Air Act and the
US Environmental Protection Agency's implementation rule for the 2015
Ozone National Ambient Air Quality Standard

DATE: September 29, 2020

I. BACKGROUND AND PROCEDURAL HISTORY:

A virtual public hearing was held on Wednesday, August 26, 2020, at 6:00 p.m. via the State of Delaware Cisco WebEx Meeting Platform by the Department of Natural Resources and Environmental Control ("DNREC," "Department") to receive comment on the proposed revision to Delaware's State Implementation Plan ("SIP") addressing the Delaware 2017 Base Year SIP Emissions Inventory under the 2015 Ozone National Ambient Air Quality Standard ("NAAQS"). Delaware is required by Section 110 of the Federal Clean Air Act ("CAA") to submit to the U.S. Environmental Protection Agency ("EPA") a SIP that provides for the implementation, maintenance, and enforcement of the National Ambient Air Quality Standard as established by the EPA.

A SIP is a state plan that identifies how that state will attain and maintain air quality that conforms to each primary and secondary NAAQS. The SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and inventories. The Department submitted its initial SIP to EPA in 1972. The Department periodically submits revisions to the SIP as required by the CAA to address air quality nonattainment and maintenance issues. The CAA requires that any proposed SIP revision be made available for public comment and presented at a public hearing prior to submitting to EPA for adoption.

The objective of the proposed SIP revision is to establish Delaware's 2017 base year emissions inventory to meet the requirements according to Sections 182(a)(1) and 172(c)(3) of the CAA and the EPA's implementation rule for the 2015 ozone NAAQS. Approval of the proposed SIP revision will enable the Department to formally address EPA's requirements and incorporate the same into Delaware's SIP document.

On October 1, 2015, EPA promulgated a revised NAAQS for ground-level ozone at a level of 0.070 parts per million. Ground-level ozone, formed in the atmosphere by photochemical reactions among volatile organic compounds (VOC), oxides of nitrogen (NO_x), and carbon monoxide (CO) in the presence of sunlight, is a serious air pollutant that harms human health and the environment. The revised NAAQS for ground-level ozone is expected to provide better protections of public health and environment.

Promulgation of a revised NAAQS triggers a requirement for the EPA to designate areas as nonattainment, attainment, or unclassifiable, and to classify the nonattainment areas based upon the severity of nonattainment at the time of designation. New Castle County, Delaware, was designated as marginal nonattainment as part of the Philadelphia-Wilmington-Atlantic City nonattainment area for the 2015 ozone NAAQS, per the final rule dated June 4, 2018. In the same final rule, Delaware's Kent and Sussex Counties were designated as attainment areas for the same 2015 ozone NAAQS. The EPA made the designations of these three counties effective on August 3, 2018. Depending on the classification of nonattainment counties within a state, states are required to submit SIP revisions to demonstrate how they are complying with the mandatory plan submission requirements for nonattainment areas under the CAA.

On December 6, 2018 EPA issued the final rule of implementation plan requirements for the 2015 ozone NAAQS. The final rule is an update to the implementing regulations previously promulgated for the 2008 ozone NAAQS. As New Castle County was designated nonattainment, and pursuant to Sections 182(a)(1) and 172(c)(3) of CAA, the Department developed emission inventories for that area to that meet the criterion of CAA every three years since 1990. Delaware has previously been

designated nonattainment for ozone under the 1979 1- hour, 1997 8-hour, and 2008 8-hour ozone NAAQS. The Department's latest comprehensive, accurate inventory of actual emissions from all sources of VOC, NO_x, and CO in the State, covered calendar year 2017. It should be noted that per EPA (40 CFR 51.1315) a base year inventory only requires emissions from sources of VOC and NO_x, however for consistency with the past base year inventory reports, the Department included sources of CO.

According to Section 182(a)(1) of the CAA and EPA's implementation rule for the 2015 ozone NAAQS (83 FR 62998), Delaware is required to submit the Base Year Emissions Inventory SIP revision to EPA by August 3, 2020. In late April 2020, EPA released the emissions data necessary for Delaware to complete the 2017 Base Year Emissions Inventory. It should be noted that Delaware was unable to complete the 2017 Base Year Emissions Inventory until this data was released by EPA.

The Airshed Planning and Inventory Program and the Greenhouse Gas, Mobile, and Air Toxics Program within the Planning Section of Division of Air Quality began planning in September 2017. The reports include source coverage categories from stationary point sources, stationary nonpoint sources, and nonroad and onroad mobile sources as described in the report.

DAQ requires emissions reporting from 126 statewide stationary point source facilities, including large industrial, commercial, and institutional facilities. As New Castle County is the only area designated as marginal nonattainment in Delaware for the 2015 ozone NAAQS, the Department's inventory reflects 82 of the facilities located in New Castle County, surveyed for air emissions data. For point sources, DAQ developed a set of criteria to use in establishing the universe of facilities required to report. These criteria are presented in section 2, of Appendix A.

A nonpoint source category is either: 1) represented by small facilities too numerous to individually inventory, such as commercial cooking at restaurants and fuel combustion at a variety of small businesses; or 2) a common activity, such as residential

open burning. Emissions from the nonpoint source categories were estimated at the county level. There are a number of nonpoint source categories which contribute to emissions of ozone precursors such as solvent use, gasoline usage, fuel combustion, and open burning. DAQ utilized information from the nonpoint sources located in New Castle County and estimated air emissions based on calculated formulas provided in section 3 of Appendix A.

DAQ utilized the EPA's MOVES model to develop emissions estimates from onroad mobile and nonroad equipment within New Castle County. The MOVES nonroad model multiplies equipment populations and their associated activity by the appropriate emission factors. Emission estimates of VOCs, NO_x, and CO for onroad mobile and nonroad equipment sector account for exhaust emissions from engine fuel combustion. Nonroad vehicles and equipment include aircraft, locomotives, commercial marine vessels, and other off-road vehicles and equipment.

Lastly, the 2017 onroad mobile source inventory is an estimate of vehicle emissions based on actual vehicle miles traveled ("VMT") on Delaware roadways in 2017. DAQ utilized annual data reported by Delaware's Department of Transportation (DelDOT) to estimate VMT based on data from permanent traffic count stations throughout the New Castle County. DAQ then used the data reported by DelDOT to estimate the air pollutants by using EPA's MOVES2014b model.

As noted above, Delaware is currently proposing the SIP revision to address EPA's requirements for incorporation into Delaware's SIP document, to establish Delaware's calendar year 2017 emissions inventory, described in Appendix A, as its base year emissions inventory under the 2015 ozone NAAQS.

The Department has the statutory basis and legal authority to act with regard to the proposed SIP revision described herein, pursuant to 7 *Del.C.* Chapter 60. The Department published a General Notice of the aforementioned proposed SIP revision, and

of the August 26, 2020 public hearing held in this matter, in the August 1, 2020 Delaware Register of Regulations.

Subsequent to the publication of the General Notices in the Delaware Register of Regulations, Governor John Carney issued a State of Emergency (“SOE”) Declaration to enable the State of Delaware to prepare for the spread of COVID-19. This SOE Declaration (which became effective on Friday, March 13, 2020) specifically directed and authorized that all public meetings of executive branch public bodies, such as the DNREC public hearing scheduled in this matter for August 26, 2020, may be conducted electronically, either by means of telephone conference call or video conference call.

In addition to all the standard notifications and noticing requirements that were met by DNREC in this matter, the Department formally addressed the change in meeting format (e.g., from standard face-to-face public gathering to virtual via the State of Delaware Cisco WebEx Meeting Platform) as follows: (1) formal news releases were issued by the Department on July 19, 2020; (2) a meeting notice was published on the State of Delaware Public Meeting Calendar on July 17, 2020; and (3) a meeting notice was posted on the website for DNREC Public Hearings on July 16, 2020. These efforts were made to ensure the public was made aware of the virtual public hearing as noted above, and that comments were still able to be submitted to the Department concerning the proposed SIP revision being proposed at this time.

Subsequent to the virtual public hearing on August 26, 2020, the hearing record (“Record”) remained open for comment through September 10, 2020. No public comment was received by the Department during any phase of this hearing matter. As set forth above, all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

II. **SUMMARY OF THE PUBLIC HEARING RECORD:**

The Record consists of the following documents: (1) a verbatim transcript of the virtual public hearing held on August 26, 2020; and (2) fourteen (14) exhibits introduced by the responsible Department staff at the time of the aforementioned public hearing and marked by this Hearing Officer accordingly as “Department Exhibits 1-14”. The Department’s responsible staff member for the drafting and overall promulgation of these proposed SIP Amendments, Jacquelyn L. Cuneo, Engineer III, Division of Air Quality, developed the Record with the relevant documents in the Department’s files.

As noted previously, the aforementioned proposed SIP revision was presented and thoroughly vetted by the Department at the virtual public hearing on August 26, 2020. No formal comment was received by members of the public at that time. Pursuant to Delaware law, the record remained open subsequent to the date of the public hearing for the purpose of allowing additional public comment to be received regarding this matter. The hearing record closed for comment in this matter on September 10, 2020, with no public comment having been received by the Department during any phase of this hearing matter.

For the Secretary’s review, a copy of each of the Department’s proposed SIP revision, as presented at the aforementioned virtual public hearing, is attached hereto as Appendix “A”. Again, all proper notification and noticing requirements concerning this proposed promulgation were met by the Department in this matter.

III. **RECOMMENDED FINDINGS AND CONCLUSIONS:**

Based on the record developed, I find and conclude that the Department has provided appropriate reasoning regarding the need for the proposed SIP revision to Delaware’s SIP document. Accordingly, I recommend promulgation of the same in the customary manner provided by law.

Further, I recommend the Secretary adopt the following findings and conclusions:

1. The Department has the statutory basis and legal authority to act with regard to the aforementioned proposed SIP revision, pursuant to 7 *Del.C.* Ch. 60;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Ch. 60, to issue an Order adopting the proposed SIP revision as final;
3. The Department provided adequate public notice of the proposed SIP revision, and all proceedings associated with the same, in a manner required by the law and regulations. The Department provided the public with an adequate opportunity to comment on the proposed SIP revision, and held the Record open for receipt of public comment subsequent to the date of the hearing (through September 10, 2020), consistent with Delaware law, in order to consider the same before making any final decision;
4. Promulgation of the proposed SIP revision will enable the Department to provide EPA with Delaware's calendar year 2017 emissions inventory as its base year emissions inventory under the 2015 ozone NAAQS, to meet the requirements of the 2015 ozone NAAQS;
5. The Department's proposed SIP revision, as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, the Department's proposed SIP revision should be approved as a final revision to Delaware's SIP document, which shall become effective immediately upon the signing of the Secretary's Order dedicated to this proposed SIP revision as set forth above;

6. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and
7. The Department shall submit the proposed SIP revision as a final SIP revision 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.



Theresa L. Newman
Public Hearing Officer

Appendix A: Proposed SIP revision