



**Department of Natural Resources and
Environmental Control**

Division of Air Quality

Regulation Proposal

**7 DE Admin. Code 1130 “Title V State
Operating Permit Program”**

Technical Support Document

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INTRODUCTION

The Division of Air Quality (AQ) of the Department of Natural Resources and Environmental Control (DNREC) is proposing to amend 7 **DE Admin. Code** 1130, Title V State Operating Permit Program.

Title V of the Clean Air Act (CAA) requires the Environmental Protection Agency (EPA) to implement air quality operating permits (Title V permits) for major sources of air emissions. Title V permits apply to sources whose emissions meet or exceed Major Source levels. Major source thresholds for Delaware are shown in Table 1. 7 **DE Admin. Code** of 1130 was adopted to implement the federal requirements for Title V permits in Delaware. This regulation establishes the permitting procedures and requirements for Delaware’s Title V operating permits.

Table 1. Major Source Thresholds for Delaware Counties

	Volatile Organic Compounds	Nitrogen Oxide	Carbon Monoxide	Sulfur	Particulates	Hazardous Air Pollutants	Other
New Castle	25	25	100	100	100	10	100
Kent	25	25	100	100	100	10	100
Sussex	50	100	100	100	100	10	100

Measured in tons per year. The threshold of 10 tons/year for HAPs is for a single HAP. The annual total threshold for all HAPs is 25 tons/year.

BACKGROUND

The proposed amendments of 7 **DE Admin. Code** 1130 include the following sections: Section 2.0 “Definitions”, 6.0 “Permit Contents”, and Section 7.0 “Permit Issuance, Renewal, Reopenings, And Revisions.”

Section 2.0 “Definitions” - Greenhouse Gases and their Global Warming Potential Values

7 **DE Admin. Code** 1130, “Definitions”, “Subject to regulation” sets the criteria for which air pollutants are required to be permitted through Delaware’s Title V program. Specifically, this definition lists the criteria for which greenhouse gases shall be subject to Title V permitting.

This criterion is based on the potential greenhouse gas (GHG) emissions for a given source. Potential emissions are calculated using the global warming potential (GWP) values for GHG pollutants. GWP is a measure of the radiative efficiency (heat-absorbing ability) of a particular gas relative to that of carbon dioxide (CO₂). GWPs used in this regulation are based on the values used in the Intergovernmental Panel on Climate Change Report.

Section 6.0 “Permit Contents” - Affirmative Defenses

Title V operating permits require facilities to have specific emission monitoring and reporting requirements to demonstrate compliance, that their emissions are below the allowable limits. Understanding that deviations in operation are possible from failure in emission control equipment, the EPA included a provision in the final rule (57 FR 32250) published on July 21, 1992 to allow for some operational flexibility.

The final rule provides an affirmative defense in the case where permit limits have been exceeded due to an emergency. As defined in 40 Code of Federal Regulations (CFR) 70.6(g), an “emergency” is a reasonably unforeseeable event beyond the control of the source that requires immediate corrective action to restore normal operation and that is not due to certain factors specified in the rule.

This affirmative defense clause is currently included in Section 6.0 of 7 **DE Admin. Code** 1130, but includes the affirmative defense case for an “emergency” or “malfunction” along with the provisions required to assert affirmative defense. As defined in regulation 1130, “Malfunction” means 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.

Section 7.0 Public Notice Requirements - “Permit Issuance, Renewal, Reopenings, And Revisions.”

Section 7.10.2 of 7 **DE Admin. Code** 1130 was adopted to implement public notification requirements for Title V operating permits. The regulation requires AQ to provide for public participation and comment when reviewing and issuing permits. There is also a requirement to advertise permit application information in Delaware newspapers, in accordance with Delaware state statute Title 7 Chapter 60 Sections 6003 and 6004. Members of the public also have the opportunity to request a hearing for the permit application, if one has not already been scheduled.

PROPOSED AMENDMENTS TO 7 DE ADMIN. CODE 1130

The proposed amendments of 7 **DE Admin. Code** 1130 include the following sections: Section 2.0 “Definitions”, Section 6.0 “Permit Contents”, and Section 7.0 “Permit Issuance, Renewal, Reopenings, And Revisions.” Details of the proposed changes are discussed below.

Revise Greenhouse Gas Compounds List and Global Warming Potentials

The proposed amendments to the definition “Subject to regulation” will clarify the definition and calculation of GWPs for Delaware Title V sources. On November 29, 2013, EPA issued a final rule (78 FR 71903) that revised the GWP values for 23 of the 32 compounds listed in Table 2-1 of 7 **DE Admin. Code** 1130. On December 11, 2014, EPA issued an additional final rule (79 FR 73749) that added 30 new compounds to the list of GHG compounds.

The proposed amendments to 7 **DE Admin. Code** 1130, Table 2-1 will revise the GWP values, which are based on the Intergovernmental Panel on Climate Change, Fifth Report (November 2, 2014). The amendments also include the addition of new GHG compounds to Table 2-1, as provided in the above two EPA final rules.

Update Affirmative Defense Requirements

The proposed amendment to Section 6.0 “Permit Contents”, subsections 6.7 and 6.1.3.3.1 is related to affirmative defense requirements. On July 21, 1992, EPA published the final rule, 57 FR 32250, addressing the affirmative defense requirements. The rule was codified in 40 CFR Section 70.6(g) and only includes provisions for affirmative defenses in the case of emergency, while Subsection 6.7 of 1130 includes guidance on claiming affirmative defenses for emission exceedances for emergencies and malfunctions. As a result, the Division is proposing to remove the term “malfunction” from 7 **DE Admin. Code** 1130, to maintain consistency with the current federal requirements for affirmative defenses.

Update Public Notice Requirements

On October 18, 2016, the EPA issued a final rule (81 FR 71613), which updated the list of required components for public notices for Title V Operating permits. These changes were codified in 40 CFR 70.7(h)(2).

AQ is proposing to amend Section 7.10.2 of 7 **DE Admin. Code** 1130, to incorporate the new public notice requirements that EPA codified in 40 CFR 70.7(h)(2). The changes to regulation 1130 will include adding the name, address and telephone number of the DNREC Staff from whom interested parties can contact for additional information.

In conclusion, the proposed amendments to 7 **DE Admin. Code** 1130 will update the list of greenhouse gases and their global warming potential values, the affirmative defense requirements, and public notice publication requirements for Title V permits. These amendments are administrative and are not anticipated to result in any emission reductions or increases, nor are these proposed amendments expected to impact an overburdened or underserved community located in Delaware.