

In The Matter Of:

*Department of Natural Resources & Environmental Control
State Implementation Plan Docket #2020-R-A-0003*

*Virtual Public Hearing
March 25, 2020*

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

RE: Proposed Revisions to Delaware's)
State Implementation Plan)
Docket #2020-R-A-0003)
Virtual Public Hearing)

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Virtual Public Hearing
Dial-In Number: 1-408-418-9388
Access Code: 715 067 309

Wednesday, March 25, 2020
6:00 p.m.

.

BEFORE: Lisa Vest, Hearing Officer

FOR THE DIVISION: Mark Prettyman, DNREC

-- Transcript of Proceedings --

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1 MS. VEST: Okay. The time is
2 6:00 p.m. I want to thank everybody for
3 tuning in tonight. We are going to go ahead
4 and start the proceeding.

5 Thank you for taking the time out
6 of your busy schedules to connect with DNREC.
7 The date is Wednesday, March 25, 2020, and we
8 are here this evening to provide this virtual
9 platform for DNREC to conduct a public
10 hearing on proposed revisions to the multiple
11 SIPs, or State Implementation Plan.

12 For those of you who may not know
13 me, my name is Lisa Vest, and Secretary
14 Garvin has appointed me to serve as the
15 hearing officer for tonight.

16 There have been some changes to
17 DNREC'S standard protocols, necessitated by
18 Delaware's ongoing State of Emergency.

19 First and foremost, this hearing is
20 being conducted virtually. No one is
21 gathered physically together for this matter
22 to occur. Everyone is participating
23 independently at their own respective
24 locations.



1 While there are no sign-in sheets
2 to document physical attendance tonight, this
3 virtual platform, WebEx, does generate a list
4 of those that are virtually present for this
5 proceeding, so the Department will still have
6 a record of those who have who electronically
7 joined us. And, again, I thank you for that.

8 At the conclusion of these
9 introductory remarks, I will be turning the
10 hearing over to Mark Prettyman, who will be
11 making a formal presentation regarding the
12 proposed actions of the Department.

13 This will be presented as part of
14 the hearing record that's being generated
15 tonight.

16 There is still a court reporter
17 virtually present creating a verbatim
18 transcript of this proceeding, pursuant to
19 the statutory requirement for DNREC to have
20 the same prepared.

21 As always, that transcript will be
22 posted on the hearing web page dedicated to
23 this matter as soon as it is received.

24 It should be noted that the



1 Department will not be accepting any comments
2 in realtime during the virtual proceeding
3 this evening. However, DNREC wishes to
4 ensure that everyone is able to offer their
5 comments for inclusion into the hearing
6 record.

7 Therefore, in all such virtual
8 hearings of DNREC until further notice, the
9 record will remain open for a minimum of 15
10 days following the hearing event.

11 In more complex cases, and in the
12 event a request for a longer comment period
13 has been received, an extension of time for
14 the public comment may be granted.

15 I would encourage those who have
16 logged in or called in this evening to check
17 out DNREC's web page for public hearings
18 under the Administrative Law Section of the
19 website for more detail on how this will be
20 moving forward with virtual.

21 Of course, all mechanisms
22 previously available by which to offer
23 comment remain intact, whether it's members
24 of the public offering their comment by the



1 electronic link that's provided on the web
2 page, or they could e-mail it, and, of
3 course, the United States Postal Service.

4 In addition to the above, all of
5 the following protocols still remain in place
6 for all DNREC public hearings.

7 Number one, all comment must be
8 related solely to the subject matter of
9 tonight's public hearing, which, again, is
10 the proposed revisions to the Department's
11 SIPs.

12 In order to ensure that everyone
13 who wishes to offer comment for the
14 Secretary's consideration is accommodated,
15 the record in this matter shall remain open
16 for a full 15 days following tonight's
17 proceedings, or through the close of
18 business, which is 4:30 p.m. on Thursday,
19 April 9, 2020.

20 It should be noted there is only
21 one authentic record of this proceeding
22 tonight, and it will be the court reporter's
23 verbatim transcript.

24 The WebEx virtual platform that we



1 are utilizing tonight will also provide a
2 recording of the event, which staff will also
3 post on the hearing web page dedicated to
4 this matter. Again, for clarification
5 purposes, however, the court reporter's
6 transcript is the official record of this
7 matter.

8 Lastly, it is important to note
9 that no decision has already been made by the
10 Department, nor will any decision be made
11 tonight with regard to the proposed
12 revisions.

13 The purpose of tonight's hearing is
14 to build the record with regard to the
15 proposed actions of the Department. A record
16 consisting of the transcript of this virtual
17 hearing, all written comments that may be
18 received, all exhibits, and my report will
19 all be reviewed by Secretary Garvin.

20 The Secretary will ultimately issue
21 an order following that review process. The
22 order will contain the decision on this
23 matter and the reasons therefore.

24 Again, there will be no question



1 and answer session permitted tonight, nor
2 will any realtime comments be accepted during
3 this virtual hearing.

4 Again, the record will remain open
5 for 15 days following today's date so that
6 members of the public do have an ample
7 opportunity to offer written comments, should
8 they wish to do so.

9 Written comment may be received on
10 the hearing page, via e-mail to
11 DNRECHearingComments@delaware.gov, or via the
12 U.S. Postal Service at the address indicated
13 on the hearing page and/or the public notice.

14 Written comments may not be
15 submitted to the Department using social
16 media platforms such as Twitter, Facebook,
17 YouTube, or text messaging.

18 All comment received either through
19 the United States Postal Service or through
20 the electronic mechanisms described, they all
21 bear the same weight as long as they are
22 received by the Department on or before 4:30
23 p.m. on April 9th, and all will be considered
24 equally by the Secretary prior to his making



1 a final decision.

2 The ultimate decision regarding
3 this matter is made by Secretary Garvin.
4 This proceeding tonight acts as a mechanism
5 to enable the Department to thoroughly vet
6 this proposed action to the public and to let
7 the public know the mechanisms available by
8 which to provide comment for Secretary
9 Garvin's consideration.

10 That being said, I am going to turn
11 the platform over to Mark Prettyman, who is
12 with our Division of Air Quality, for his
13 presentation.

14 MR. PRETTYMAN: Thank you, Lisa. I
15 respectfully request that the slides be
16 enabled on the screen.

17 MS. VEST: We are doing that now.

18 MR. PRETTYMAN: Thank you. Good
19 evening, everyone. My name is Mark
20 Prettyman, and I'm an Environmental Scientist
21 with the Airshed Planning and Inventory Group
22 for the Division of Air Quality in the
23 Delaware Department of Natural Resources and
24 Environmental Control.



1 First, as stated by Lisa, there
2 have been some changes to the Department's
3 standard protocols, necessitated by
4 Delaware's ongoing State of Emergency due to
5 the COVID-19 pandemic.

6 On March 12, 2020, Delaware's
7 Governor John Carney issued a State of
8 Emergency Declaration to prepare for the
9 spread of COVID-19. The declaration became
10 effective at 8 a.m. on Friday, March 13,
11 2020.

12 The order stated that the Governor
13 specifically directed and authorized that all
14 public meetings of executive branch public
15 bodies may be conducted electronically,
16 either by means of telephone conference call
17 or video conference call.

18 The Department has addressed the
19 change in meeting format to the public
20 through several different means.

21 1. Press releases were issued by
22 the Department on March 17 and March 20.

23 2. An updated meeting notice was
24 published on the State of Delaware Public



1 Meeting Calendar on March 24.

2 And 3: An updated meeting notice
3 was posted on the website for DNREC public
4 hearings on March 24th.

5 These efforts have been made to
6 ensure the public is aware of the change in
7 format of this hearing and can provide
8 comments on its content.

9 The purpose of this hearing is to
10 take public comments on three proposed State
11 Implementation Plan revisions to address the
12 2015 National Ambient Air Quality Standards
13 for ground-level ozone.

14 Specifically, these revisions are
15 to address the certification of Delaware
16 requirements for Reasonably Available Control
17 Technology; the certification of Delaware's
18 Nonattainment New Source Review program; and
19 the certification of Delaware's Emission
20 Statement program.

21 The State Implementation Plan is a
22 plan that identifies how a state will attain
23 and maintain air quality in order to conform
24 to each primary and secondary National



1 Ambient Air Quality Standard.

2 Delaware's initial State
3 Implementation Plan was approved by the
4 Environmental Protection Agency on May 31,
5 1972.

6 Since this initial approval, the
7 Delaware State Implementation Plan has been
8 revised numerous times to address air quality
9 nonattainment and maintenance issues.

10 These edits or additions to the
11 original State Implementation Plan, or
12 "revisions," as they are commonly referred
13 to, occur by updating plans and inventories,
14 and adding new and revised regulatory control
15 requirements.

16 Delaware's State Implementation
17 Plan is compiled in Title 40 of the Code of
18 Federal Regulations at Part 52, Subpart I.

19 The Federal Clean Air Act, as
20 amended by the Clean Air Act Amendments of
21 1990, requires all areas of the nation to
22 attain and maintain compliance with the
23 National Ambient Air Quality Standards.

24 These federal standards are



1 designed to protect the public health and
2 welfare from six criteria pollutants, one of
3 which is ozone.

4 On October 1, 2015, the
5 Environmental Protection Agency promulgated a
6 revised National Ambient Air Quality Standard
7 for ground-level ozone, from 0.075 parts per
8 million to 0.070 parts per million.

9 Promulgation of a revised National
10 Ambient Air Quality Standard triggers a
11 requirement for the Environmental Protection
12 Agency to designate areas as nonattainment,
13 attainment, or unclassifiable, and to
14 classify the nonattainment areas based upon
15 the severity of nonattainment at the time of
16 designation.

17 New Castle County, Delaware, was
18 designated as marginal nonattainment as part
19 of the Philadelphia-Wilmington-Atlantic City
20 nonattainment area for the 2015 ozone
21 National Ambient Air Quality Standard,
22 effective August 3, 2018.

23 Kent and Sussex Counties were
24 designated as attainment areas for the 2015



1 ozone National Ambient Air Quality Standard,
2 also effective August 3, 2018.

3 Depending on the classification of
4 nonattainment counties within a state, states
5 are required to submit State Implementation
6 Plan revisions to demonstrate how they are
7 complying with the mandatory plan submission
8 requirements for nonattainment areas under
9 the Clean Air Act.

10 With each new National Ambient Air
11 Quality Standard, the Environmental
12 Protection Agency summarizes the plan
13 requirements to implement the provisions of
14 the Clean Air Act which are applicable to
15 attainment and nonattainment areas, or
16 implementation plan requirements, as these
17 are more commonly known.

18 The Environmental Protection Agency
19 finalized the Implementation Plan
20 Requirements for the 2015 ozone National
21 Ambient Air Quality Standard on December 6,
22 2018.

23 As a marginal nonattainment area,
24 New Castle County is subject to specific



1 requirements in this final rule.

2 However, as Delaware is a part of
3 the Ozone Transport Region, which is a group
4 of states identified under the Clean Air Act
5 for the purposes of addressing interstate
6 transport, all counties in Delaware are
7 subject to certain implementation plan
8 requirements.

9 Delaware is addressing three State
10 Implementation Plan requirements in this
11 hearing.

12 The first State Implementation Plan
13 requirement which Delaware is addressing is
14 Reasonably Available Control Technology.
15 Delaware is required to demonstrate that all
16 major sources of nitrogen oxides and volatile
17 organic compound emissions are required to
18 implement controls which represent Reasonably
19 Available Control Technology, as well as all
20 sources and source categories covered by
21 Control Technique Guidelines and Alternate
22 Control Techniques issued by the
23 Environmental Protection Agency.

24 Reasonably Available Control



1 Technology is required statewide since
2 Delaware is in the Ozone Transport Region.

3 The first State Implementation Plan
4 revision being proposed this evening is a
5 certification that Delaware's regulations
6 meet the requirements for Reasonably
7 Available Control Technology under the 2015
8 ozone National Ambient Air Quality Standard.

9 The second requirement which
10 Delaware is addressing is Nonattainment New
11 Source Review. Nonattainment New Source
12 Review is a preconstruction review permit
13 program that applies to new major stationary
14 sources or major modifications at existing
15 sources located in a nonattainment area.

16 This requirement is statewide,
17 since Delaware is in the Ozone Transport
18 Region.

19 The second State Implementation
20 Plan revision being proposed this evening is
21 a certification that Delaware's Nonattainment
22 New Source Review program meets the
23 requirements under the 2015 ozone National
24 Ambient Air Quality Standard.



1 The third requirement Delaware is
2 addressing identifies plan submission
3 requirements to include rules which establish
4 annual reporting requirements for certain
5 stationary sources.

6 This State Implementation Plan
7 revision is a certification that Delaware's
8 regulations meet this "Emissions Statement"
9 requirement under the 2015 ozone National
10 Ambient Air Quality Standard.

11 The Department now enters the
12 following exhibits into the public record to
13 support the approval of the State
14 Implementation Plan revisions as well as to
15 support the alteration of tonight's public
16 hearing to a virtual platform.

17 Exhibit 1: The final rule for the
18 promulgation of the 2015 ozone National
19 Ambient Air Quality Standard, dated
20 October 26, 2015, which was published in
21 Volume 80 of the Federal Register, beginning
22 on Page 65292.

23 Exhibit 2: The final rule for the
24 designations of areas as nonattainment for



1 the 2015 ozone National Ambient Air Quality
2 Standard, dated June 4, 2018, which was
3 published in Volume 83 of the Federal
4 Register, beginning on Page 25776.

5 Exhibit 3: The final rule of
6 implementation plan requirements for the 2015
7 ozone National Ambient Air Quality Standard,
8 dated December 6, 2018, which was published
9 in Volume 83 of the Federal Register,
10 beginning on Page 62998.

11 Exhibit 4: The Register Notice
12 which appeared in the Delaware Register of
13 Regulations. Issue Date: March 1, 2020,
14 Volume 23, Issue 9, Pages 781 through 784.

15 Exhibit 5: The affidavit and
16 public hearing notice as it appeared in the
17 February 16, 2020 Delaware State News that
18 advertised today's public hearing.

19 Exhibit 6: The affidavit and
20 public hearing notice as it appeared in the
21 February 16, 2020 News Journal that
22 advertised today's public hearing.

23 Exhibit 7: The public hearing
24 notice for today's public hearing, on the



1 State of Delaware Public Meeting Calendar, as
2 dated March 18, 2020, prior to the change to
3 a virtual public hearing.

4 Exhibit 8: The public hearing
5 notice for today's public hearing on the
6 State of Delaware's Public Meeting Calendar,
7 as dated March 24, 2020, after the change to
8 a virtual public hearing.

9 Exhibit 9: The public hearing
10 notice for today's public hearing, as posted
11 on the website for DNREC Public Hearings,
12 dated March 18, 2020, prior to the change to
13 a virtual public hearing.

14 Exhibit 10: The public hearing
15 notice for today's public hearing, as posted
16 on the website for DNREC Public Hearings,
17 dated March 24, 2020, after the change to a
18 virtual public hearing.

19 Exhibit 11: The Reasonably
20 Available Control Technology State
21 Implementation Plan, as proposed in the
22 Delaware Register on March 1, 2020.

23 Exhibit 12: The Nonattainment New
24 Source Review and Emission Statement



1 certifications, as proposed in the Delaware
2 Register on March 1, 2020.

3 Exhibit 13: The "Declaration of a
4 State of Emergency for the State of Delaware
5 Due to A Public Health Threat," as issued by
6 Delaware Governor John Carney on March 12,
7 2020.

8 Exhibit 14: A proclamation by
9 Governor John Carney, dated March 13, 2020,
10 authorizing all meetings of public bodies to
11 be conducted electronically until further
12 notice.

13 Exhibit 15: The Press Release
14 issued by the Department of Natural Resources
15 and Environmental Control on March 17, 2020,
16 announcing "changes to operations due to
17 COVID-19," to include a notice that "hearings
18 for permits, regulations and appeals are
19 being moved to phone or video for public
20 access."

21 Exhibit 16: A copy of the
22 Department of Natural Resources and
23 Environmental Control's website discussing
24 updates to services related to COVID-19, as



1 published March 19, 2020. This website also
2 announced that all Department public hearings
3 will be virtual until further notice.

4 Exhibit 17: The Press Release
5 issued by the Department of Natural Resources
6 and Environmental Control on March 20, 2020,
7 stating that, "Public hearings will be
8 available via phone or video conference" and
9 that, "The public will be able to submit
10 comments about the subject of each hearing
11 via e-mail, online form, or regular mail."

12 This completes the Department's
13 presentation of the three proposed revisions
14 to Delaware's State Implementation Plan for
15 the 2015 ozone National Ambient Air Quality
16 Standard.

17 Thank you.

18 MS. VEST: Okay. Thank you very
19 much, Mark. Let the record reflect that the
20 exhibits as identified by the Department just
21 now are hereby entered into the formal
22 hearing record.

23 Mark, is there anything further
24 that the Division of Air Quality wishes to



1 put on the record at this time?

2 MR. PRETTYMAN: Nothing further at
3 this time.

4 MS. VEST: Excellent. Thank you
5 very much.

6 At this point we would normally
7 open the floor to accept comment.

8 However, since it is virtual right
9 now, what we are going to do is ensure that
10 the record remains open for the public to
11 offer comment, if it wishes to do so, by the
12 various mechanisms that I spoke about in the
13 beginning of the hearing.

14 As is always the case, DNREC values
15 public input concerning all of its actions.
16 And so the record will remain open for an
17 additional 15 days following tonight's
18 proceeding.

19 The public may feel free to offer
20 comment for the Secretary's consideration.
21 They can do it by e-mail. They can do it by
22 electronic comment link, both of which are
23 available on the Department's website.

24 If you go to the DNREC website,



1 click on Administrative Law, go down, you
2 will see Public Hearings. You will find this
3 one in a chronological listing of all public
4 hearings, and there will be buttons for easy
5 access.

6 And you can enter the comments that
7 way, or you can simply write us to my
8 attention, Lisa Vest, Hearing Officer, at the
9 DNREC offices here at 89 Kings Highway,
10 Dover, Delaware, 19901.

11 As I said before, all comment,
12 whether it be accepted electronically, via
13 e-mail, or by United States Postal Service,
14 all bears the same weight, and all will be
15 taken into consideration and weighed by the
16 Secretary prior to him making a decision.

17 At this point we are going to
18 conclude the virtual portion of our record.

19 Thank you for taking the time to
20 join us electronically. And thank you again
21 for the Department's presentation.

22 The record will remain open through
23 the close of business on April 9, 2020.

24 Thank you, guys. Everybody stay safe. This



meeting is adjourned.

(Concluded at 6:21 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 26th day of March 2020.



Lorena J. Hartnett
Registered Professional Reporter

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