

1 DNREC Virtual Public Hearing
2 Proposed Revisions to Delaware's
3 Second Particulate Matter Limited Maintenance Plan
4 Docket No. 2022-R-A-0006

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6
7 Moderated by Theresa Smith

8 Tuesday, January 23, 2024

9 6:05 p.m.

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12 Remote Proceeding
13 Division of Air Quality
14 Natural Resources and Environmental Control
15 89 Kings Highway
16 Dover, DE 19901
17 (302) 739-9037
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22 Reported by: Andrew Weader

23 JOB NO.: 6380522
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A P P E A R A N C E S

List of Attendees:

Theresa Smith, State of Delaware Regulatory

Specialist/Hearing Office, Office of the Secretary

Administrative Law Services Section

Tanesha Perry, State of Delaware Department of Natural

Resources and Environmental Control, Administrative

Specialist III

Kelsey Pangman, Environmental Scientist with the

Airshed Planning and Inventory Group, Division of Air

Quality in the Delaware Department of Natural

Resources and Environmental Control

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E X H I B I T S

NO. DESCRIPTION PAGE

Exhibit 1 2006 Particulate Matter 2.5
Daily National Ambient Air
Quality Standard, Final Rule 19

Exhibit 2 2006 Particulate Matter 2.5
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Exhibit 3 Register Notice for the
Proposed revisions to Delaware's
Second Limited Maintenance Plan,
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Exhibit 4 Affidavit and Legal Notice,
December 17, 2023, Delaware State
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Exhibit 5 Affidavit and Legal Notice,
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8		Public Hearings, December 17, 2023	19
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11		Maintenance Plan, Proposed by the	
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P R O C E E D I N G S

MS. SMITH: Good evening. We will now begin the hearing. The time is now 6:05 p.m. on January 23, 2024.

For ADA compliance, tonight's formal proceeding offers closed captioning in a variation of languages. Before I begin my introductory remarks, I will hand it over to Tanesha Perry with the Department's Office of the Secretary to go over the closed captioning features, which is available in multiple languages on the Zoom platform.

Ms. Perry, you may begin.

MS. PERRY: Hello. My name is Tanesha Perry; I am the administrative specialist with the Office of Secretary. I'm here to assist the hearing officer tonight. I'd like to make sure everyone is aware that the Zoom platform we are using has the ability for closed captioning in multiple languages. To start closed captioning, if you're using a computer, at the bottom of the screen you should see "show captions" button. If you don't see the "show captions" button, you may have to select the three dots that say, "more."

Once you find the "show captions"

1 button, you should click the carrot pointing up, which
2 will bring your translation options. You can select
3 your preferred language from there. If your preferred
4 language isn't listed, you can select "more," and all
5 the languages will be listed.

6 If you're on a smartphone, at the
7 bottom of your screen, select the "captions" button
8 indicated by "CC." If your preferred language is not
9 listed at the bottom, you may have to select the three
10 dots that say, "more." You should then select
11 "meeting settings" with the gear icon next to it.
12 Once the settings page comes up, located at the very
13 bottom, select "translation language." From there,
14 you'll be able to select your preferred language.
15 Then select "done" at the top right corner, and then
16 "done" again. If the captions are not automatically
17 popping up yet, you may need to select "captions"
18 again, and select "show captions."

19 Now, I'll turn it back over to the
20 hearing officer, Theresa Smith.

21 MS. SMITH: Thank you, Ms. Perry.

22 MS. PERRY: My name is Theresa Smith,
23 and Secretary Garvin has appointed me to serve as the
24 hearing officer for tonight's formal proceeding. We

1 are here this evening to provide a virtual platform
2 for the State of Delaware's Department of Natural
3 Resources and Environmental Control to conduct its
4 virtual hearing on proposed revisions to Delaware's
5 State Implementation Plan to address Delaware second
6 Particulate Matter Limited Maintenance Plan under the
7 2006 24-hour Fine Particulate Matter National Ambient
8 Air Quality Standard, docket No. 2022.R.A.0006.

9 The purpose of the hearing is to build
10 a record in regard to the hearing matter by providing
11 a formal legal platform for the public to learn about
12 the proposed revisions, and to enable the public to
13 offer live comment. First and foremost, this hearing
14 is being conducted virtually; no one is together in
15 the same room. Everyone is participating
16 independently at their own respective locations.
17 While we are not physically gathered tonight however,
18 Zoom does generate a list of those who are virtually
19 present for this proceeding, so the Department will
20 have a record of those who have electronically joined
21 this event.

22 There is a court reporter virtually
23 present who will prepare a verbatim transcript of the
24 hearing, pursuant to the statutory requirement for

1 DNREC to have the same prepared. And as always, that
2 transcript will be posted on the hearing webpage
3 dedicated to this matter as soon as it is received.

4 In addition, I would encourage those
5 who are attending the hearing to also visit the
6 hearing webpage dedicated to this matter for
7 additional details concerning the proposed revisions
8 to the state implementation plan. The hearing record
9 presented tonight, along with other related documents
10 are posted on the Department's hearing webpage
11 dedicated to this matter. The hearing webpage can be
12 found online under the administrative law section of
13 DNREC's hearing website that will be listed towards
14 the end of tonight's hearing.

15 At the conclusion of my introductory
16 remarks, I will be turning the hearing over to the
17 department staff to provide their presentation for the
18 record being generated in this matter. Whereas the
19 Department would then open the verbal comment portion
20 of the hearing following the Department's
21 presentation, the Department did not receive
22 registration for verbal comment tonight.

23 It is important to note that the
24 Department offered the opportunity to register to

1 provide verbal comment, as noticed in the legal ads
2 and online. Those that wished to have provided a
3 verbal comment would have had to register by 12:00
4 p.m. today, to which there were no registrants by that
5 time.

6 Before we begin the presentations,
7 please be advised of the following protocols that
8 remain in place for all DNREC public hearings. All
9 comment received must be limited solely to the subject
10 matter of tonight's hearing. All comments pertinent
11 to the subject matter of the virtual hearing will be
12 incorporated into the record being generated in this
13 matter.

14 In light of the Administrative
15 Procedures Act, and to ensure that everyone who wishes
16 to offer comment for the Secretary's consideration is
17 accommodated, the Department is required to, at a
18 minimum, provide a comment period of 15 days after the
19 hearing. There is only one authentic record of this
20 remote proceeding tonight, and it is the official
21 court reporter's verbatim transcript. The statutory
22 purpose of tonight's hearing is to build a record with
23 regard to the Department's proposed actions.

24 A record consisting of the transcript

1 of the hearing tonight, all written comment, all
2 exhibits, and eventually the hearing officer's report,
3 will be reviewed by Secretary Garvin. The Secretary
4 will ultimately issue an order following that review
5 process containing his decision on this matter and the
6 reasons therefor.

7 Per DNREC standard hearing protocols,
8 there will be no Q&A or chat session permitted during
9 the hearing. It is important to note that no decision
10 has already been made by the Department, nor will a
11 decision be made tonight with regard to the proposed
12 migratory matter. As previously stated, DNREC wishes
13 to ensure that everyone is enabled to offer their
14 comments for inclusion into the record being generated
15 in this matter.

16 As it is in the legal ads and online,
17 the Department stated that the public comment period
18 will be open through February 7, 2024. Comments may
19 be submitted through a comment form link on the
20 hearing webpage via e-mail to
21 dnrechearingcomments@delaware.gov, or via the of the
22 U.S. Postal Service at the physical address for DNREC
23 indicated on the hearing webpage and the public
24 notices previously issued in this matter.

1 Written comments to DNREC may not be
2 submitted using social media platforms such as
3 Twitter, Facebook, YouTube, or text messaging. Please
4 remember that all comment received either through USPS
5 or via the electronic mechanisms noted just now, as
6 long as is received by the Department on or before
7 February 7th, will bear the exact same weight and will
8 be considered equally by the secretary prior to making
9 his final decision in this matter.

10 While all comments are appreciated,
11 each comment must be limited solely to the subject
12 matter of tonight. Multiple comments saying the same
13 thing do not outweigh one singular comment. Simply
14 put, comments are not votes; a single, well supported
15 comment may carry more weight than 1,000 form letters.
16 I also note that only comments submitted directly to
17 DNREC and entered by myself into the formal hearing
18 record in this matter will be posted on the hearing
19 webpage and considered by the Department as a part of
20 his decision process.

21 The Department has not partnered with
22 any outside organizations or websites to assist with
23 the public submission of comments in this matter. So
24 again, only submit comments to DNREC directly.

1 Lastly, the ultimate decision regarding this matter is
2 made by DNREC Secretary Garvin. This formal hearing
3 tonight acts as a mechanism to enable Department to
4 thoroughly vet the hearing matter to the public and to
5 let the public know the various ways which comment may
6 be submitted for Secretary Garvin's consideration if
7 so desired.

8 I will now hand it over to Kelsey
9 Pangman, with the Division of Air Quality, to provide
10 the Department's present presentation.

11 Kelsey, you may begin.

12 MS. PANGMAN: Good evening. My name is
13 Kelsey Pangman, and I am an environmental scientist
14 with the Airshed Planning and Inventory Group for the
15 Division of Air Quality in the Delaware Department of
16 Natural Resource and Environmental Control.

17 The purpose of this hearing is to
18 receive public comment on Delaware's second Fine
19 Particulate Matter Limited Maintenance Plan, to
20 address the 2006 24-hour National Ambient Air Quality
21 Standards for fine particulate matter. Delaware's
22 State Implementation Plan identifies how Delaware will
23 attain and maintain air quality, as defined in Title
24 40 of the Code of Federal Regulations as Part 52,

1 Subpart I.

2 Particulate matter is defined as a
3 mixture of solid particles and liquid droplets found
4 in the air. This maintenance plan focuses on the
5 24-hour standard for fine particulate matter less than
6 2.5 microns, also referred to as Particulate Matter
7 2.5. Reduction of fine particles, it's critical to
8 human health as they can penetrate deep into the lungs
9 as well as degrade environmental health by reducing
10 visibility.

11 These Federal Clean Air Act, as amended
12 by the Clean Air Act Amendments of 1990, requires all
13 areas of the nation to attain and maintain compliance
14 with the National Ambient Air Quality Standards.

15 These Federal standards are designed to protect the
16 public health and welfare from six criteria
17 pollutants, one of which is fine particulate matter.

18 On October 7, 2006, the Environmental
19 Protection Agency promulgated a 24-hour standard of 35
20 micrograms per meter cubed, based on a 3-year average
21 of the 98th percentile of 24-hour concentrations, also
22 known as the 2006 24-hour National Ambient Air Quality
23 Standard.

24 Promulgation of a revised National

1 Ambient Air Quality Standard triggers a requirement
2 for the Environmental Protection Agency to designate
3 areas as nonattainment, attainment, or unclassifiable,
4 and to classify the nonattainment areas based upon the
5 severity of nonattainment at the time of designation.

6 MS. SMITH: Kelsey, can I interrupt you
7 really quick?

8 MS. PANGMAN: Yes.

9 MS. SMITH: The date, October 7th, you
10 said, is that October 17th or October 7th?

11 MS. PANGMAN: Oh, October 17th. Thank
12 you.

13 MS. SMITH: Okay, just want to make
14 sure. Thank you.

15 MS. PANGMAN: All right. So slide 5.
16 On November 13, 2009, the Environmental Protection
17 Agency published the area designations for the 2006
18 24-hour National Ambient Air Quality Standard. That
19 action, effective on December 14, 2009, designated the
20 Philadelphia area as nonattainment for the 2006
21 24-hour National Ambient Air Quality Standard, based
22 on 2006 to 2008 monitoring data.

23 The Philadelphia Nonattainment Area
24 includes New Castle County in Delaware; Burlington,

1 Camden, and Gloucester Counties in New Jersey; and
2 Bucks, Chester, Delaware, Montgomery, and Philadelphia
3 Counties in Pennsylvania. New Castle County was
4 designated as non-attainment for this new standard.
5 Kent and Sussex Counties were designated as attainment
6 for this new standard.

7 Section 175A of the Clean Air Act
8 requires Maintenance Plans for areas that are
9 redesignated as attainment. These plans identify how
10 a state will attain and maintain air quality. The
11 limited maintenance plan is a tool that allows certain
12 nonattainment and maintenance areas to provide for
13 maintenance under the Clean Air Act section 175A,
14 based on an analysis of current and historical air
15 quality data, rather than modeling or emissions
16 projections.

17 The only route to recognized attainment
18 of the National Ambient Air Quality Standard and
19 removal of nonattainment status and requirements is a
20 formal redesignation to attainment, including
21 submittal of a maintenance plan. On November 27,
22 2012, the State of Delaware submitted the first
23 ten-year maintenance plan for the
24 Philadelphia-Wilmington, Pennsylvania, New Jersey,

1 Delaware non-attainment area through 2025, and
2 requested that the Environmental Protection Agency
3 redesignate the moderate area to attainment for the
4 2006 24-hour Particulate Matter 2.5 National Ambient
5 Air Quality Standard.

6 On August 5, 2014, the Environmental
7 Protection Agency approved the maintenance plan and
8 concurrently redesignated the area to attainment for
9 the Particulate Matter 2.5 National Ambient Air
10 Quality Standard, effective September 5, 2014. This
11 is the second ten-year maintenance plan, which is a
12 State Implementation Plan revised for the Delaware
13 portion of the Philadelphia-Wilmington,
14 Pennsylvania-New Jersey-Delaware for fine particulate
15 matter. Each plan covers a ten-year period from 2025
16 to 2035. This proposed second limited maintenance
17 plan ensures that good Particulate Matter 2.5 air
18 quality will be maintained through 2035.

19 This second maintenance plan includes
20 Delaware's 2008 attainment year inventory to identify
21 the level of emissions sufficient to achieve the
22 National Ambient Air Quality Standards and utilizes
23 the 2017 emissions inventory to show emissions
24 reductions. It includes a description of the

1 Particulate Matter 2.5 monitoring networks, control
2 measures needed to maintain the 2006 24-hour standard,
3 a contingency plan with specific control measures that
4 could be implemented if the area fails to meet the
5 2006 24-hour Particulate Matter 2.5 National Ambient
6 Air Quality Standards, and a maintenance demonstration
7 that shows that the area has continued to meet the
8 National Ambient Air Quality Standards.

9 Now we would like to enter ten
10 exhibits, shown on the next slides, into the public
11 record to support the proposed revision to Delaware's
12 State Implementation Plan.

13 Exhibit 1, 2006 Particulate Matter 2.5
14 Daily National Ambient Air Quality Standard, Final
15 Rule.

16 Exhibit 2, 2006 Particulate Matter 2.5
17 Daily National Air Quality Standard, Implementation
18 Rule.

19 Exhibit 3, Register Notice for the
20 proposed revisions to Delaware's Second Limited
21 Maintenance Plan, published in Delaware's Register of
22 Regulations on January 1, 2024.

23 Exhibit 4, Affidavit and Legal Notice
24 in the December 17, 2023, News Journal that advertised

1 today's hearing.

2 Exhibit 5, Affidavit and Legal Notice
3 in the December 17, 2023, Delaware State News that
4 advertised today's hearing.

5 Exhibit 6, notice for today's hearing
6 on the State of Delaware Public Meeting Calendar,
7 December 17, 2023.

8 Exhibit 7, legal notice for today's
9 hearing, as posted on the website for Delaware Natural
10 Resource and Environmental Control Public Hearings,
11 dated December 17, 2023.

12 Exhibit 8, Proposed Delaware's Second
13 Particulate Matter Limited Maintenance Plan, proposed
14 by the Department in today's public hearing.

15 Exhibit 9, appendices to proposed
16 Delaware's Second Particulate Matter Limited
17 Maintenance Plan, proposed by the Department in
18 today's public hearing.

19 Exhibit 10, the Department's
20 presentation at today's hearing.

21 This completes the Department's
22 presentation. Thank you.

23 MS. SMITH: Thank you, Kelsey.

24 I just want to make clarification to

1 Exhibit No. 4 and No. 5 that's posted online. What
2 was presented was the News Journal, first, and
3 Delaware State, second, I believe. The way it was --
4 it's actually posted as Exhibit 4, Affidavit and Legal
5 Notice, and December 17th, Delaware State News as
6 Exhibit 4. And Exhibit 5, Affidavit and Legal Notice,
7 December 17, 2023, News Journal. So those are just
8 swapped; no big deal, I just wanted to clarify that
9 for the record.

10 I have received all exhibits, Exhibits
11 1 through 10 electronically, and I hereby mark those
12 exhibits as Department's Exhibits 1 through 10.

13 (Exhibits 1 through 10 were marked for
14 identification.)

15 I appreciate your presentation, Ms.
16 Pangman.

17 As the Department received no
18 registration for public comment by 12:00 p.m. today,
19 there will not be a verbal comment portion of the
20 hearing. Again, if you wish to submit public comments
21 in writing, please follow the instructions that were
22 given in the introductory remarks, and it is also
23 available on the screen for those who are virtually
24 present.

1 The hearing record will remain open
2 through February 7, 2024, for comment. As previously
3 mentioned, the court reporter's verbatim transcript
4 will be posted on the hearing webpage dedicated to
5 this matter as soon as it is received.

6 I want to thank you all for attending
7 tonight. The hearing is now concluded at 6:24 p.m.

8 (Whereupon, at 6:24 p.m., the
9 proceeding was concluded.)

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CERTIFICATE

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I, ANDREW WEADER, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Andrew Weader

ANDREW WEADER

Notary Public in and for the
State of Delaware

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CERTIFICATE OF TRANSCRIBER

I, MOLLY MCCOLM, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



MOLLY MCCOLM

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