

In the Matter Of:

DNREC - Delaware City Refining Company Permit Renewal

Hearing Docket# 2020-P-A-0017

July 14, 2020

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DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL
OF THE STATE OF DELAWARE

RE: Delaware City Refining Company)
Title V Permit Renewal)
Docket #2020-P-A-0017)
Virtual Public Hearing)

.. . . .

Virtual Public Hearing
Dial-In Number: 1-408-418-9388
Access Code: 129 391 4939

Tuesday, July 14, 2020
6:00 p.m.

.. . . .

BEFORE: Lisa Vest, Hearing Officer
FOR THE DIVISION: Lindsay Rennie, DNREC
Division of Air Quality

-- Transcript of Proceedings --

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1 MS. VEST: Thank you guys for
2 tuning in to attend this evening. Our court
3 reporter has confirmed that she is on the
4 call right now, so we can go ahead and begin.

5 Again, thank you for taking the
6 time out of your busy schedules to connect
7 with us today.

8 Today is Tuesday, July 14, 2020.
9 And we are here this evening to provide a
10 virtual platform for the State of Delaware's
11 Department of Natural Resources and
12 Environmental Control to conduct a virtual
13 public hearing on the pending permit renewal
14 request for the Delaware City Refinery
15 Company, or DCRC.

16 For those of you that may not know
17 me, my name is Lisa Vest, and the Cabinet
18 Secretary of DNREC has designated me to serve
19 as the hearing officer for tonight's
20 proceeding.

21 As we all the know, there have been
22 changes made to DNREC's standard hearing
23 protocols, necessitated by the ongoing state
24 of emergency implemented due to the COVID-19



1 pandemic.

2 First and foremost, this hearing is
3 being conducted virtually. No one has
4 gathered together in the same room. Everyone
5 is participating independently at their own
6 respective locations.

7 While there are no sign-in sheets
8 to document physical attendance tonight,
9 WebEx does generate a list of those that are
10 virtually here for this evening, so the
11 Department can still maintain an accurate
12 record of those who have attended
13 electronically. And, again, I do thank
14 everyone for their interest in joining
15 tonight.

16 At the conclusion of these
17 introductory remarks, I will be turning the
18 hearing over to representatives for both the
19 Department as well as the applicant. Both
20 wish to make presentations for the record
21 that is being generated in this matter.

22 Again, there is a court reporter
23 virtually present. She will prepare a
24 verbatim transcript of the hearing tonight



1 pursuant to the statutory requirement for
2 DNREC to have the same done.

3 And, as always, that transcript
4 will be posted on the hearing page dedicated
5 to this matter as soon as it is received.

6 Please note that the Department
7 will not be accepting any comments in
8 realtime during the hearing this evening. We
9 do wish to ensure, however, that everyone is
10 enabled to offer their comments for inclusion
11 into the record.

12 Therefore, as is the case in all of
13 our DNREC virtual hearings, this record will
14 remain open through July 31, 2020 so that the
15 public may have adequate time to offer
16 comment for the record, should they wish to
17 do so.

18 I would encourage those who have
19 logged in or who have called in by telephone
20 this evening to check out DNREC's web page
21 for public hearings under the "Administrative
22 Law" section of the website for more detail
23 concerning this particular permit matter.

24 That information, as you can see,



1 is up on the screen right now. That is the
2 docket number. You can search by that or
3 just do a chronological survey of all of the
4 hearings that are currently posted.

5 Both presentations, the
6 Department's and the Applicant's, along with
7 other documentation related to this
8 permitting matter, are posted on the hearing
9 web page that is dedicated to this particular
10 permit.

11 And, again, the public can gain a
12 wealth of information by a review of the
13 same, so I would encourage you to check that
14 out.

15 Of course, all mechanisms
16 previously available by which to offer
17 comment remain intact -- electronic link,
18 e-mail, and USPS.

19 Additionally, please note that the
20 following protocols remain in place for all
21 DNREC public hearings: Number one, all
22 comment received must be limited solely to
23 the subject matter of tonight's hearing. All
24 comments pertinent to the subject matter of



1 this hearing will be incorporated into the
2 hearing record being generated at this time.

3 Number two, in order to ensure that
4 everyone who wishes to offer comment for the
5 Secretary's consideration is accommodated,
6 the record shall remain open following
7 tonight's proceedings through July 31, 2020.

8 Number three, there is only one
9 authentic record of this formal proceeding
10 tonight, and it will be the official court
11 reporter's verbatim transcript.

12 Number four, the statutory purpose
13 of tonight's hearing is, again, to build a
14 record with regard to the Department's permit
15 that is currently being proposed.

16 A record consisting of the
17 transcript of the hearing tonight, all
18 written comments that may come in between now
19 and July 31, 2020, all exhibits that are
20 entered into the record this evening, and
21 eventually my Hearing Officer's Report, will
22 all be reviewed personally by Secretary
23 Garvin.

24 The Secretary will ultimately issue



1 an order following his review process. That
2 order will contain his decision on this
3 permitting matter and the reasons for his
4 decision.

5 Again, there will be no Q and A or
6 live chat sessions permitted during the
7 hearing tonight, nor will there be any
8 realtime comments accepted on this virtual
9 platform during the course of tonight's
10 proceedings.

11 Number five: Lastly, it is so
12 important to note that no decision has
13 already been made by the Department
14 concerning this matter, nor will any decision
15 be made tonight with regard to this pending
16 permit application.

17 Again, we are keeping the public
18 comment period open through July 31st so that
19 members of the public do have the ample
20 opportunity to offer written comment for the
21 Secretary's consideration, should they wish
22 to do so.

23 Comments may be submitted through
24 the comment form located on the hearing page,



1 via e-mail to
2 DNRECHearingComments@delaware.gov, or via the
3 United States Postal Service at the physical
4 address for DNREC listed on the hearing page
5 and/or the public notices that have been
6 previously issued in this matter.

7 Written comments may not be
8 submitted using any type of social media
9 platform such as Twitter, Facebook, YouTube,
10 or direct text messaging.

11 And, again, please remember that
12 all comment, whether it is received through
13 the United States Postal Service or through
14 the various electronic mechanisms noted just
15 now, as long as it is received on or before
16 July 31st, it will all bear the same weight,
17 and it will all be considered equally by
18 Secretary Garvin prior to his making his
19 final decision in this matter.

20 The ultimate decision regarding
21 this pending permit application is made by
22 Secretary Garvin. This formal hearing
23 tonight acts as merely a mechanism to enable
24 the Department to thoroughly vet it to the



1 public and to also let the public know the
2 various ways by which comment may be
3 submitted for consideration.

4 That being said, I am now going to
5 turn the floor over to Department staff who
6 will be in charge of handling the
7 presentations for tonight's matter.

8 MS. RENNIE: Good evening. My name
9 is Lindsay Rennie. I am one of the
10 representatives with Division of Air Quality.

11 I will be speaking later this
12 evening and talking about some of the
13 comments that were received and the permit.

14 Representing the Delaware City
15 Refinery Company is Larry Boyd, who will
16 start with the presentation, talking about
17 the permit application that they submitted.

18 MS. VEST: Very well. Mr. Boyd,
19 you may begin when ready.

20 MR. BOYD: Okay. Thank you, Lisa.
21 Thank you, Lindsay. Good evening. I am
22 Larry Boyd, Environmental Manager at the
23 Delaware City Refinery.

24 Tonight we will review the changes



1 associated with the refinery's Title V permit
2 renewal.

3 Before I get into the details of
4 the renewal, I wanted to provide a brief
5 eye-level overview of what a Title V permit
6 is.

7 Title V is a federal operating
8 permit program implemented at the state
9 level.

10 Title V of the 1990 Clean Air Act
11 required the EPA to promulgate regulations
12 which, in turn, required states to establish
13 new operating permit programs.

14 For the State of Delaware, DNREC
15 Regulation 1130 was drafted to comply with
16 the Clean Air Act.

17 This regulation applies to major
18 sources of criteria air pollutants, such as
19 VOCs, which are volatile organic compounds;
20 nitrogen oxides, NO_x; carbon monoxide, CO;
21 particulate matter, PM; hazardous air
22 pollutants, HAPS; and sulfur dioxide.

23 Most heavy industrial facilities in
24 the United States would be considered to be



1 major sources. The Delaware City Refinery is
2 a major source and is, therefore, subject to
3 Regulation 1130 and the Title V permitting
4 program.

5 Major source facilities are
6 required to apply for and have a Title V
7 permit.

8 It is well established that the
9 fundamental purpose of the Title V program is
10 to consolidate into a single document all
11 applicable requirements from Federal, State,
12 and local air quality regulations and from
13 pre-approved operating air permits for a
14 facility.

15 Therefore, a Title V permit cannot
16 create new permit requirements that have not
17 already been authorized by DNREC.

18 The Delaware City's Title V permit
19 incorporates more than 90-plus Regulation
20 1102 air permits for the site into a
21 three-part permit that is approximately 369
22 pages long. The Title V permit includes
23 operational limitations, emission limits,
24 compliance methods, monitoring and testing



1 requirements, reporting requirements, and
2 certification requirements for each process
3 used at the plant.

4 Title V permits must be renewed
5 every five years per the regulation.

6 As far as the refinery's Title V
7 permit, I wanted to review the timeline
8 associated with it.

9 The Delaware City Refinery's Title
10 V permit was issued effective May 28, 2015.
11 It is Permit Number HUM003/00016, and it
12 consists of three parts -- parts one, part
13 two, and part three.

14 The permit has a five-year term
15 with an expiration date of May 27, 2020. The
16 renewal permit application was due May 27,
17 2019, twelve months prior to permit
18 expiration.

19 The renewal permit application was
20 submitted May 10, 2019 on time. A timely
21 renewal application allows the current permit
22 to remain active past the expiration date
23 until the renewal is issued.

24 Since the issuance of the Title V



1 permit in May 2015, several revisions of the
2 permit have been completed.

3 Looking at the timeline, revised
4 Title V permits were issued with permit
5 revision one, effective April 11, 2017;
6 revision two, effective October 16, 2017;
7 revision three, effective April 12, 2018; and
8 revision four, effective October 3, 2019.

9 For this Title V permit renewal, a
10 Title V permit renewal and modifications
11 application was submitted on May 10, 2019.

12 This application incorporates
13 permit conditions from the ethanol marketing
14 project.

15 It includes the elimination of the
16 maximum data capture requirements from the
17 crude NOx CEMS, incorporation of requirements
18 contained in the consent decree, replacement
19 of the EPA Tanks 4.09 Sulfur Package
20 requirement with the Tanks ESP Pro Version
21 software, and modification of short-term NOx
22 limits per the July 2019 settlement
23 agreement.

24 For the ethanol marketing project,



1 the renewal incorporates conditions into the
2 Title V permits of previously authorized
3 permit requirements from the ethanol
4 marketing project permits dated October 19,
5 2017.

6 The permits allow the Delaware City
7 Refinery to export up to 10,000 barrels per
8 day of ethanol on a rolling 12-month average
9 basis via the marine piers.

10 The project included modifications
11 to Tank 206, Tank 225, the marine piers, and
12 the terminal truck-loading rack, and
13 installation of a vapor vacuum control system
14 to reduce fugitive emissions at the marketing
15 terminal.

16 Crude NOx CEMS Requirements: The
17 renewal removed unit-specific data capture
18 requirements from the crude NOx CEMS section
19 of the permit to make the data capture
20 requirements consistent with those applicable
21 to other units.

22 The crude unit CEMS requirements
23 are less stringent than those found in the
24 NOx Cap section of the permit.



1 The crude unit section requirements
2 are 85 percent capture of daily operating
3 hours and 85 percent capture of monthly
4 operating days, whereas the NOx Cap section
5 of the permit requires 90 percent of
6 operating data each month or 95 percent
7 operating data each quarter.

8 The refinery is accepting the more
9 stringent requirements, as specified in the
10 NOx Cap section of the permit.

11 Consent Decree Requirements: The
12 renewal includes incorporation of
13 requirements contained in the consent decree,
14 United States of America versus Motiva
15 Enterprises LLC, Number H-01-0978.

16 The consent decree was signed in
17 2001 and contained mostly various leak
18 detection and repair requirements.

19 That consent decree is still
20 active, and most of its requirements were
21 transitioned into the permit. Three
22 conditions previously omitted are included as
23 part of this renewal.

24 July 2019 Air Settlement Agreement:



1 The Delaware City Refining Company and DNREC
2 entered into a settlement agreement on
3 July 11, 2019, resolving appeals of
4 Regulation 1102 air permits containing
5 short-term NOx limits.

6 The effective permits issued on
7 October 21, 2019 modified NOx provisions for
8 Boilers 3 and 4, Combined Cycle Units 1 and
9 2, and the Fluids Catalytic Cracking Unit.

10 The renewal incorporates into the
11 Title V permit these modifications to the
12 short-term NOx limits.

13 Tanks Emissions Software: The
14 renewal updates all tank sections in the
15 permits to reflect the replacement of EPA
16 Tanks 4.09 software, which is no longer
17 supported by the EPA, with Tanks ESP Pro
18 Version Software to estimate air emissions
19 from the tanks.

20 The software is used to estimate
21 the air emissions released from the tanks at
22 the refinery based on such things as the size
23 of the tank, the shape of the tank, the type
24 of tank, storage capacity of the tank, the



1 product in the tank, and several other
2 factors.

3 And that's all I have for the
4 presentation. And thank you all for your
5 time tonight.

6 MS. VEST: Okay. Thank you,
7 Mr. Boyd. Just a little recordkeeping: Let
8 the record reflect that the Power Point
9 presentation that Mr. Boyd just gave on
10 behalf of the applicant is going to be
11 entered into the hearing record and marked as
12 Applicant Exhibit 1.

13 And I will instruct staff to have
14 that posted on the hearing web page. Barring
15 any unforeseen complications, people should
16 expect to be able to access that online on
17 this web page by tomorrow afternoon at the
18 latest.

19 And I thank you again, Mr. Boyd,
20 for that presentation.

21 At this point I will turn the floor
22 back over to Lindsay for the Department's
23 side.

24 MS. RENNIE: Good evening. Again,



1 my name is Lindsay Rennie. I am the Air
2 Regulator for the Delaware City Refinery. I
3 manage their permits, their air permits.

4 I'm going to talk very briefly
5 about the next steps of this permitting
6 process. And I'm going to give some
7 preliminary responses to the initial comments
8 that were submitted as part of the public
9 hearing request.

10 So at this point we are at the
11 public hearing stage of the permitting
12 process. So we will review.

13 Public comments can be received by
14 writing, via e-mail, the website, or through
15 U.S. Post through the end of the month, and
16 then all comments will be entered into the
17 formal hearing record.

18 The refinery will have an
19 opportunity to respond to comments submitted
20 during that month. And then the Division of
21 Air Quality will draft a technical response
22 memo to address comments that are pertinent
23 to the air quality considerations of the
24 permit.



1 The hearing officer will then draft
2 a report and an order for the Secretary's
3 consideration. And following the Secretary's
4 order, the Division will resubmit a proposed
5 permit to EPA for review.

6 So at this point I'm going to give
7 some preliminary responses to some of the
8 initial comments.

9 The final technical response memo
10 will be far more detailed and to all the
11 comments that were submitted, not just the
12 ones submitted as part of the public hearing
13 request.

14 Throughout the comments submitted
15 was that the draft permit unlawfully gives
16 DNREC discretion to excuse noncompliance
17 during periods of unplanned shutdown of the
18 fluid coking unit, the fluid catalytic
19 cracking unit, or their controls.

20 The AQ preliminary response is that
21 the referenced division follows EPA's policy
22 regarding excess emissions during
23 malfunctions, startup, and shutdown guidance.

24 This guidance allows an enforcement



1 discretion approach for excess emissions that
2 occur during startup/shutdown period. It
3 gives the states ability to determine whether
4 a specific violation warrants enforcement and
5 what type of enforcement is appropriate.

6 The expectation is that the fobi
7 will demonstrate that the emissions were
8 unavoidable, that they were minimized, that
9 the units were operated well, and that the
10 appropriate regulatory bodies were notified
11 in accordance with what the policy
12 recommends.

13 The purpose of this provision is to
14 encourage the facilities to prioritize
15 environmental protection during upset during
16 carbon shutdown and lays out what the
17 Department's expectations are for the
18 facility.

19 This provision is not a director's
20 discretion provision. A director's
21 discretion provision administratively
22 redefines excess emissions as non-violation.

23 Instead, this provision explicitly
24 recognizes excess emissions as periods of



1 noncompliance.

2 This provision does not provide an
3 automatic exemption from the emission limit
4 or preemptively waive future penalties.

5 And this provision does not bar the
6 EPA's ability to seek enforcement action or
7 the citizens' ability to seek enforcement
8 through the court the way a directive
9 discretion provision would.

10 The facility has not elected to
11 make use of this provision since its
12 inclusion in the permit.

13 The next comment is that the draft
14 unlawfully relaxes federally enforceable
15 limits during planned startup and shutdown of
16 the fluid coking units and fluid catalytic
17 cracking unit, and when the fluid catalytic
18 cracking unit's carbon monoxide boiler is
19 combusting only refinery fuel gas.

20 The Division's preliminary response
21 is that the startup/shutdown limits are
22 short-term limits that are in lieu of normal
23 operating short-term limits. They are not in
24 lieu of the annual limit.



1 Emissions that occur during
2 startup/shutdown periods must be included in
3 the long-term limit totals, where those are
4 the annual limits or the 365-day rolling
5 limits. We will clarify this in the proposed
6 permit.

7 But this is the way that the
8 facility has operated when they calculate
9 their own emissions, and this is the way the
10 Department has operated when reviewing their
11 permit and their emissions.

12 The emission limits are continuous.
13 Federal regulations require that emission
14 limitations be continuous, but it does not
15 require that emission limits be the same at
16 all times.

17 It provides flexibility for
18 different emission limits for different
19 operating scenarios, as is appropriate for
20 the specific technology.

21 Federal regulations do not require
22 that emission limits be numerical. So
23 different operating parameters or limits
24 would qualify as part of the continuous



1 emission limit criteria.

2 For pollutants for which no
3 short-term limit is specified in the permit,
4 annual limits serve to ensure that there is a
5 continuous emission limit at all times.

6 So in that case the presence of
7 startup/shutdown limits, especially for SIP
8 emission limits is to provide an additional
9 layer of environmental protection along with
10 the annual limits.

11 And, finally, the startup/shutdown
12 limits do not relax federal limits. The
13 startup/shutdown limits are the same or lower
14 than federal limits, even if expressed in a
15 different format.

16 This table shows the normal
17 operating limits and the startup/shutdown
18 limits for the fluid catalytic backing unit.
19 So I will briefly go through each of these
20 pollutants.

21 For volatile organic compounds, the
22 normal operation limit is 0.4 pounds per
23 million scuff, whereas the startup/shutdown
24 limit is nine and a half pounds per hour.



1 One is a weight-based limit, one is a
2 mass-based limit, but these are very similar
3 limits depending on the operating rate of the
4 unit.

5 For particulate matter, the normal
6 operation limit is one pound of particulate
7 matter for every thousand pounds of coke
8 burn, and the startup/shutdown limit is
9 500 pounds per hour.

10 There is minimal to negligible coke
11 burn during startup and shutdown periods, so
12 a coke-burn rate is not appropriate in this
13 scenario. However, the startup/shutdown
14 limit was originally developed to accommodate
15 catalysts loss through a bypass vent. This
16 operating scenario no longer exists, and so
17 this limit, the startup/shutdown limit, will
18 be reduced accordingly and reevaluated as
19 part of this permitting process.

20 For sulfur dioxide, the short-term
21 limit is 50 parts per billion on a seven-day
22 average. The startup/shutdown limit is
23 165 pounds per hour. Fifty parts per billion
24 and 165 pounds per hour for this particular



1 unit under normal operation are similar
2 limits. They are approximately the same.
3 However, the startup/shutdown limit is more
4 protective of the environment, because it is
5 an hourly limit versus a weekly limit for
6 normal operation.

7 For carbon monoxide, both the
8 normal operating limit and the
9 startup/shutdown limit is 500 parts per
10 million.

11 The startup/shutdown limit was
12 updated as part of the most recent
13 significant permit modification in October to
14 this 500 parts per million limit.

15 For hazardous air pollutants, both
16 for normal operation and startup/shutdown
17 limits, the limit has to meet Part 63,
18 Subpart UUU of the Federal regulations.

19 Normal operation also has a
20 hydrogen cyanide limit of 45 pounds per hour.
21 Hydrogen cyanide is only emitted during full
22 burn, which is one of two operating scenarios
23 for this unit. And it's directly
24 proportional to coke burn-off.



1 There is minimal to negligible coke
2 burn-off during the startup and shutdown, so
3 there is not an appropriate limit for a
4 startup and shutdown.

5 Additionally, hydrogen cyanide
6 compliance is based on carbon monoxide
7 compliance. And carbon monoxide compliance
8 is the same regardless of normal or startup
9 and shutdown.

10 For NO_x, the limits are 108 parts
11 per million on a seven-day average and 80
12 parts per million on a 365-day average.

13 During startup and shutdown, the
14 limit is 137 parts per million on a seven-day
15 average and 100 parts per million on a
16 365-day average.

17 So these, the normal operation
18 limits are based on operation of the
19 selective non-catalytic reduction system and
20 is not based on a Federal regulation.

21 The startup/shutdown limit is
22 slightly higher, but it does represent a
23 continuous limit.

24 Additionally, the facility-wide NO_x



1 cap applies at all times for all NOx units,
2 including the food catalytic cracking unit.
3 So this is normally with a cap of 1,650 tons
4 per year, where the facility would have to
5 include the emissions from this unit during
6 normal operation and during carbon shutdown
7 operations.

8 And, finally, for lead the normal
9 operation limit is 0.0004 pounds for every
10 1,000 pounds of coke burn-off. Again, there
11 is minimal to negligible levels of coke
12 burn-off during startup and shutdown periods.

13 Additionally, compliance with this
14 limit is based on stack testing, and there is
15 no stack test data for startup and shutdown
16 period.

17 This next table compares the normal
18 operating limits to the startup and shutdown
19 limits for the fluid coking unit.

20 For volatile organic compounds,
21 sulphuric acid, total suspended particles,
22 and ammonia, the carbon shutdown limit is
23 lower than the normal operating limit.

24 For particulate matter, the normal



1 operation limit is .3 pounds for every
2 million BTUs and 128.4 pounds per hour.

3 For startup and shutdown, the
4 hourly limit is 133.3 pounds per hour, so
5 about 5 pounds per hour higher than normal
6 operations.

7 This limit is not a Federal limit,
8 but it will be reevaluated as part of this
9 permitting process.

10 Sulfur dioxide, the short-term
11 normal operation limit is 50 parts per
12 million on a seven-day average. For startup
13 and shutdown, the limit is 95 pounds per
14 hour. 95 pounds per hour, as an approximate,
15 is 50 parts per million for this unit. The
16 startup and shutdown limit is more productive
17 because it is expressed hourly rather than
18 weekly.

19 Carbon monoxide, the normal
20 operation limit is 500 parts per million on
21 an hourly basis. And for startup and
22 shutdown, it's 415 pounds per hour.

23 The 415 pounds per hour is
24 significantly lower than the 500 ppm limit



1 for normal operation.

2 So NOx, the normal operation limit
3 is 152 parts per million on a seven-day
4 average and 115 parts per million on a
5 365-day average.

6 During startup and shutdown, the
7 facility-wide NOx cap applies at all times
8 for all NOx-producing units, including the
9 fluid coking unit.

10 The lead in the permit is
11 0.0004 pounds every 1,000 pounds of coke
12 burn-off. There is minimal to negligible
13 coke burn-off during startup and shutdown
14 periods, so this is not an appropriate
15 emission rate. Instead, the annual limit of
16 0.12 times per year applies at all times.

17 And, finally, the HAPs requirement
18 is to reduce HAPs by 98 percent, or to 20
19 parts per million by introducing an events
20 stream into the burner. And, additionally,
21 there is a nickel limit of less than
22 0.001 pounds for every thousand pounds of
23 coke burn-off.

24 There is minimal to negligible coke



1 burn during startup and shutdown periods.

2 And so the actual limit applies at all times
3 of 0.27 tons per year.

4 The last comment I will address is
5 that the draft permit unlawfully allows
6 affirmative defense liability for exceedances
7 of technology-based limits during emergency
8 and malfunction.

9 The Division's preliminary response
10 is that the condition in the permit is based
11 on the Regulation 1130 in Section 6.7.2, and
12 the regulation is based on EPA's 1999 policy
13 regarding excess emissions during
14 malfunctions, startup, and shutdown guidance.

15 This policy clarifies that states
16 have the discretion to provide an affirmative
17 defense or an excuse -- or is able to excuse
18 the source from penalties if the source can
19 demonstrate that it meets certain objective
20 criteria.

21 And so they would be excused from
22 penalties brought for excess emissions during
23 certain malfunctions, startup, and shutdown
24 episodes but would not be excused from



1 injunctive relief.

2 The EPA has since concluded in 2015
3 that the enforcement structure of the Clean
4 Air Act includes precludes any affirmative
5 defense provisions that would operate to
6 limit the court's jurisdiction or discretion
7 to determine the appropriate remedy and
8 enforcement action.

9 Essentially, it doesn't allow
10 affirmative defense provisions that limit the
11 court's ability to pursue enforcement.

12 In the same Regulation 1130 in
13 Section 6.2, it states, in part, "all terms
14 and conditions in a permit issued under
15 Section 6.0 of this regulation are
16 enforceable by the Department, by EPA, and
17 citizens under Section 304 of the Act."

18 "This regulation does not seek to
19 limit EPA's ability or citizens' ability to
20 seek enforcement."

21 At this time the Division has
22 exhibits I would like to enter into the
23 hearing record, including the application,
24 the permit, technical memos, legal notices,



1 request for a public hearing, and additional
2 comments.

3 Items one through nine are already
4 posted on the hearing web page. And item
5 ten, which is this presentation, will be
6 posted tomorrow.

7 MS. VEST: Okay. Thank you,
8 Lindsay.

9 Just again for the record and for
10 clarification purposes, are Exhibits 1
11 through 9 the same as are posted currently
12 and have been posted on the hearing web page?
13 And can you confirm that they have not been
14 changed or modified in any way since they
15 were posted?

16 MS. RENNIE: Yes. One through nine
17 are the same as has been posted and have not
18 changed since their posting.

19 MS. VEST: Excellent. And ten, of
20 course, as you noted, will be entered into
21 the hearing record now, and it will also go
22 up on the web page tomorrow.

23 So let the record reflect that
24 Exhibits 1 through 10 are hereby entered into



1 the formal hearing record being generated in
2 this matter.

3 Does the Department have any
4 further comments it wishes to add at this
5 time?

6 MS. RENNIE: No.

7 MS. VEST: Okay. Thank you.

8 With those presentations having
9 been concluded, I would ask that Lindsay
10 forward now to the final slide.

11 We want to thank you for taking
12 your time again to tune in and be a part of
13 this virtual public hearing.

14 Again, there is a wealth of
15 information available for viewing on the
16 hearing web page. Again, it is Docket Number
17 2020-P-A-0017. By all means, check it out.

18 It is our desire, it is our hope
19 that people wishing to offer comment can have
20 time now to look it over, review it, have
21 plenty of time, as well, to make reasoned
22 comments.

23 And, again, all comments bear the
24 same weight, whether they are entered by



1 electronic means or mailed USPS.

2 As long as they are all received
3 by -- on or before, actually, July 31, 2020,
4 they all bear the same weight and will all be
5 entered into the record and given
6 consideration equally by Secretary Garvin
7 prior to his making a decision.

8 I want to thank you all again for
9 taking your time. This meeting is hereby
10 adjourned.

11 (Concluded at 6:33 p.m.)

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CERTIFICATE

I, Lorena J. Hartnett, a Notary Public and Registered Professional Reporter, do hereby certify that the foregoing is an accurate and complete transcription of the proceeding held at the time and place stated herein, and that the said proceeding was recorded by me and then reduced to typewriting under my direction, and constitutes a true record of the testimony given by said witnesses.

I further certify that I am not a relative, employee, or attorney of any of the parties or a relative or employee of either counsel, and that I am in no way interested directly or indirectly in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office on this 16 day of July 2020.



Lorena J. Hartnett
Registered Professional Reporter

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