

In the Matter Of:

Department of Natural Resources & Environmental Control

PERMITS HEARING

October 27, 2021



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

RE: Proposed Amendments to
7 DE Admin. Code 1102 "Permits"

.. . . .

Virtual Public Hearing (2 of 3)
Dial-In Number: 1-408-418-9388
Event Number: 179 845 2350

Wednesday, October 27, 2021
6:24 p.m.

.. . . .

BEFORE: Lisa Vest, Hearing Officer

FOR THE DIVISION: Taylor Englert, DNREC

-- Transcript of Proceedings --

WILCOX & FETZER
Registered Professional Reporters
1330 King Street - Wilmington, Delaware 19801

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1 MS. VEST: And I am going to
2 briefly begin again. So, Lorena, if you
3 would, go ahead and begin the second of the
4 three transcripts.

5 Again, I thank everybody for
6 joining tonight. We are in the middle of a
7 multi-regulatory public hearing. The date is
8 Wednesday, October 27, 2021. And we are now
9 going to be addressing the second of three
10 sets of air quality regs.

11 The Department is proposing
12 amendments to 7 Delaware Admin Code 1102,
13 "Permits."

14 Again, for those of you that may
15 not know me already, my name is Lisa Vest,
16 and Secretary Garvin has designated me to
17 serve as hearing officer for tonight's
18 proceeding.

19 As is the case with all DNREC
20 hearings, there are standard protocols that
21 are adhered to. The Department does keep
22 track, even though we are virtual, of
23 everyone in attendance. WebEx will generate
24 an attendance sheet, so we will know exactly

1 who is attending tonight. And, again, I
2 thank all of you for doing so.

3 At the conclusion of these brief
4 introductory remarks, I will be turning the
5 screen back over to the Department staff, who
6 have another brief presentation, again this
7 time with respect to the proposed regulatory
8 amendments to the 1102 regarding permits.

9 As always, there is a court
10 reporter virtually present. She will prepare
11 a verbatim transcript of all of the matters
12 that we are addressing tonight. And, as
13 always, that transcript will be posted on the
14 hearing webpage dedicated to this matter as
15 soon as it is received.

16 Once the Department's presentation
17 has concluded and the exhibits that are being
18 proposed are entered into the record, we will
19 again open the floor to the one member of the
20 public that has preregistered to offer
21 comment, and we will see if she wishes to
22 offer comment at that point.

23 As is the case with the first one
24 that we just got done doing, DNREC wants to

1 ensure that everybody who wishes to offer
2 comment for the record is fully accommodated.
3 Therefore, the record will remain open
4 subsequent to the close of tonight's
5 proceedings, and folks can submit comments
6 for the record for the Secretary's
7 consideration regarding 7 Delaware Admin Code
8 1102 "Permits," proposed regulatory
9 amendments, on or before November 11, 2021.

10 Again, I would encourage those in
11 attendance to check out the DNREC website
12 under the Administrative Law Section. You
13 can easily find this hearing located towards
14 the top of the page. They go in
15 chronological order.

16 This hearing transcript, once we
17 receive it from the court reporter, along
18 with the Department's presentations and
19 exhibits and any comments that come in, will
20 all be posted immediately upon receipt to
21 that page. And the public can gain a lot of
22 information by reviewing the same.

23 Again, all mechanisms previously
24 available for comment remain in effect. We

1 have electronic link. We have e-mail and
2 United States Postal Service.

3 And also I need to read briefly the
4 protocol that we set forth previously, since
5 there are three separate records.

6 Number 1: All comment received
7 must be limited solely to the subject matter
8 of tonight's hearing, which this portion now
9 is, again, proposed amendments to 7 Delaware
10 Admin Code 1102, "Permits."

11 Number 2: As previously noted, in
12 order to ensure that everyone who wishes to
13 offer comment for the Secretary's
14 consideration is accommodated, the record
15 shall remain open to receive comment through
16 November 11, 2021.

17 Number 3: There is only one
18 authentic record of tonight's proceedings,
19 and it is the verbatim court transcript.

20 4: The statutory purpose of
21 tonight's hearing is to build the record with
22 regard to the Department's proposed
23 regulatory actions. The record consisting of
24 the transcript of tonight's hearing, all

1 comments, all exhibits, and eventually the
2 Hearing Officer's Report, will be received
3 and reviewed by Secretary Garvin.

4 He will ultimately issue an order
5 following that review process, and that order
6 will contain not only his decision, but the
7 reason therefor.

8 It's also important to note, number
9 five, no decision has already been made
10 regarding this proposed action, nor will any
11 decision be made tonight.

12 The record will remain open through
13 November 11th so that we have an opportunity
14 to hear from the public with regard to these
15 proposed actions. And all will be considered
16 by the Secretary equally.

17 Comments may be submitted through a
18 comment form link on the hearing page, via
19 e-mail to the
20 DNRECHearingComments@delaware.gov, or via the
21 United States Postal Service at the physical
22 address listed not only on the hearing page
23 but on the public notices previously issued
24 in this matter as well.

1 Again, please note that comments to
2 DNREC may not be submitted using social media
3 platforms such as Twitter, Facebook, YouTube,
4 or text messaging.

5 Lastly, please remember that all
6 comments, whether they came in prior to the
7 hearing, tonight at the hearing, or
8 subsequent to the hearing, between now and
9 November 11th, as long as they are germane to
10 the subject matter of the hearings tonight,
11 they all bear the same weight.

12 It doesn't matter whether they come
13 in physically through the United States Post
14 Office or whether they come in
15 electronically. They are all considered
16 equally. They will all be reviewed by the
17 Secretary prior to his making a decision in
18 this matter.

19 And, again, the ultimate decision
20 regarding whether these matters get
21 promulgated is Secretary Garvin's. This
22 hearing tonight merely acts as a mechanism to
23 enable the Department to thoroughly vet this
24 action to the public and to let the public

1 know the various ways by which they may
2 submit comments for the Secretary's
3 consideration.

4 Okay. That being said, I am going
5 to turn it over again to Taylor. Taylor, I'm
6 going to make you presenter again, so that
7 should open up your window to share your
8 screen. Yes?

9 MS. ENGLERT: Yes.

10 MS. VEST: There you go.

11 MS. ENGLERT: Thank you, Lisa.

12 Good evening. My name is Taylor Englert, and
13 I am an engineer with the Airshed Planning
14 and Inventory Program for the Division of Air
15 Quality in the Delaware Department of Natural
16 Resources and Environmental Control.

17 The purpose of tonight's hearing is
18 to receive public comments on the proposed
19 updates to Title 7 of the Delaware
20 Administrative Code, Regulation 1102,
21 "Permits."

22 Delaware state law requires air
23 quality Natural Minor permits for equipment
24 which has the potential to discharge air

1 contaminants into the atmosphere.

2 Regulation 1102 establishes
3 permitting procedures and requirements for
4 these Natural Minor permits.

5 Natural Minor permits are issued to
6 all sources whose uncontrolled emissions
7 exceed 10 pounds per day. Sources whose
8 total uncontrolled emissions exceed Major
9 Source emission levels require an additional
10 permit called a Title V operating permit.

11 The objective of the proposed
12 amendments is to update the public notice
13 publication requirements for Natural Minor
14 permits. This is to maintain consistency
15 with the wording of the Environmental
16 Protection Agency's current federal
17 regulations and the proposed wording of Title
18 7 of the Delaware Administrative Code,
19 Regulation 1130, "Title V State Operating
20 Permit Program."

21 The Environmental Protection Agency
22 updated the list of contents to be identified
23 in public notices for Title V permits in
24 their final rule, which is published on

1 October 18, 2016 in Volume 81 of the Federal
2 Register, beginning on Page 71,613.

3 These changes were codified in
4 Title 40 of the Code of Federal Regulations,
5 Section 70.7(h)(2).

6 Section 12.0 of Regulation 1102 was
7 adopted to implement public notification
8 requirements for Natural Minor permits.

9 The regulation requires the
10 Division of Air Quality to provide for public
11 participation and comment when reviewing and
12 issuing permits.

13 There is also a requirement to
14 advertise permit application information in
15 Delaware newspapers in accordance with
16 Delaware state statute, Title 7, Chapter 60,
17 Section 6003 and 6004.

18 Members of the public also have an
19 opportunity to request a hearing for the
20 permit application if one has not already
21 been scheduled.

22 The Division of Air Quality is
23 proposing to amend the public notice
24 requirements in Regulation 1102 for Natural

1 Minor permits in order to standardize the
2 public notice requirements for both Title V
3 Operating and Natural Minor permits in
4 Delaware.

5 The proposed amendments to
6 Subsections 12.3.2 and 12.4.2 include adding
7 the following: The name, address, and
8 telephone number of the DNREC staff, or an
9 e-mail or website address, from whom
10 interested parties can contact for additional
11 information, and the time and place of any
12 hearing that may be held.

13 The changes to these sections are
14 shown on the slide. Underlines show text
15 that is being added.

16 Now we would like to enter ten
17 exhibits shown on the next two slides into
18 the public record to support the proposed
19 amendments to Title 7 of the Delaware
20 Administrative Code, Regulation 1102,
21 "Permits".

22 This completes the Department's
23 presentation of proposed amendments to
24 Regulation 1102. Thank you.

1 MS. VEST: Great. Thank you so
2 much. Again, just bookkeeping for the
3 record. With the list of exhibits that the
4 Department is displaying at this point, are
5 these the same exhibits that are listed on
6 the hearing webpage dedicated to this matter
7 as Department's proposed exhibits?

8 MS. ENGLERT: Yes, they are.

9 MS. VEST: And have they been
10 changed or altered in any way since their
11 time of posting?

12 MS. ENGLERT: Yes. We corrected
13 minor errors in Exhibit 1, the technical
14 support document. We clarified the language
15 regarding applicability for a natural minor
16 permit.

17 MS. VEST: Okay. Thank you. And
18 so the amended one is what is presently up
19 there, and it is the one that has been
20 corrected? Correct?

21 MS. ENGLERT: Yes.

22 MS. VEST: Okay. Very good. Thank
23 you, Taylor. Let the record reflect that the
24 Department's proposed exhibits with regard to

1 proposed amendments to 7 Delaware Admin Code
2 1102, "Permits," are hereby incorporated into
3 the hearing record. And, again, thank you,
4 Taylor, for that.

5 At this time I am going to turn it
6 over to another staff member who, hopefully,
7 will have better luck now with regard to the
8 comments.

9 I once again want to note for the
10 record that the Department follows a
11 preregistration protocol, that members of the
12 public are more than welcome to offer comment
13 live at our hearings, provided that they
14 preregister to do so. We did in this
15 instance have Emily Rodden from New Castle
16 Prevention Coalition register for this
17 hearing tonight.

18 So, once again, Emily, hopefully
19 your mic has been unmuted. Do you wish to
20 offer any comments with regard to the Section
21 1102 regs that were just presented?

22 MS. RODDEN: Sure.

23 MS. VEST: Okay. Just checking. I
24 don't want to presume anything.

1 I would ask Megan to try to put her
2 screen up again. If it doesn't work, I think
3 WebEx is being kind of glitchy tonight for
4 some reason, and I apologize for that. We
5 will try to put the timer up, but we are also
6 keeping track of the three minutes, you know,
7 manually as well.

8 MEGAN: This is Megan. I do not
9 have access to share my screen again. I can
10 share the document, but I cannot share the
11 screen.

12 MS. VEST: You know what? Let's
13 not worry about it. We will just do it
14 manually. Thanks for trying again.

15 MEGAN: Okay.

16 MS. VEST: Emily, if you are
17 unmuted, you may proceed when ready.

18 MS. RODDEN: Great. The only
19 comment that I am going to have is I think
20 the amendments are good to include the
21 website and the additional hearings.

22 But the thing that I thought about
23 was if there was some way to inform community
24 members, as well.

1 I understand that that is what the
2 newspaper and the website are for; but, you
3 know, if people, people aren't looking in
4 those places, I guess my thought is if there
5 was some way to send these updates to like
6 community leaders, um, members of non-profits
7 in the area, or like known community like
8 advisors, that someone could go to, they
9 could disseminate this information to other
10 people.

11 I don't know if that's possible to
12 put that into the writing of the amendment,
13 but that's my only comment.

14 MS. VEST: Okay. Well, again, we
15 appreciate it. The Department appreciates
16 you taking the time to offer the comment.
17 And it will be contained in the court
18 reporter's transcript. And thank you again.

19 So at this point, Megan, I'm just
20 going to ask you to flip it back to me for
21 hosting so we can wrap this matter up. Thank
22 you.

23 And, again, thanks to everyone for
24 bearing with us. I don't know why WebEx is

1 being difficult this afternoon or this
2 evening, but it is, but we will get through
3 it.

4 That is basically going to conclude
5 the portion of the hearing tonight that
6 concerns the proposed amendments to 7
7 Delaware Admin Code 1102 "Permits."

8 Again, the record will remain open
9 not only for this particular section but for
10 all three sets of regs that we are dealing
11 with tonight. The public can feel free to
12 comment anytime between now and when the
13 record closes for receipt of additional
14 comment on November 11, 2021.

15 I want to thank everybody for
16 attending. Again, if you want to hear about
17 the last set of regs, just stay tuned, but
18 for now we are going to close this portion of
19 the proceedings with regard to this second
20 set.

21 The meeting is adjourned.

22 And forth benefit of the court
23 reporter, again that will conclude the second
24 transcript. And now we can move into the

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last set.

So, hopefully, I'm not moving too fast for the court reporter, but I'm going to go ahead and start that.

(Concluded at 6:40 p.m.)

- - -

CERTIFICATE

1
2 I, Lorena J. Hartnett, a Notary Public and
3 Registered Professional Reporter, do hereby certify
4 that the foregoing is an accurate and complete
5 transcription of the proceeding held at the time and
6 place stated herein, and that the said proceeding
7 was recorded by me and then reduced to typewriting
8 under my direction, and constitutes a true record of
9 the testimony given by said witnesses.

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

15 IN WITNESS WHEREOF, I have hereunto set my
16 hand and affixed my seal of office on this 2nd day
17 of November 2021.

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23 Lorena J. Hartnett
24 Registered Professional Reporter

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