

In The Matter Of:
DNREC
HRNG 7 DE ADMIN Code 1151

Docket #2020-R-A-0004
April 23, 2020

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

RE: Proposed New Regulation)
7 DE Admin Code 1151)
Docket #2020-R-A-0004)
Virtual Public Hearing)

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Virtual Public Hearing
Dial-In Number: 1-408-418-9388
Access Code: 350 344 904

Thursday, April 23, 2020
6:00 p.m.

..

BEFORE: Lisa Vest, Hearing Officer

FOR THE DIVISION: Ajo Rabemiarisoa, DNREC
Division of Air Quality

-- Transcript of Proceedings --

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1 MS. VEST: Good evening. Thank you
2 for joining us. I believe that we are all
3 connected and ready, so we are going to go
4 ahead and begin tonight's proceedings.

5 Thank you for taking the time out
6 of your busy schedules to join us. The date
7 is Thursday, April 23, 2020, and we are here
8 this evening to provide a virtual platform
9 for the State of Delaware's Department of
10 Natural Resources and Environmental Control
11 to conduct its public hearing on proposed new
12 regulations for hydrofluorocarbons, or HFCs.

13 For those of you that may not know
14 me, my name is Lisa Vest, and Secretary
15 Garvin has designated me to serve as the
16 hearing officer for tonight's proceedings.

17 Briefly, there have been some
18 changes made to DNREC's standard hearing
19 protocols, necessitated, of course, by
20 Delaware's state of emergency due to the
21 COVID-19 pandemic.

22 First and foremost, this hearing is
23 being conducted virtually. There is no staff
24 gathered together in the same room. Everyone



1 is participating independently at their own
2 respective locations.

3 While there are no sign-in sheets
4 to document physical attendance tonight,
5 WebEx does generate a list of those that are
6 virtually present and have connected for
7 tonight's proceeding, so the Department still
8 keeps a verifiable record of those who have
9 electronically joined us tonight.

10 And, again, I thank everyone for
11 their interest in this matter.

12 At the conclusion of these remarks,
13 I will be turning the hearing over to
14 responsible Department staff, who will be
15 making a formal presentation regarding these
16 new proposed regulations for the benefit of
17 the hearing record that's being generated
18 tonight.

19 There is still a court reporter
20 that's virtually present. She is connected
21 with us on this platform, and she will
22 prepare a verbatim transcript of the hearing
23 tonight pursuant to the statutory
24 requirements for DNREC to do so.



1 And, as always, that transcript
2 will be posted on the hearing web page
3 dedicated to this event as soon as it has
4 been received.

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

11 Therefore, it should be noted that
12 the record will remain open to receive public
13 comment through May 31, 2020.

14 I would encourage those who have
15 logged in or who are listening by phone this
16 evening to visit DNREC's web page for public
17 hearings under the administrative law section
18 of the website for further information
19 concerning the various ways by which the
20 public can give us comment.

21 And each and every comment that is
22 received is submitted for the Secretary's
23 consideration.

24 Of course, all mechanisms



1 previously available by which the public can
2 offer comment remain intact. We have
3 electronic links. We have e-mail and, of
4 course, the United States Postal Service.

5 Also, briefly, the following
6 protocols do remain in place for all DNREC
7 public hearings:

8 All comment received must be
9 limited solely to the subject matter of
10 tonight's event. All comments pertinent to
11 the subject matter of this hearing will be
12 incorporated into the record being generated
13 in this matter.

14 As previously noted, in order to
15 ensure that everyone who wishes to offer
16 comment for the Secretary's consideration is
17 accommodated, the record will remain open
18 through May 31, 2020.

19 There is only one authentic record
20 of this proceeding tonight, and it is the
21 official court reporter's verbatim
22 transcript.

23 The statutory purpose of tonight's
24 hearing is to build the record with regard to



1 the Department's proposed actions. The
2 record, consisting of the transcript from the
3 hearing tonight, all written comments, all
4 exhibits that are entered in, and eventually
5 my hearing officer's report, will be reviewed
6 by the Secretary prior to his making a
7 decision.

8 The Secretary will ultimately issue
9 an order following his review containing his
10 decision on the matter and his reasons
11 therefore.

12 There will be no Q and A session on
13 the matter tonight, nor will any real-time
14 comments be accepted via this virtual
15 platform during the course of tonight's
16 event.

17 It is important to note that no
18 decision has already been made by the
19 Department, nor will any decision be made
20 tonight with regard to these proposed new
21 regulations.

22 The record will remain open through
23 May 31st, again so that members have ample
24 opportunity to offer their written comment,



1 should they wish to do so.

2 Comments may be submitted through a
3 comment forum on the hearing page, via e-mail
4 to DNRECHearingComments@delaware.gov, or via
5 the U.S. Postal Service at the physical
6 address for DNREC indicated on the hearing
7 page online.

8 Please note that written comments
9 to DNREC in this matter may not be submitted
10 using any social media platform such as
11 Twitter, Facebook, YouTube or standard text
12 messaging.

13 All comment received through either
14 the mail or through electronic mechanisms
15 that we were just noting now, as long as it
16 is received by the Department on or before
17 May 31st, will bear exactly the same weight
18 and will all be considered equally by the
19 Secretary prior to his making a final
20 decision.

21 The ultimate decision regarding
22 this proposed promulgation is made by DNREC
23 Secretary Garvin. This formal hearing
24 tonight acts as a mechanism to enable the



1 Department to thoroughly vet this proposed
2 action to the public as well as to let the
3 public know all the ways by which they can
4 offer comment.

5 Those protocols now being said, I
6 am going to now invite staff to come in and
7 begin their presentation.

8 And she will be here momentarily.
9 Ajo, are you there?

10 MS. RABEMIARISOA: Yes.

11 MS. VEST: Okay. Great. I am
12 going to now turn over the screen. Have you
13 got it?

14 MS. RABEMIARISOA: Yes.

15 MS. VEST: Okay. Proceed.

16 MS. RABEMIARISOA: Thank you. So
17 good evening, everyone. My name is Ajo
18 Rabemiarisoa, and I am an Environmental
19 Engineer with the Division of Air Quality in
20 the Department of Natural Resources and
21 Environmental Control.

22 The purpose of this hearing is to
23 formally vet this proposed regulatory action
24 to the public and to receive public comments



1 on the proposed new regulation, 7 Delaware
2 Admin. Code 1151, titled "Prohibitions on Use
3 of Certain Hydrofluorocarbons in Specific
4 End-Uses."

5 The objective of this regulation is
6 to establish the prohibitions and
7 requirements for the use and manufacture of
8 HFCs in the State of Delaware according to
9 their specific end usage, including air
10 conditioning and refrigeration equipment,
11 aerosol propellants, and foam end-uses.

12 This proposed new regulation was
13 initiate by Governor Carney's directive with
14 support of the General Assembly through the
15 House Concurrent Resolution 60, which directs
16 the Department to propose regulations for the
17 use and manufacturing of HFCs in Delaware.

18 This proposed new regulation is
19 designed to support the 26 to 28 percent
20 greenhouse gas emissions reduction goal that
21 Governor Carney established in June of 2018
22 as part of our participation with the U.S.
23 Climate Alliance.

24 Hydrofluorocarbons, or HFCs, are



1 potent greenhouse gases with global warming
2 potential that are hundreds to thousands of
3 times that of carbon dioxide, and their use
4 is projected to increase through 2050.

5 Currently, HFCs are the fastest
6 growing source of greenhouse gases globally
7 and in the State of Delaware, where their
8 emissions are projected to increase by
9 47 percent from 2016 to 2030.

10 According to estimates based on
11 tools developed by the California Air
12 Resources Board on behalf of the U.S. Climate
13 Alliance, the proposed regulation is expected
14 to reduce HFC emissions by 25 percent by
15 2030, compared to a business-as-usual
16 scenario, which translates to up to 832,000
17 metric tons of CO2 equivalent emissions
18 avoided between 2020 and 2030, roughly the
19 equivalent of the annual greenhouse gas
20 emissions of 176,000 passenger cars in
21 Delaware.

22 As a coastal state with over
23 381 miles of shoreline, Delaware is already
24 experiencing the detrimental effects of



1 climate change and its associated increased
2 temperatures, see level rise, and intense
3 rainfall events.

4 Delaware is vulnerable to coastal
5 erosion, storm surge, saltwater intrusion,
6 and tidal wetland losses.

7 Intense rainfall and rising sea
8 levels increase the risk of permanent and
9 temporary flooding across the state, which
10 threatens public safety and incurs costly
11 damage to homes and businesses.

12 Rising temperatures and extreme
13 heat events increase the risk of serious
14 illnesses, especially for vulnerable
15 citizens -- the elderly, young children,
16 outdoor workers, and people with pre-existing
17 health conditions.

18 Temperature and rainfall extremes
19 pose serious challenges for our agriculture
20 and tourism economies, as well as imposing
21 increasing costs for maintaining and
22 repairing critical infrastructure.

23 Inundation from sea level rise will
24 occur in all three of Delaware's counties,



1 affecting a wide variety of resources.

2 This proposal is necessary to
3 support Delaware's efforts to mitigate the
4 effects of climate change and increase
5 Delawarean's quality of life and economic
6 opportunities.

7 The proposed new regulation is
8 based on the previously promulgated U.S. EPA
9 Significant New Alternatives Policy, or SNAP,
10 rules 20 and 21, for which the federal agency
11 had built an extensive technical support for
12 the overall costs and the benefits for
13 transitioning to lower global warming
14 potential refrigerants that minimize risks to
15 human health and the environment.

16 In 2017, U.S. EPA's ability to
17 regulate HFCs through the SNAP program was
18 limited by a court ruling. And although
19 actions to continue HFC management have been
20 initiated at the federal level, they have no
21 established time frame. And timely state
22 action is necessary to limit the rapidly
23 increasing HFC emissions.

24 The proposed new regulation



1 establishes that no person may sell, lease,
2 rent, install, use, or manufacture in the
3 State of Delaware any product or equipment
4 using a listed substance for any air
5 conditioning, refrigeration, foam, or aerosol
6 propellant end-use, as identified in the
7 regulation.

8 The proposed timeline for the
9 effective dates of prohibitions vary by
10 end-use category, from January 1, 2021
11 through January 1, 2024, and have been
12 informed by both the EPA SNAP rules 20 and 21
13 assessment of available low-global warming
14 potential alternatives, and by our
15 stakeholder engagement process.

16 To ensure industry compliance with
17 Delaware's HFCs new proposed regulation, the
18 Department provided an extensive stakeholder
19 engagement process from September 2019
20 through January 2020. This stakeholder
21 engagement has shed the light on many
22 industry concerns and considerations, which
23 informed the following flexibility mechanisms
24 that we have included as part of our



1 regulation.

2 First, the Department has included
3 language for the continued use of product or
4 equipment containing a prohibited substance
5 after the effective date of prohibition, if
6 this product or equipment was acquired prior
7 to the applicable date of prohibition.

8 Second, the Department has included
9 language for the use of prohibited substance
10 in all servicing, maintenance, and repair
11 operations of an existing product or
12 equipment, as part of its regular life-cycle
13 operations.

14 Third, the Department is allowing
15 for the sale/import/export/distribution/use
16 and installation of any product or equipment
17 covered under this regulation after their
18 specific effective date of prohibition, if
19 this product or equipment was manufactured
20 prior to the applicable effective date of
21 prohibition.

22 Fourth, the proposed new
23 recollection has no recordkeeping
24 requirements.



1 Informed by the input from our
2 stakeholders from various industries covered
3 under this regulation, the Department has
4 developed disclosure statement requirements
5 for manufacturers of the four categories of
6 end-uses presented on this slide, based on
7 their practical constraints and existing
8 practices.

9 These included logistical
10 considerations in the distribution and supply
11 chains of the covered products and equipment
12 and the use of existing labeling standards as
13 potential compliance paths for this
14 regulation.

15 Although no perfect solution was
16 identified as a path forward for all industry
17 during our stakeholder engagement process,
18 the Department believes that the proposed
19 disclosure requirement language allows enough
20 flexibility for manufacturers to comply,
21 while offering the customers transparent and
22 easily accessible information on their
23 purchase, and ensuring the product or
24 equipment's compliance is in compliance with



1 State regulation.

2 The Regulatory Flexibility Analysis
3 and Impact Statement Form, submitted as
4 Exhibit 6 to this regulation, offers more
5 details about the expected impact of this
6 regulation to Delaware's individuals and
7 small businesses.

8 The proposed regulation is not
9 expected to add a burden to Delaware
10 businesses and individuals, since it was
11 designed with multiple flexibility
12 mechanisms, such as a grandfather clause, a
13 sell-through provision, and no recordkeeping
14 requirements, as mentioned previously.

15 In Delaware, the Department has
16 estimated that there are more than 3,000 end
17 users using the covered products and
18 equipment, including retail stores,
19 supermarket and grocery stores, and
20 restaurants.

21 The regulation was designed to
22 allow these end-users to be able to continue
23 the use of their product and equipment
24 acquired before the effective date of



1 prohibition, and to perform any servicing,
2 maintenance, and repair operations required
3 in the regular life cycle of an equipment
4 without additional considerations.

5 It is only when the end-user
6 performs a retrofit or purchases a new
7 equipment that they would have to comply with
8 the regulation.

9 The technical support document,
10 submitted as Exhibit 5 to this regulation,
11 details the Department's analysis and
12 technical support for this regulation.

13 It includes more details on the
14 background of this action, the proposed
15 regulation, the expected economic impact and
16 benefits of this regulation, and the details
17 of our stakeholder and public engagement
18 process throughout the regulatory rule-making
19 process.

20 The Division of Air Quality has a
21 total of 19 exhibits that have been made
22 accessible through our public hearing website
23 since Monday, April 20th. We would ask that
24 they be entered in the public record at this



1 time.

2 MS. VEST: Okay. Thank you, Ajo.

3 One quick question just to confirm
4 for the record: Are the exhibits as posted
5 on the hearing web page identical to those
6 that you are proposing to be entered in
7 tonight?

8 MS. RABEMIARISOA: Yes, they are.

9 MS. VEST: Okay. Very well. Let
10 the record reflect that Exhibits 1 through
11 19, as identified on the public hearing web
12 page devoted to this matter, are hereby
13 entered into the formal hearing record.

14 Does that conclude Air Quality's
15 comments and presentation for this evening?

16 MS. RABEMIARISOA: This concludes
17 the presentation for the proposed regulation,
18 yes.

19 MS. VEST: Great. Thank you, Ajo.
20 At this point I'm just going to let that last
21 slide stay up.

22 We want to thank everybody for
23 joining us. The Department's presentation
24 that was given just now, as well as all of



1 the other 19 exhibits associated with this
2 proposed promulgation, are included and up on
3 the hearing website for this matter.

4 You can also see the link to that
5 website on the slide that's still up right
6 now.

7 As previously noted, the Department
8 encourages all members of the public that
9 wish to offer comment regarding these
10 proposed regs offer comment. We are
11 extending the record to receive comment
12 all the way through May 31, 2020, so a little
13 bit more than a month.

14 So, please, I would encourage those
15 in attendance or perhaps those that weren't
16 able to join us tonight to share the
17 information, go online, review the exhibits,
18 and feel free to offer comment.

19 You can also offer multiple
20 comments, if you wish. So if you send your
21 comment in and then you think of something
22 else that you would like to say, by all
23 means, you can send multiple sets of
24 comments.



1 As long as they are all received on
2 or before May 31, 2020, as I said at the
3 beginning of the proceedings, they all bear
4 the same weight, and they will all be taken
5 under consideration by Secretary Garvin prior
6 to his making his decision.

7 So I want to thank Air Quality
8 staff for doing their presentation. At this
9 point thank you, everybody, for attending.
10 This hearing is adjourned.

11 (Concluded at 6:19 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 4th day of May 2020.



Lorena J. Hartnett
Registered Professional Reporter

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