

**SUBMITTED via DNREC ONLINE PORTAL**

TO: Lisa Vest, Hearing Officer

DATE: July 23, 2020

RE: Further Public Comment on Docket # 2020-P-A-0017 (Application of Delaware City Refining for permit renewal of Permit: AQM-003/00016 – Part 1 (Renewal 3), Part 2 – (Renewal 2), and Part 3 (Renewal 3)).

I am submitting the following further public comment in the above captioned Docket:

**Comment 4. DNREC’s Public Hearings Without Contemporaneous Oral Public Comment Violates The Governor’s Proclamation No. 17-3292**

In addition to the 3/12/20 Order referenced in my previous Comment No. 1, the Governor and Lt. Governor also issued a Proclamation specifically governing the conduct of public meetings by State public bodies. The six paragraphs of the Declaration largely mirror the requirements in ¶ 5 of the 3/12/20 Order. Paragraph 6 of the Declaration imposes the additional requirement that “all other rules and procedures applicable to public meetings shall be followed.”

The public hearing in the above-listed docket did not comply with the requirement of ¶ 2 of the Declaration that the technology used “must permit members of the public to hear the comments of **and speak to** such members of the public body contemporaneously” and that “[p]ublic participants must also be permitted to . . . **submit questions or comments**” (emphasis supplied). The public hearing therefore violated the Governor’s Declaration as well.

A copy of the Governor’s Declaration is attached to these comments so that it is part of the public record.

**Comment 5. Documents Attached To Be Part Of The Record**

Although they are public records and should already be before the Secretary (as they govern and affect his conduct), out of an abundance of caution, I am attaching a copy of the 3/12/20 Order, the Twentieth Modification of that Order, and the Fourth Extension of that Order so that they are clearly part of the record in this Docket.

Thank you for the opportunity to submit these Public Comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kenneth T. Kristl". The signature is fluid and cursive, with a large initial "K" and a distinct "T" in the middle.

Kenneth T. Kristl, Esq.

Attachments

3/12/20 Order

3/12/20 Proclamation

Twentieth Modification

Fourth Extension

# State of Delaware



Executive Department  
Dover

## **DECLARATION OF A STATE OF EMERGENCY FOR THE STATE OF DELAWARE DUE TO A PUBLIC HEALTH THREAT**

**WHEREAS**, the Centers for Disease Control and Prevention has determined that a novel coronavirus (“COVID-19”) presents a serious public health threat, and that this threat is likely to impact the State of Delaware; and

**WHEREAS**, the Delaware Department of Health & Social Services’ Division of Public Health (DPH) has determined that it is vital for the State of Delaware to prepare for the possible community transmission of COVID-19 and take steps to avoid the transmission of the virus, which may include avoiding public gatherings; and

**WHEREAS**, it is in the best interests of the State to protect its citizens from a potential public health emergency that could threaten the lives of those who live and work here; and

**WHEREAS**, the predicted public health threat created by COVID-19 will likely continue to create dangerous and potentially life-threatening public health conditions and may result in additional public safety responses.

**NOW, THEREFORE, I, JOHN C. CARNEY**, pursuant to Title 20, Chapter 31 of the Delaware Code, do hereby declare a State of Emergency in Delaware. This State of Emergency will be effective as of Friday, March 13, 2020 at 8:00 a.m. E.S.T., and shall continue until terminated as provided under state law. The nature of the emergency is the public health threat from the COVID-19. Along with such other actions authorized by Title 20, Chapter 31 of the Delaware Code, I specifically direct and authorize:

1. All departments and agencies of the State of Delaware shall assist in response and recovery activities, as directed by and in coordination with the Delaware Emergency Management Agency (DEMA), in consultation with the Secretary of the Department of

Safety and Homeland Security (DSHS), necessary in those areas affected by the COVID-19. Further, DEMA is authorized to enact the Delaware Emergency Operations Plan.

2. The Delaware National Guard shall take precautionary or responsive actions directed by the Director of DEMA, in consultation with the Secretary of DSHS, upon request by local authorities.
3. Pursuant to the authority provided in Title 20, Chapter 31 of the Delaware Code, DPH, in consultation with DEMA and the Secretary of DSHS, shall consider responsive actions with respect to facility closures, isolation and quarantine measures, including quarantine of individuals or groups of individuals, and such other measures as they deem necessary to protect the health and safety of the public. DPH is authorized to purchase and distribute antitoxins, serums, vaccines, immunizing agents, antibiotics and other pharmaceutical agents, health care supplies or medical supplies.
4. As of Friday, March 13, 2020 at 8:00 a.m. E.S.T., and until further notice, there are no driving restrictions in effect in the State.
5. As of Friday, March 13, 2020 at 8:00 a.m. E.S.T., all public meetings of executive branch public bodies governed by 29 Del. C. §§10001 et. seq. (including boards, commissions, task forces, and any other similar public body) may be conducted electronically, either by means of telephone conference call or video-conference call. The technology used must permit members of the public body to hear the comments of and speak to all those participating, and members of the public to hear the comments of and speak to such members of the public body contemporaneously. Public participants must also be permitted to electronically access presentation materials and submit questions or comments. During any public meeting conducted by electronic means, each member of the public body will identify him or herself before speaking so that members of the public are able to hear the comments of the members of the public body. Notice requirements of public meetings will continue as required by law and will include the electronic information necessary for participation. Meetings already noticed shall be updated as soon as practicable with the information necessary for members and the public to participate electronically.
6. Given that Delaware has evidence of the presence of COVID-19, it is important that social events be held safely to prevent the spread of infection. Proper precautions are essential. Event hosts should review the potential risks and cancel all “non-essential mass gatherings” of 100 people or more. CDC event guidance strongly emphasizes that those at highest risk (over age 60 and with chronic health conditions) not attend large gatherings. Large gatherings, if held, should provide the following: adequate space allowing 6 feet between individuals; adequate air flow; warm water and soap along with hand sanitizer stations; signage that emphasizes that ill individuals not attend; and a process in place to manage an ill individual safely. As of Friday, March 13, 2020 at 8:00 a.m. E.S.T., DPH and DEMA are authorized to cancel gatherings should it be deemed necessary for public health reasons, and such cancellation shall not constitute a taking and shall not entitle the owner or organizer to just compensation.

7. Schools are encouraged to review activities that bring attendees in close proximity to each other based upon the CDC's guidance for social events. Schools should have a rigorous cleaning process and emphasize that sick students and staff stay home. DPH is not recommending that school facilities close at this time, but DPH will continue to coordinate closely with school district leadership to prevent community spread of the COVID-19.
8. Facilities serving older adults, including skilled nursing facilities, assisted living facilities, hospice providers, and rehabilitation facilities with older patients should:
  - a. Screen and restrict access by those who meet the following: 1) signs or symptoms of a respiratory infection such as cough, fever, shortness of breath or sore throat; 2) in the last 14 days had contact with someone with a confirmed diagnosis of COVID-19, or 3) are ill with respiratory illness.
  - b. All individuals permitted to enter the facility must wash hands upon entry; if soap and water are not available, alcohol-based sanitizer may be used.
  - c. Make online methods of face-to face communication and phone calls available.
  - d. Facility staff should be restricted from international travel and should be monitored if they have travelled out of the country in the last 14 days.
  - e. Staff should be monitored if they have been in contact with someone who is under investigation for COVID-19 or have traveled out of state.
  - f. Staff should be monitored if they are showing any signs of respiratory infection such as fever, cough or sore throat.
  - g. Any staff member who has these signs or symptoms should not go to work. Any staff that develop these signs or symptoms on the job should immediately stop working, put on a face mask, and self-isolate at home.
  - h. Staff who develop these signs and symptoms should inform the infection preventionist and contact their primary care doctor, as well as the Division of Public Health at 1-866-408-1899 for next steps.
  - i. Nursing homes should increase availability of alcohol-based hand sanitizers, tissues, no-touch receptacles for disposal, and facemasks at entrances, waiting rooms, and resident check-ins.
  - j. Signage should be increased for vigilant infection prevention.
  - k. Properly clean, disinfect, and limit sharing of medical equipment between residents and areas of the facility.
9. No entity doing business in this state shall engage in price gouging as a result of this public health emergency, which shall mean an excessive price increase of goods or services offered for sale beyond the sale price in the usual course of business immediately prior to the date of this state of emergency, unless the increase is attributable to additional costs imposed on the supplier of such goods or services, such price not to increase more than 10% from the cost customarily applied in the usual course of business prior to this state of emergency. A violation of this paragraph shall be deemed an unlawful practice under § 2513 of Title 6 of the Delaware Code and a violation of Subchapter II of Chapter 25 of Title 6.
10. State employees shall refrain from any business travel out of state. If you are scheduled for business travel that you feel is essential, please notify your supervisor.

11. The Department of Health and Social Services and the Department of Safety and Homeland Security are exempted from 29 Del. C. Chap. 69 for purposes of purchasing materials necessary for responding to this public health emergency.
12. I reserve the right to take or direct state or local authorities to take, without issuance of further written order, any other necessary actions authorized by Title 20, Chapter 31 of the Delaware Code to respond to this emergency.

APPROVED this 12<sup>th</sup> day of March 2020 at 3:00 p.m.

Governor



# STATE OF DELAWARE



## OFFICE OF THE GOVERNOR

### PROCLAMATION

*Whereas*, the Centers for Disease Control and Prevention has determined that a novel coronavirus ("COVID-19") presents a serious public health threat; and

*Whereas*, as of 8:00 a.m. E.S.T. on March 13, 2020, the Governor declared a State of Emergency due to the public health threat of COVID-19; and

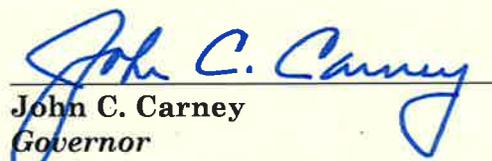
*Whereas*, in order to prevent the community transmission of COVID-19, the Governor's State of Emergency declaration ordered all public meetings of executive branch public bodies governed by 29 Del. C. §§10001 et. seq. (including boards, commissions, task forces, and any other similar public body) may be conducted electronically, either by means of telephone conference call or video-conference call; and

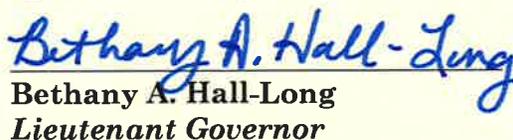
*Whereas*, in the interests of protecting the citizens of this state from the public health threat caused by COVID-19, the Governor is authorized to take such action as the Governor reasonably believes necessary to help maintain life, health, property or public peace in this state, including issuing a proclamation to suspend the provisions of any regulatory statute prescribing the procedures for conducting state business where strict compliance with the statute may hinder necessary action in coping with the public health threat caused by COVID-19.

***Now, Therefore, We, John Carney, Governor,  
and Bethany Hall-Long, Lieutenant Governor,  
do hereby declare that the following precautionary  
measures shall be implemented:***

1. All meetings of public bodies governed by 29 Del. C. §§10001 et. seq., until further notice, may be conducted electronically, either by means of telephone conference call or video-conference call.
2. The technology used must permit members of the public body to hear the comments of and speak to all those participating, and members of the public to hear the comments of and speak to such members of the public body contemporaneously. Public participants must also be permitted to electronically access presentation materials and submit questions or comments.
3. During any public meeting conducted by electronic means, each member of the public body will identify him or herself before speaking so that members of the public are able to hear the comments of the members of the public body.
4. Notice requirements of public meetings will continue as required by law and will include the electronic information necessary for participation.
5. Meetings already noticed shall be updated as soon as practicable with the information necessary for members and the public to participate electronically.
6. All other rules and procedures applicable to public meetings shall be followed.



  
John C. Carney  
Governor

  
Bethany A. Hall-Long  
Lieutenant Governor

# State of Delaware



Executive Department  
Dover

## **TWENTIETH MODIFICATION OF THE DECLARATION OF A STATE OF EMERGENCY FOR THE STATE OF DELAWARE DUE TO A PUBLIC HEALTH THREAT**

**WHEREAS**, the Centers for Disease Control and Prevention (“CDC”) has determined that a novel coronavirus (“COVID-19”) presents a serious public health threat, and has advised the public that asymptomatic individuals may be carriers of the COVID-19 virus and may unknowingly spread the virus to other individuals in close proximity, and therefore, social distancing is required to help mitigate the individual exposure to (and community spread of) the COVID-19 virus; and

**WHEREAS**, it is in the best interests of the State to protect its citizens from a public health emergency that could threaten the lives of those who live and work here; and

**WHEREAS**, on March 12, 2020 at 3:00 p.m. E.D.T., I issued a State of Emergency declaration due to the public health threat of COVID-19, which became effective as of 8:00 a.m. E.D.T. on March 13, 2020 (the “COVID-19 State of Emergency”); and

**WHEREAS**, on March 16, 2020 at 2:00 p.m. E.D.T., I issued the First Modification to the COVID-19 State of Emergency declaration to advise that the CDC issued new guidance for large

events and mass gatherings, recommending that organizers halt gatherings of fifty (50) people or more for the next eight weeks due to the public health threat of COVID-19, including conferences, social events, concerts and other types of assemblies; and

**WHEREAS**, on March 18, 2020 at 2:00 p.m. E.D.T., I issued the Second Modification to the COVID-19 State of Emergency declaration that modified the limitations on public gatherings of fifty (50) or more people and, among other things, placed certain restrictions on the operation of certain businesses and facilities in the State of Delaware; and

**WHEREAS**, on March 21, 2020 at 12:00 p.m. E.D.T., I issued the Third Modification to the COVID-19 State of Emergency declaration to close all Delaware beaches, except to persons using the beaches for exercise or to walk their dogs, subject to certain precautions recommended by the CDC on COVID-19, which became effective as of 5:00 p.m. E.D.T.; and

**WHEREAS**, on March 23, 2020 at 4:00 p.m. E.D.T. and 4:02 p.m. E.D.T., respectively, I issued the Fourth and Fifth Modifications to the COVID-19 State of Emergency declaration to close all non-essential businesses in Delaware, except those that can offer goods and services on the Internet, and to order a Shelter in Place for Delaware residents; and

**WHEREAS**, on March 24, 2020 at 4:00 p.m. E.D.T. I issued the Sixth Modification to the COVID-19 State of Emergency declaration to provide a moratorium on evictions and foreclosure proceedings to enable Delawareans to shelter in place safely, extended the presidential primary, provided for absentee balloting during the COVID-19 crisis, provided for a modified state procurement process, and placed a moratorium on cancellation of insurance policies for delay in premium payments caused by the economic uncertainty; and

**WHEREAS**, on March 29, 2020 at 4:30 p.m. E.D.T., I issued the Seventh Modification to the COVID-19 State of Emergency declaration to provide for the self-quarantine of travelers from areas severely impacted by COVID-19 outside the State of Delaware into the State; and

**WHEREAS**, on March 30, 2020 at 5:00 p.m. E.D.T., I issued the Eighth Modification to the COVID-19 State of Emergency declaration to permit a comprehensive approach to the provision of childcare in the State of Delaware during the State of Emergency to support essential workers; and

**WHEREAS**, on April 1, 2020 at 3:00 p.m. E.D.T., I issued the Ninth Modification to the COVID-19 State of Emergency declaration to prohibit gatherings of ten (10) or more people and increase safety precautions for businesses and their visitors; and

**WHEREAS**, on April 6, 2020 at 6:00 p.m. E.D.T., I issued the Tenth Modification to the COVID-19 State of Emergency declaration to further restrict the operation of non-essential businesses to limit the spread of COVID-19; and

**WHEREAS**, on April 10, 2020 at 3:30 p.m. E.D.T., I extended the COVID-19 State of Emergency declaration, as modified; and

**WHEREAS**, on April 15, 2020 at 9:00 a.m. E.D.T., I issued the Eleventh Modification to the COVID-19 State of Emergency declaration to provide increased guidance and support to long-term care facilities to protect our most vulnerable populations and to permit remote notarization under limited circumstances; and

**WHEREAS**, on April 23, 2020 at 4:15 p.m. E.D.T., I issued the Twelfth Modification to the COVID-19 State of Emergency declaration to allow the Public Health Authority to activate more out-of-state health care workers to assist in Delaware's fight against COVID-19; and

**WHEREAS**, on April 25, 2020 at 4:00 p.m. E.D.T., I issued the Thirteenth Modification to the COVID-19 State of Emergency declaration to require the use of cloth face coverings in public settings where other social distancing measures are difficult to maintain, including in grocery stores and pharmacies, especially in areas of significant community-based transmission; and

**WHEREAS**, on April 29, 2020 at 6:00 p.m. E.D.T., I issued the Fourteenth Modification to the COVID-19 State of Emergency declaration limiting the rent that may be charged to holdover tenants and preventing landlords from charging holdover tenants with losses not covered by the expired rental agreement; and

**WHEREAS**, on May 7, 2020 at 10:00 a.m. E.D.T., I issued the Fifteenth Modification to the COVID-19 State of Emergency declaration to permit minimum operations by certain small businesses to begin a gradual process toward businesses reopening, and to extend deadlines for statewide, municipal, and school district elections due to the ongoing public health concerns caused by COVID-19; and

**WHEREAS**, on May 8, 2020 at 12:30 p.m. E.D.T., I extended the State of Emergency a second time; and

**WHEREAS**, on May 10, 2020 at 1:15 p.m. E.D.T., I issued the Sixteenth Modification to the COVID-19 State of Emergency declaration to suspend end-of-year evaluations for educators, professional development requirements and assessments due to the suspension of the school year caused by COVID-19; and

**WHEREAS**, on May 14, 2020 at 5:00 p.m. E.D.T., I issued the Seventeenth Modification to the COVID-19 State of Emergency declaration to reopen Delaware beaches, boardwalks, certain

on-premise businesses, and swimming facilities, subject to precautions needed to protect public health; and

**WHEREAS**, on May 18, 2020 at 12:30 p.m. E.D.T., I issued the Eighteenth Modification to the COVID-19 State of Emergency declaration encouraging virtual services but expanding the ability of houses of worship and places of religious expression to conduct in-person services with safety precautions; and

**WHEREAS**, on May 22, 2020 at 4:00 p.m. E.D.T., I issued the Nineteenth Modification to the COVID-19 State of Emergency declaration to allow restaurants to expand outdoor seating capacity; and

**WHEREAS**, reopening the State in a phased approach allows for officials to continue to monitor the spread of COVID-19 and react appropriately; and

**WHEREAS**, the Phase 1 Reopen Plan, like the interim steps before it and like the steps taken afterwards, was formulated in close consultation with public health officials to ensure it is respecting the core principles of controlling the spread of COVID-19 at a time when the State must continue to exercise heightened caution; and

**WHEREAS**, the Phase 1 Reopen Plan, if key indicators continue to trend downward, will be the first phase in a multi-step process of reopening Delaware; and

**WHEREAS**, the State of Delaware will lift the ban on short-term rental units and the mandatory 14-day quarantine for out-of-state travelers on June 1 as part of the rolling reopening of Delaware's economy; and

**WHEREAS**, outdoor weddings and graduation ceremonies will be permitted in Delaware beginning on June 1, with basic public health precautions in place to protect against the spread of COVID-19.

**NOW, THEREFORE, I, JOHN C. CARNEY,** pursuant to Title 20, Chapter 31 of the Delaware Code, to control and prevent the spread of COVID-19 within the State of Delaware, do hereby order that the COVID-19 State of Emergency declaration, as modified by the First through Nineteenth Modifications and extended on April 10, 2020 and on May 8, 2020, shall remain in effect until further notice, with the following modifications and additions:

**A. FACE COVERINGS:** Effective June 1, 2020, at 8:00 a.m. E.D.T., the Thirteenth Modification to the COVID-19 State of Emergency declaration is hereby modified as follows:

1. Paragraph 3. is hereby modified to add the following:

g. when they are a speaker, reader, or singer to a live audience. If face coverings or face shields are not available or cannot be used, the speaker, reader, and singer shall face away from the audience, maintain at least thirteen (13) feet of distance between themselves and the audience, or stand behind a physical barrier or partition, such as a sneeze guard. The reader, speaker, or singer must put the face covering back on and use hand sanitizer immediately after speaking, reading, or singing.

2. Paragraph 3.d. is hereby modified as follows (noted by strikethrough and italics):

d. when they are in an outdoor public area, *outdoor gathering or outdoor event*, including state parks, and golf courses, *wedding receptions or graduations*, if maintaining social distancing of six (6) feet between individuals of different households is impracticable; or a speaker, reader, or singer to a live audience. If face coverings or face shields are not available or cannot be used, the speaker, reader, or singer shall face away from the audience, maintain at least thirteen (13) feet of distance between themselves and the audience, or stand behind a physical barrier or partition, such as a sneeze guard. The reader, speaker, or singer must put the face covering back on and use hand sanitizer immediately after speaking, reading, or singing.

**B. INDIVIDUAL OBLIGATIONS OF SOCIAL DISTANCING AND TRANSMISSION REDUCTION DURING PHASE 1:**

1. Effective June 1, 2020, at 8:00 a.m. E.D.T., the Fifth Modification to the COVID-19 State of Emergency declaration (requiring Delawareans to shelter in place) and the Seventh Modification to the COVID-19 State of Emergency declaration (related to the out-of-state

traveler fourteen (14) day quarantine), and all amendments thereto, are hereby stricken and replaced with this Twentieth Modification and Delaware's Phase 1 Reopen Plan, including any subsequent amendments thereto. While in the State of Delaware, all individuals must follow the Phase 1 Reopen Plan "General Guidance: Individuals" to promote social distancing and reduce transmission of COVID-19.

2. For the purposes of this Modification, "Minimum Social Distancing Requirements" means maintaining at least six (6) foot social distancing from any individual who is not a member of the same household or a caregiver to someone in that household, washing hands with soap and water for at least twenty (20) seconds as frequently as possible or using hand sanitizer composed of at least sixty percent (60%) ethanol or seventy percent (70%) isopropanol, covering coughs or sneezes with something other than one's hands (e.g., elbow, handkerchief), regularly cleaning high-touch surfaces, and not shaking hands.
3. Individuals leaving their residence for work or other activities are strongly advised to take the following steps to reduce transmission of COVID-19:
  - a. Maintain at least six (6) foot social distancing from other individuals, except for members of your household.
  - b. Wear a cloth face covering as required by the Thirteenth Modification when inside a retail establishment, such as grocery stores, pharmacies, or other public-serving businesses. A face covering should also be worn outdoors when it is not possible to maintain at least six (6) feet social distancing from other people, except for members from the same household.
  - c. Carry hand sanitizer and use it frequently.
  - d. Wash hands using soap and water for at least twenty (20) seconds as frequently as possible.
  - e. Regularly clean high-touch surfaces such as steering wheels, wallets, and phones.
  - f. Stay at home if sick.
  - g. Avoid or minimize leisure travel.
  - h. All vulnerable individuals, including those at high risk of severe illness from COVID-19, are strongly advised to continue to shelter in place. Members of households with vulnerable residents should be aware that by returning to work or other environments where distancing is not practical, they could carry the virus home. Precautions should be taken to isolate oneself from vulnerable individuals.

4. Nothing in this Order prevents the Delaware Emergency Management Agency (“DEMA”) from issuing, requesting, and enforcing isolation and quarantine orders pursuant to 20 Del. C. § 3136 or DPH from issuing and enforcing isolation and quarantine orders pursuant to 16 Del. C. § 505.

**C. SOCIAL GATHERINGS AND EVENTS:** Effective June 1, 2020, at 8:00 a.m. E.D.T., Paragraph 1 of the Ninth Modification to the COVID-19 State of Emergency declaration regarding gatherings is hereby stricken and replaced with the following:

1. Indoor Gatherings: All persons are prohibited from gathering indoors or in partially enclosed spaces in groups of ten (10) or more people until after June 15, 2020. At indoor gatherings of fewer than ten (10), individuals should protect themselves and vulnerable populations by practicing proper hand hygiene, six (6) foot social distancing, and all other Minimum Social Distancing Requirements outlined in this Twentieth Modification to the State of Emergency. Regular interactions with immediate family members, members of the same household, and caregivers do not constitute a “gathering” in any location, indoors or out. This indoor gathering limit applies to individuals, including when they are in a place of social gathering such as a restaurant. Businesses, industries and activities that must operate in accordance with the Phase 1 Reopen Plan are responsible to comply with the capacity limits and other applicable guidance provided in the Phase 1 Reopen Plan.
2. Outdoor Gatherings/Events up to 250 people: Gatherings or events in fully unenclosed outdoor spaces, or tents, only as described below, of up to two hundred and fifty (250) people (e.g. outdoor weddings and receptions, outdoor graduations, outdoor funerals, etc.) are permitted in Phase 1 under the following conditions:

- a. Hosts of outdoor gatherings or events should take steps to protect vulnerable populations, including by providing materials and equipment necessary for proper hand hygiene, enforcing social distancing and the use of face coverings, and complying with any applicable restrictions on businesses, industries and activities under the Phase 1 Reopen Plan or other applicable DPH guidance.
  - b. Venues interested in holding an outdoor gathering or event of up to two hundred and fifty (250) people must have a mechanism for limiting attendance, enforce social distancing between attendees and comply with paragraphs 4-6 of the Thirteenth Modification to the COVID-19 State of Emergency declaration relating to providing face coverings for employees and signage about the use of face coverings for guests.
  - c. Any food service, including by catering services and their staff, must operate within the parameters prescribed for Food and Drink Establishments in the Nineteenth Modification to the State of Emergency and the Phase 1 Reopen Plan. Buffet-style, family-style, and any other self-service food is prohibited, as are “butlered” hors d’oeuvres, unless the server can ensure no human contact with the distribution of pre-packaged items.
  - d. Concessions selling only pre-packaged food must deliver food directly to seated customers or ensure social distancing in lines. They should facilitate contactless transactions as often as possible.
  - e. Individuals must wear cloth face coverings in accordance with the requirements of the Thirteenth Modification to the COVID-19 State of Emergency declaration and this Twentieth Modification.
  - f. Individuals who are not part of the same household are expected to remain at least six (6) feet apart to the greatest extent possible and are encouraged to maintain greater physical distance whenever possible.
  - g. Individuals must stay home when sick.
  - h. Individuals should wash their hands or use hand sanitizer regularly during the gathering or event.
  - i. Hand sanitizing stations should be supplied at any entrance or exit and at various locations within the event. Hand sanitizer must be composed of at least sixty percent (60%) ethanol or seventy percent (70%) isopropanol.
  - j. Bathrooms and high contact surfaces must be disinfected every fifteen (15) minutes to two (2) hours.
  - k. The gathering or event must comply with all other applicable state, county and local laws for gatherings and events.
  - l. Gatherings or events are permitted to occur in tents as long as the tents have a maximum of two (2) walls, which may only be opposing and not adjoining (i.e., no corners). A round tent may not have a side wall or walls.
  - m. A school district or charter school holding an outdoor gathering or event of up to 250 people must comply with any guidance posted by the Department of Education.
3. Outdoor Gatherings/Events over 250 people: According to the CDC, gatherings of more than two hundred and fifty (250) people offer more opportunities for person-to-person

contact and therefore pose greater risk of COVID-19 transmission. Social, community, recreational, and leisure events of more than two hundred and fifty (250) people (“large gatherings and events”), including but not limited to parades, festivals, conventions, fundraisers, sporting events and fairs, are hereby prohibited at all locations and venues, except that hosts of previously scheduled outdoor large gatherings and events may apply to move forward with the large gathering or event by submitting a plan to [covid19faq@delaware.gov](mailto:covid19faq@delaware.gov) at least seven (7) days prior to the anticipated event. Plan approval is at the discretion of the Division of Small Business which, in consultation with the Division of Public Health, will consider how to prevent, reduce the spread of, and suppress COVID-19 at any gathering or event permitted under this Modification. At a minimum, the plan must meet the following requirements:

- a. The plan must show a strict adherence to guidelines in Paragraph 2 of this section: “Outdoor Gatherings/Events up to 250 People.”
- b. The plan must consider information regarding the number of people attending who are at greater risk of more serious illness after contracting COVID-19. Older adults and persons with pre-existing health conditions are thought to be at increased risk.
- c. The plan must consider information regarding the density of attendees within a confined area. Based on what is currently known about the virus, spread from person-to-person happens most frequently among close contacts, meaning individuals who are within six (6) feet of each other for ten (10) minutes or more.
- d. The plan must contain information regarding enforcement of social distancing.
- e. The plan must consider information regarding the level of transmission in the local community and the level of transmission in the areas from which attendees will travel. That information can be obtained from the two sites listed here:
  1. View Delaware data from the Division of Public Health available at <https://myhealthycommunity.dhss.delaware.gov>.
  2. View national data from CDC available at <https://www.cdc.gov/covid-data-tracker/index.html>.
- f. The plan must consider local traffic patterns and parking capacity needs.
- g. The plan must follow all requirements for Food and Drink Establishments outlined in the Phase 1 Reopen Plan, including but not limited to maintaining social distancing between individuals from different households if food or drink is served.

- h. The gathering or event must comply with all other applicable state, county and local laws for gatherings and events.
4. A school district or charter school may apply to host a large gathering or event by submitting a plan to Secretary of Education Susan Bunting at susan.bunting@doe.k12.de.us at least seven (7) days prior to the anticipated event. Plan approval is at the discretion of the Department of Education, which in consultation with the Division of Public Health, will consider how to prevent, reduce the spread of, and suppress COVID-19 in relation to the gathering.

**D. PHASE 1 BUSINESS REOPENING:** The provisions in this section are effective June 1, 2020, at 8:00 a.m. E.D.T. unless otherwise stated:

1. Paragraph 2. of the Ninth Modification to the COVID-19 State of Emergency declaration related to the operation of businesses, is hereby stricken.
2. Paragraph 3.a. of the Tenth Modification and Paragraph D.3. of the Nineteenth Modification to the COVID-19 State of Emergency declaration related to Commercial Lodging are hereby stricken.
3. Paragraph 3.b. of the Tenth Modification and Paragraph C.6. of the Nineteenth Modification to the COVID-19 State of Emergency declaration related to Campgrounds are hereby stricken.
4. The Eighteenth Modification to the COVID-19 State of Emergency declaration regarding houses of worship is hereby stricken in its entirety.
5. Paragraph C.5. of the Nineteenth Modification to the COVID-19 State of Emergency declaration is hereby amended to add the following:
  - k. *Commercial Lodging.* As used herein, Commercial Lodging includes hotels, motels, inns, short-term accommodations, vacation homes, or condo rentals (such as Airbnb, VRBO, HomeAway or any other vacation or overnight

accommodation rental), and other lodgings providing overnight accommodation. Commercial Lodging may reopen, provided that the total number of guests within common areas (lobby, food and drink, gyms, etc.) of any hotel, motel, or inn shall not exceed thirty percent (30%) of that establishment's stated fire occupancy requirements, and indoor gatherings of ten (10) or more persons shall not be permitted. The thirty percent (30%) limit does not apply to the number of hotel rooms that may be booked or occupied at one time or to short term rental accommodations, such as vacation homes or condo rentals. Additional requirements for Commercial Lodging are listed in the Phase 1 Reopen Plan.

1. *Campgrounds*. Campgrounds may reopen but must ensure that the spacing of individual campsites (tent or RV) does not allow the individuals within a campsite to come within six (6) feet of individuals in any other campsite. Additional requirements for campgrounds are listed in the Phase 1 Reopen Plan.
- m. *Auction Houses*. Auction Houses may open to the general public, provided, however, that the total number of persons permitted in an Auction House at any one time shall not exceed thirty percent (30%) of that Auction House's stated fire occupancy requirements. Additional requirements for Auction Houses are listed in the Delaware Auctioneer's Association Guidelines issued by the Delaware Department of Agriculture.
- n. *Houses of Worship*. Houses of Worship may continue to offer in-person services, provided, however, that the total number of persons permitted in a House of Worship at any one time shall not exceed thirty percent (30%) of that House of Worship's stated fire occupancy requirements. Additional requirements for Houses of Worship are listed in the Guidance for Communities of Worship.

6. Paragraph B.4.q. of the Fifteenth Modification to the COVID-19 State of Emergency declaration is hereby modified as follows (noted by strikethrough and italics):

q. Drive-in services, such as graduations and drive-in movies, are permitted with the following restrictions:

1. People attending the service must remain in their vehicles at all times and are permitted to open their windows, halfway if needed *sunroofs, or convertible tops*.
2. Vehicles attending services may only include immediate family members *individuals* who live in the same household.
3. No outdoor seating shall be permitted, including outdoor seating in an open bed of a vehicle.
4. Vehicles must remain at least *six* (6) feet from each other (including side-to-side while parked).

5. Owners/operators of the property being used for drive-in services shall clearly mark spacing appropriate to identify *six* (6) feet between cars.
6. No exchange of materials shall take place between attendees and each other or attendees and the providers of the services.
7. There must be strict adherence to social distancing guidelines recommended by the CDC and the Division of Public Health.
8. Owners/operators shall provide clear signage regarding these requirements.

7. Paragraph C. of the Nineteenth Modification of the COVID-19 State of Emergency declaration related to the Phase 1 Reopen Plan is hereby modified to insert a new Paragraph 2A., between Paragraphs 2. and 3., as follows:

2A. Phase 1 Responsibilities of all Businesses: in addition to the industry-specific guidance issued to businesses, all businesses shall follow the coronavirus guidelines for public safety enumerated by the CDC and DPH, including:

- a. Employees, patrons, and visitors must wear cloth face coverings compliant with the Thirteenth Modification of the State of Emergency at all times.
- b. Employees must be designated to monitor patrons and visitors entering a business, in lines, and ensure social distancing throughout a business' location.
- c. Businesses must ensure social distancing of at least six (6) feet between waiting patrons and visitors in line, both inside and outside. Signage and floor markings must be present to guide patrons and visitors in appropriately spacing while in line.
- d. Use doors, windows and other ventilation mechanisms to increase introduction of fresh air and turnover of air within the business' location.
- e. All surfaces touched by patrons or visitors, including doors, seating, restrooms, and point of sale infrastructure must be disinfected using an EPA-approved disinfectant every fifteen (15) minutes to two (2) hours.
- f. Limit cash transactions, and encourage patrons to use credit, debit, or other contactless forms of payment. Cash registers and pin pads must be sanitized after each use. Any donations collected by a business must be collected through stationary box, mail, or electronic means.
- g. Discourage the use of shared phones, desks, workstations, radios, wearable technology. If these are unavoidable, they must be cleaned after each use.
- h. Businesses must make hand sanitizer or handwashing stations readily available for all employees, patrons, and visitors throughout the business' location, including at each entry and exit at a minimum. Hand sanitizer must be composed of at least sixty percent (60%) ethanol or seventy percent (70%) isopropanol.
- i. Hand sanitizer must be used by employees at frequent intervals during any service, appointment, or other scheduled gathering or event, including at a minimum after contact with surfaces that touched by others, when incidental contact has been made with a patron or visitor, and prior to preparing or distributing food or drink.

- j. Businesses must post signs on how to stop the spread of COVID-19, hand hygiene, and properly wear a cloth face covering, including:
  - 1. Do not enter if you have symptoms of COVID-19 or if you have been exposed to anyone who has tested positive with COVID-19 in the past fourteen (14) days;
  - 2. Individuals age thirteen (13) and up are required to wear a cloth face covering in accordance with the Thirteenth Modification;
  - 3. At all times, individuals who are not part of the same household should maximize physical distance from others and remain at least six (6) feet apart; and
  - 4. Proper hand washing and frequent use of hand sanitizer is encouraged.
  - 5. Printable signs that will help you comply with the general and industry-specific signage requirements in the Phase 1 guidance are available at <https://business.delaware.gov/wp-content/uploads/sites/118/2020/05/DSB-COVID-19-Posters-For-Review.pdf>.
- k. Services, appointments, or other scheduled gatherings and events must be staggered to allow for a thorough cleaning according to CDC guidelines of any public spaces before the next service, appointment, or other scheduled gathering or event begins.
- l. Follow all State and CDC guidelines and recommendations for social distancing, including that employees maintain six (6) feet of space between themselves and other employees, patrons, and visitors to the greatest extent possible.
- m. For fixed seating venues, only thirty percent (30%) of patron or visitor seating may be occupied and there must be a six (6) foot radius around individual household units. Patrons and visitors must exit their seats in an orderly, row by row fashion, as directed by venue staff.
- n. Businesses are strongly encouraged to modify any practices that cause close contact (meaning being within six (6) feet for ten (10) minutes or more) or sharing items among patrons or visitors.
- o. Sharing microphones is prohibited. All microphones, whether they be self-standing in holders, handheld or lapel style must be sanitized after each use.
- p. Proper precautions must be taken when handling ready-to-eat foods. Variances or other allowances for bare hand contact are void until these restrictions are lifted. Unwrapped food products may not be handed directly to individuals for immediate consumption using bare hand to bare hand contact. Individual servings of unwrapped food products may be distributed by single-use articles (i.e., napkin, cups, etc.) or on reusable articles that are properly disinfected between each use, or they may be placed into a container or onto a tray and distributed by a single individual using tongs or other barrier to bare hand to hand contact.
- q. Businesses shall not permit patrons or visitors who are not members of the same household to share food or beverage.
- r. Implement flexible and non-punitive sick-leave policies to facilitate compliance with this Modification. Such policies should follow any guidance from the CDC and DPH regarding COVID-19.
- s. Exclude employees who (a) have been diagnosed with COVID-19, (b) are reasonably suspected to have COVID-19, or (c) have symptoms of COVID-19,

such as fever, cough, shortness of breath, new loss of taste or smell, sore throat, aches or muscle pain, chills or repeated shaking with chills. Such employees shall stay home and not come to work until they are free of fever (99.5 °F or greater using an oral thermometer), signs of a fever, and any other symptoms of COVID-19 for at least 24 hours, without the use of fever-reducing or other symptom-altering medicines (e.g., cough suppressants). These employees should notify their supervisor and stay home if they are sick.

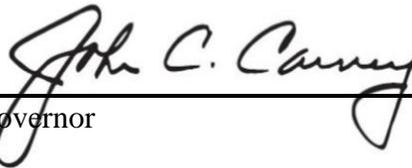
- t. Symptomatic employees must not physically return to work until cleared by DPH.
- u. Prohibit employees who have been told they must be isolated or quarantined from on-premises work until cleared by DPH or a medical professional.
- v. Separate sick employees from other individuals immediately.
- w. Enforce cough and sneeze hygiene.

#### **E. MISCELLANEOUS:**

1. Effective June 1, 2020 at 8:00 a.m. E.D.T., all public meetings of public bodies governed by 29 Del. C. §§10001 et seq. (including boards, commissions, task forces, and any other similar public body) may be conducted in person in public buildings, provided that (1) the total number of individuals permitted in a room at one time shall not exceed thirty percent (30%) of stated fire occupancy requirements; (2) a six (6) foot radius around individuals is maintained, and (3) attendees wear cloth face coverings in accordance with the Thirteenth Modification. Public bodies are encouraged to conduct meetings electronically, either by means of telephone conference call or video conference call, as permitted by Paragraph 5 of the Declaration of the State of Emergency. Any in-person meeting must also provide a telephone or video conference option for any member of the public body or the public who does not wish to attend in person.
2. Paragraphs A.1., A.2., and A.3. of the Fifteenth Modification to the COVID-19 State of Emergency declaration related to elections are hereby modified by striking the provision (noted by strikethrough) “and enforce crowd limitations of 10 persons at a time at polling places” from each paragraph.

3. Paragraph 7 of the First Modification to the COVID-19 State of Emergency declaration authorizing the Secretary of Labor to develop emergency rules amending the Delaware Unemployment Insurance Code, to remain in effect until the State of Emergency declaration has been rescinded, is hereby extended until July 2, 2020 unless expressly extended by a subsequent Modification to the State of Emergency Order or the Delaware Code is amended to permit a longer duration.
4. This Order has the force and effect of law. Any failure to comply with the provisions contained in a Declaration of a State of Emergency or any modification to a Declaration of the State of Emergency may constitute a criminal offense. 20 Del. C. §§ 3115 (b); 3116 (9); 3122; 3125. State and local law enforcement agencies are authorized to enforce the provisions of any Declaration of a State of Emergency.

APPROVED this 31st day of May 2020 at 3:30 p.m.

  
Governor

# State of Delaware



Executive Department  
Dover

## **FOURTH EXTENSION OF THE DECLARATION OF A STATE OF EMERGENCY FOR THE STATE OF DELAWARE DUE TO A PUBLIC HEALTH THREAT**

**WHEREAS**, in connection with the serious public health threat from the novel coronavirus (“COVID-19”) that has impacted the State of Delaware, I issued a Declaration of a State of Emergency for the entire state at 3:00 p.m. on March 12, 2020; and

**WHEREAS**, during the past several months, I have issued Twenty-Three Modifications to the State of Emergency declaration first to protect from the spread of COVID-19 by, among others things, limiting social gatherings, closing places of public accommodation, restricting beach access, closing childcare to all but emergency care, restricting business operations to essential businesses only with non-essential businesses either closed or remote working only, and ordering a shelter in place for all Delawareans, and then to begin to reopen the state by, among other things, requiring individuals to wear cloth face coverings both inside essential businesses and outside when social distancing is difficult, permitting businesses and other places of public accommodation to reopen slowly, reopening the beaches, lifting the quarantine and restrictions on commercial lodgings, and taking other measures to reopen the economy while still focused on protecting the public health, safety and welfare of Delawareans during the COVID-19 pandemic;

and

**WHEREAS**, the State of Delaware continues to face a serious public health threat from COVID-19 and the risk to life remains; and

**WHEREAS**, pursuant to Delaware's emergency management statutes, a State of Emergency proclaimed by the Governor may not continue for more than 30 days without being renewed; and

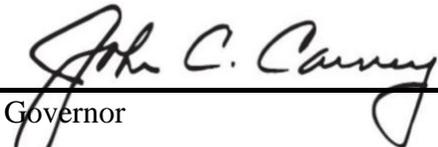
**WHEREAS**, I extended the State of Emergency for an additional 30 days on April 10, 2020, on May 8, 2020 and on June 6, 2020; and

**WHEREAS**, I find that the conditions necessitating a State of Emergency continue to exist and require that the State of Emergency remains in effect.

**NOW THEREFORE, I, JOHN C. CARNEY**, pursuant to Title 20, Chapter 31 of the Delaware Code, to control and prevent the spread of COVID-19 within the State of Delaware, do hereby declare:

1. The State of Emergency due to COVID-19, first declared March 12, 2020 and subsequently modified as set forth above is extended, effective immediately.
2. All provisions of the State of Emergency and its Twenty-Three Modifications currently in place shall remain in full force and effect until terminated in accordance with state law.

APPROVED this 6<sup>th</sup> day of July 2020 at 1:30 p.m.

  
Governor