
TECHNICAL RESPONSE MEMORANDUM

To: Lisa Vest, Hearing Officer

Through: Valerie Gray *vag*
Renaë Held *rjh*

From: Taylor Englert

Date: November 30, 2021

Re: Department’s response to the comment received on the proposed amendments to 7 **DE Admin. Code** 1130 – *Title V State Operating Permit Program*

You presided over a virtual public hearing on Wednesday, October 27, 2021 beginning at 6:00 PM. The subject of the public hearing was the proposed amendments to 7 **DE Admin. Code** 1130 “Title V State Operating Permit Program”.

At the hearing, the Department received a comment from Emily Rodden who’s affiliated with the New Castle Prevention Coalition.

The commenter gave verbal testimony at the hearing, which is included in the verbatim transcript¹. The Department thanks the commenter for their comment on this amended proposed regulation.

This memorandum provides a summary of the comment received and the response of the Division of Air Quality (Department) on behalf of the Department.

Comment 1

Regarding Section 6.0, “Permit Content”, the commenter asked what the difference was between the terms “emergencies” and “malfunctions”; and if there is a difference, they asked why it is being removed from the regulation.

Department Response

The Department notes that the comments were presented as questions and that no adjustments or edits were subsequently required to the proposed regulatory amendments. The following is in response to the commenter’s questions posed at the hearing:

¹ Hearing Transcript, “Proposed Amendments to 7 **DE Admin. Code** 1130, “Title V State Operating Permit Program”, Wilcox & Fetzer, www.wilfet.com, available at <https://dnrec.alpha.delaware.gov/events/public-hearing-air-quality-regulations/>. Comments by Emily Rodden can be found on pages 26 through 27.

7 **DE Admin. Code** 1130 currently allows for an affirmative defense to enforcement actions when noncompliance with certain emission limitations in operating permits occurs because of qualifying emergency or malfunction events.

Section 6.7.1 of 7 **DE Admin. Code** 1130 defines an emergency as: “...any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency.”

Section 6.7.1 of 7 **DE Admin. Code** 1130 defines a malfunction as: “...any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner, and that causes the source to exceed a technology based emission limitation under the permit, due to unavoidable increases in emissions attributable to the malfunction. An emergency or malfunction shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.”

The Environmental Protection Agency’s (EPA) 40 Code of Federal Regulations (CFR) 70.6(g) governs state operating permit programs and provides for states to develop and submit to the EPA programs for issuing operating permits for major and certain other stationary sources of air pollution. 40 CFR 70.6(g) provides four provisions that need to be met in order for a facility to claim affirmative defense for an “emergency”. 40 CFR 70.6(g) does not provide affirmative defenses for a “malfunction”; therefore, to prevent confusion for Title V facilities and to provide consistency with the EPA’s current federal regulation, the department has proposed to remove the term “malfunction” from Regulation 1130.