

HEARING OFFICER'S REPORT

TO: The Honorable Shawn M. Garvin
Cabinet Secretary, Department of Natural Resources and Environmental Control

FROM: Lisa A. Vest
Regulatory Specialist, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: **Proposed Amendments to 7 DE Admin. Code 1103: *Ambient Air Quality Standards* (Hearing Docket No. 2021-R-A-0011)**

DATE: March 10, 2022

I. BACKGROUND AND PROCEDURAL HISTORY:

A virtual public hearing was held on Wednesday, October 27, 2021, at 6:00 p.m. via the State of Delaware Cisco WebEx Meeting Platform by the Department of Natural Resources and Environmental Control (“DNREC” or “Department”) to receive comment on proposed regulatory amendments to 7 DE Admin. Code 1103: *Ambient Air Quality Standards* (“Amendments”). The Department’s Division of Air Quality (“DAQ”) is proposing to amend 7 DE Admin. Code 1103 to (1) update the National Ambient Air Quality Standards (“NAAQS”) for ground level ozone; (2) update the Code of Federal Regulations (“CFR”) reference dates for all NAAQS; and to (3) remove the sulfur dioxide (“SO₂”) 24-hour and annual primary standards that have been revoked by the United States Environmental Protection Agency (“EPA”). Each update is being proposed by the Department so that Delaware’s regulations maintain consistency with the EPA’s current federal regulations.

The NAAQS are established by the EPA for six “criteria air pollutants:” ground-level ozone, SO₂, particulate matter, nitrogen oxide, carbon monoxide, and lead. The NAAQS have both primary and secondary standards. Primary standards are required to protect public health, while secondary standards protect the environment. The Clean Air Act (“CCA”) requires states to implement standards and determine whether they are in compliance with the NAAQS. The CCA also requires the EPA to periodically review the science upon which the standards are based and the standards themselves, to determine whether the standards should be revised.

In 2015 the EPA promulgated revised primary and secondary ozone NAAQS for ground-level ozone via the EPA's final rule, published on October 26, 2015, as set forth in Volume 80 of the Federal Register ("FR"), beginning on page 65,292. In 2010, the EPA reviewed the NAAQS for SO₂ and determined that the available science showed that a shorter-term one-hour average measurement of SO₂ would be more protective of human health. Consequently, the EPA revoked the SO₂ 24-hour primary standard and the SO₂ annual primary standard. The final rule was published on June 22, 2010, in Volume 75 of the FR, beginning on Page 35,520.

The above changes were subsequently codified in Title 40 of the CFR, Sections 50.19 and 50.17, respectively. In addition to updating these standards, the proposed regulatory Amendments also include updating the federal reference dates, so that Delaware's regulation references the most current methodologies set by the EPA for measuring criteria pollutant levels.

Currently, the primary and secondary ozone NAAQS as set forth in 7 DE Admin. Code 1103, Section 6.0, reflect an outdated standard of 0.075 parts per million ("ppm"). The federal regulatory standards, established by EPA in 2015, are set at 0.070 ppm. This proposed regulatory action will amend the current ozone standards in Delaware's regulations to 0.070 ppm to mirror that of EPA's current regulations and will update the CFR reference dates throughout the rule to July 1, 2019, to ensure references to methodologies for measuring criteria pollutant levels are the most recent.

Lastly, as noted above, the Department also proposes to remove the SO₂ 24-hour and annual primary standards that have been revoked by the EPA. Again, each update referenced above is being proposed by the Department so that Delaware's regulations maintain consistency with the EPA's current federal regulations (40 CFR 50.19: 80 FR 65292 and 40 CFR 50.17: 75 FR 35520).

The Department has the statutory basis and legal authority to promulgate these proposed Amendments, pursuant to 7 *Del.C.* §6010(a) and (c). The Department published the initial proposed Amendments in the October 1, 2021, *Delaware Register of Regulations* (“*Register*”). Accordingly, the Department held the public hearing regarding this regulatory action on October 27, 2021.

No comments were received by the Department regarding the proposed Amendments to 7 DE Admin. Code 1103. It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

II. SUMMARY OF THE PUBLIC HEARING RECORD:

The Record consists of the following documents:

- (1) a verbatim transcript; and
- (2) ten documents introduced by Department staff at the public hearing held on October 27, 2021 and marked by this Hearing Officer at the time of the hearing accordingly as Department Exhibits 1-10.

The Department’s person primarily responsible for the drafting and overall promulgation of the proposed Amendments, Taylor Englert, Engineer with the Airshed Planning and Inventory Program for the DAQ, developed the Record with the relevant documents in the Department’s files.

III. RECOMMENDED FINDINGS AND CONCLUSIONS:

The Department is currently proposing the adoption of the aforementioned proposed amendments to 7 DE Admin. Code 1103, *Ambient Air Quality Standards*. As noted previously, the proposed Amendments will update the Department’s DAQ regulations regarding (1) the NAAQS for ground level ozone; (2) the CFR reference dates for all NAAQS; and will (3)

remove the SO₂ 24-hour and annual primary standards that have been revoked by the EPA. Each update is being proposed by the Department so that Delaware's regulations maintain consistency with the EPA's current federal regulations.

Based on the Record developed in this matter, I find and conclude that the Department has provided appropriate reasoning regarding the need for the proposed Amendments. I further find that the proposed Amendments will enable the Department to ensure consistency with the EPA's current federal regulations. Accordingly, I recommend promulgation of the proposed amendments to 7 DE Admin. Code 1103, *Ambient Air Quality Standards*, in the customary manner provided by law.

Further, I recommend the Secretary adopt the following findings and conclusions:

1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code 1103, *Ambient Air Quality Standards*, pursuant to 7 *Del.C.* §6010(a) and (c);
2. The Department has jurisdiction under its statutory authority to issue an Order adopting the proposed Amendments as final;
3. The Department provided adequate public notice of the proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same subsequent to the time of the public hearing (through November 11, 2021), in order to consider all public comment on the same before making any final decision;

4. Promulgation of the proposed Amendments will enable the Department to update the Department's DAQ regulations regarding the NAAQS for ground level ozone and the CFR reference dates for all NAAQS, and will also remove the SO₂ 24-hour and annual primary standards that have been revoked by the EPA, so that Delaware's regulations maintain consistency with the EPA's current federal regulations;

5. The Department has reviewed the proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and believes the same to be lawful, feasible, and desirable, that it will not establish reporting requirements or substantive additional costs for individuals or small businesses, and that the recommendations as proposed should be applicable to all Delaware individuals or small businesses equally;

6. The Department's proposed Amendments, as initially published in the October 1, 2021, *Delaware Register of Regulations*, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, the proposed Amendments should be approved as final Amendments, which shall go into effect ten days after publication in the next available issue of the *Delaware Register of Regulations*;

7. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and

8. The Department shall submit the proposed Amendments as final Amendments to the *Delaware Register of Regulations* for publication in its next available issue and shall provide such other notice as the law and regulation require, as the Department determines is appropriate.

/s/Lisa A. Vest
LISA A. VEST
Regulatory Specialist

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Attachments:
Appendix A: Proposed Reg. Amendments (7 DE Admin. Code 1103: *Ambient Air Quality Standards*)