

1 DELAWARE DEPARTMENT OF NATURAL RESOURCES AND
2 ENVIRONMENTAL CONTROL (DNREC)
3 DIVISION OF AIR QUALITY PROPOSED AMENDMENTS TO:
4 7 DE ADMIN. CODE 1130
5 "TITLE V STATE OPERATING PERMIT PROGRAM"

6
7 Docket No. 2023-R-A-0015

8
9
10 Moderated by Theresa Smith

11 Thursday, April 25, 2024

12 6:00 p.m.

13
14
15 Remote Proceeding

16 DNREC

17 89 Kings Highway

18 Dover, DE 19901

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23 Reported by: Andrew Weader

24 JOB NO.: 6601008

A P P E A R A N C E S

List Of Attendees:

Theresa Smith, Hearing Officer

Jakim Mohammaed, Public Commenter

Taylor Englert, DNREC Division of Air Quality

Monica Fibelkorn, DNREC's Office of the Secretary

Rena Hold, DNREC Division of Air Quality

Valerie Gray, DNREC Program Administrator

Jacquelyn Cuneo, DNREC Division of Air Quality

Kelsey Pangman, DNREC Division of Air Quality

Tyler Phommachanh, Public Attendee

Genevieve Cordeiro, Public Attendee

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Mr. Jakim Mohammaed

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1 P R O C E E D I N G S

2 MS. SMITH: Good evening. I believe
3 everyone is now connected and ready to start the
4 virtual public hearing. My name is Theresa Smith, and
5 Secretary Garvin has appointed me to serve as the
6 hearing officer for tonight's formal proceeding.
7 Before I begin my introductory remarks, I have
8 Ms. Monica Fibelkorn with the DNREC's Office of the
9 Secretary to provide instructions on the use of closed
10 captioning feature available in a variation of
11 languages through the Zoom platform.

12 Ms. Fibelkorn, please begin.

13 MS. FIBELKORN: Hello. My name is
14 Monica Fibelkorn. I'm the administrative specialist
15 with the Office of the Secretary. I'm here to assist
16 the hearing officer tonight.

17 I'd like to make sure everyone is aware
18 that the Zoom platform we're using has the ability for
19 closed captioning in multiple languages. To start
20 closed captioning, if you're using a computer, at the
21 bottom of your screen, you should see a "show
22 captions" button. If you don't see the "show
23 captions" button, you may have to select the three
24 dots that say "more."

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

7 If you're on a smartphone, at the
8 bottom of your screen, select the "captions" button
9 indicated by the "CC." If your preferred language is
10 not listed at the bottom, you may have to select the
11 three dots that say "more." You should then select
12 "meeting settings" with the gear icon next to it.

13 Once the settings page comes up,
14 located at the very bottom, select "translation
15 language." From there, you'll be able to select your
16 preferred language and then select "done" at the top
17 right corner and then "done" again.

18 If the captions are not automatically
19 popping up yet, you may need to select "captions"
20 again and select "show captions."

21 Now I'll turn it back over to the
22 hearing officer.

23 MS. SMITH: Thank you, Ms. Fibelkorn.

24 Thank you all for taking the time out

1 of your busy schedules to connect with us today.
2 Today is Thursday, April 25, 2024. We are here this
3 evening to provide a virtual platform for the state of
4 Delaware's Department of Natural Resources and
5 Environmental Control to conduct its virtual public
6 hearing on docket number 2023-R-A-0015. The proposed
7 revisions to 7DE Admin Code 1130, Title V, State
8 Operating Permit Program.

9 First and foremost, this hearing is
10 being conducted virtually; no one's together in the
11 same room, and everyone is participating independently
12 at their own respective locations. While we are not
13 physically gathered tonight, Zoom does generate a list
14 of those that are virtually present for the
15 proceedings. So the Department will have a record of
16 those who electronically join this event. At the
17 conclusion of my introductory remarks, I will be
18 turning the hearing over to the Department staff to
19 provide the presentation for the record being
20 generated in this matter.

21 Once the presentation concludes, those
22 persons who pre-registered in advance of the hearing
23 will be acknowledged and provided an opportunity to
24 offer comment on the proposed regulatory matter in

1 alignment with DNREC's standard comment hearing
2 protocols.

3 There is a court reporter virtually
4 present who will prepare a verbatim transcript of the
5 hearing pursuant to the statutory requirement for
6 DNREC to have the same prepared. And as always, that
7 transcript will be posted on the hearing webpage
8 dedicated to this matter as soon as it is received.

9 In addition, I would encourage those
10 who are attending the hearing to also visit the
11 hearing -- or also visit the hearing webpage dedicated
12 to this matter for additional details concerning the
13 proposed regulations. The hearing webpage can be
14 found online under the administrative law section of
15 DNREC's website that will be listed at the conclusion
16 of tonight's hearing. Before we begin the
17 presentation, please be advised of the following
18 protocols that remain in place for All DNREC public
19 hearings:

20 All comment received must be limited
21 solely to the subject matter of tonight's hearing.
22 All comments pertinent to the subject matter of the
23 virtual hearing will be incorporated into the record
24 being generated in this matter. In order to ensure

1 that everyone who wishes to offer comment for the
2 Secretary's consideration is accommodated, the record
3 in this matter shall remain open for a minimum of 15
4 days following tonight's proceeding.

5 There's only one authentic record of
6 this formal proceeding tonight, and it is the official
7 court reporter's verbatim transcript. The statutory
8 purpose of tonight's hearing is to build a record with
9 regard to the Department's proposed actions, a record
10 consisting of the transcript of the hearing tonight,
11 all written comments, all exhibits. And eventually my
12 hearing officer's report will be reviewed by Secretary
13 Garvin. The Secretary will ultimately issue an order
14 following that review process containing his decision
15 on this matter and the reasons therefor.

16 Per DNREC's standard hearing protocols,
17 there will be no Q&A or chat session permitted during
18 the hearing. Those who preregistered to offer verbal
19 comments will be acknowledged to speak at the
20 conclusion of the presentation portion of tonight's
21 proceeding. Additional instructions with regard to
22 the offering of verbal comment tonight will be
23 provided at that time.

24 It is important to note no decision has

1 already been made by the Department nor will a
2 decision be made tonight with regard to this proposed
3 regulatory matter. As previously stated, DNREC wishes
4 to ensure everyone is -- and able to offer their
5 comments for inclusion into the record being generated
6 in this matter.

7 In light of the Administrative
8 Procedures Act, the Department is required to, at a
9 minimum, provide a comment period of a minimum of 15
10 days after the hearing. As noticed in legal ads and
11 online, the Department stated that the public comment
12 period will be open through Thursday, May 10, 2024.

13 Comments may be submitted through a
14 comment form link on the hearing webpage via email to
15 dnrechearingcomments@delaware.gov or via U.S. Postal
16 Service at the physical address for DNREC indicated on
17 the hearing page and public notices previously issued
18 in this matter.

19 Written comments to DNREC may not be
20 submitted using social media platforms such as
21 Twitter, Facebook, YouTube, or text messaging.

22 Comments may be submitted -- I'm
23 sorry -- please remember all comments received through
24 USPS or via the electronic mechanisms noted just now,

1 as long as received by the Department on or before May
2 10th, will bear the exact same weight and will be
3 considered equally by the Secretary prior to making a
4 final decision on this matter.

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

12 I will now hand it over to Ms. Taylor
13 Englert with the Division of Air to provide the
14 Department's presentation.

15 MS. ENGLERT: Thanks, Theresa.

16 Good evening. My name is Taylor
17 Englert, and I am an engineer with the Air Toxic's
18 Transportation and Climate Group for the Division of
19 Air Quality in the Delaware Department of Natural
20 Resources and Environmental Control.

21 The purpose of this hearing is to
22 receive public comments on the proposed amendments to
23 Title VII of the Delaware Administrative Code
24 Regulation 1130, Title V, State Operating Permit

1 Program.

2 Title V of the Clean Air Act requires
3 the Environmental Protection Agency to implement air
4 quality operating permits called Title V Permits.
5 Title V Permits apply to sources whose emissions meet
6 or exceed major source levels. These sources are
7 typically large stationary sources like power plants,
8 refineries, or manufacturing plants. Title VII of the
9 Delaware Administrative Code, Regulation 1130, was
10 adopted to implement the federal requirements for
11 Title V Permits in Delaware and establish the
12 permitting procedures and requirements for these
13 sources.

14 Title V Permits require facilities to
15 have specific emission monitoring and reporting
16 requirements to demonstrate compliance that their
17 emissions are below the allowable limits.
18 Understanding that deviations in operation are
19 possible from failure in admission control equipment,
20 the Environmental Protection Agency included an
21 affirmative defense provision to allow for some
22 operational flexibility where permit limits have been
23 exceeded due to an emergency.

24 An emergency is defined as any

1 situation arising from sudden and reasonably
2 unforeseeable events beyond the control of the source,
3 including acts of God which the situation requires
4 immediate corrective action to restore normal
5 operation, and that causes the source to exceed a
6 technology-based emission limitation under the permit
7 due to unavoidable increases in emissions attributable
8 to the emergency.

9 The "affirmative defense" clause for
10 Title V Permits is currently included in Title VII of
11 the Delaware Administrative Code, Regulation 1130,
12 Section 6.0. On July 21, 2023, the Environmental
13 Protection Agency issued a final rule in Volume 88 of
14 the Federal Register, beginning on page 47,029, that
15 removed all emergency affirmative defense provisions
16 for state and federal operating permit programs from
17 Title 40 of the Code of Federal Regulations, Part
18 70.6G and 71.6G.

19 The rule indicates that Title V
20 Emergency Affirmative Defense Provisions should be
21 removed because they are inconsistent with the
22 Environmental Protection Agency's interpretation of
23 the enforcement structure of the Clean Air Act. And
24 the removal of the provisions will align with other

1 Environmental Protection Agency actions involving
2 affirmative defenses.

3 The objective of the proposed
4 amendments to Regulation 1130, Title V, State
5 Operating Permit Program, is to remove the affirmative
6 defense provisions and references for Title V Permits
7 to maintain consistency with the Environmental
8 Protection Agency's current federal regulations.

9 As referenced on the previous slide,
10 the removal of affirmative defense provisions for the
11 Title V program was precipitated by the Environmental
12 Protection Agency's final rule published on July 21,
13 2023. The rule is codified in Title 40 of the Code of
14 Federal Regulations, Section 706G, which had outlined
15 affirmative defense requirements for state operating
16 permitt programs.

17 The Department is proposing to remove
18 all affirmative defense provisions and references from
19 Title VII of the Delaware Administrative Code
20 Regulation 1130, Section 6.0, Permit Contents, to
21 align with the federal requirements. Subsection 6.0
22 of Regulation 1130 contains the standard permit
23 requirements, and subsection 6.3, 1.3, contains the
24 monitoring and related record-keeping and reporting

1 requirements.

2 Within subsection 6.1.3, 6.1.3.3.3.1
3 specifically lists emergency-related affirmative
4 defense reporting requirements. The Department
5 proposes to remove subsection 6.1.3.3.3.1, as shown by
6 the strikeout, deleting the following sentence: "Any
7 deviation resulting from emergency conditions as
8 defined in subsection 6.7 of this regulation shall be
9 reported within two working days of the date on which
10 the permittee first becomes aware of the deviation.

11 If the permittee wishes to assert the
12 affirmative defense authorized under 6.7 of this
13 regulation, the Department would reserve the section
14 to maintain numerical continuity of the subsequent
15 subsections of the regulation, as indicated with the
16 underlying bracketed word "reserved" on this slide.

17 Section 6.7, Emergencies, lists the
18 affirmative defense provisions. The Department
19 proposes to remove the entire subsection via strikeout
20 and also reserve the subsection to maintain numerical
21 continuity of the regulation. The deletion would
22 include the subsection 6.7.1 through 6.7.5.

23 An additional amendment is proposed to
24 Regulation 1130, Section 8.0 of Appendix A,

1 Insignificant Activities, to correct a typographical
2 error identified during the review of this regulation.
3 This correction is not substantive and does not change
4 the intent or purpose of the regulation.

5 Now we would like to enter 10 exhibits
6 shown on the next slides into the public record to
7 support the proposed amendments to Title VII of the
8 Delaware Administrative Code, Regulation 1130, Title V
9 State Operating Permit Program:

10 Exhibit 1, regulation 1130 technical
11 support document.

12 Exhibit 2, removal of Title V,
13 emergency Affirmative Defense Provisions, EPA, final
14 Rule.

15 Exhibit 3, start action notice approved
16 by the Department secretary on October 10, 2023.

17 Exhibit 4, registered notice and
18 proposed amendments to Title VII of the Delaware
19 Administrative Code, Regulation 1130, published in
20 Delaware Register of Regulations on April 1, 2024.

21 Exhibit 5, affidavit and legal notice
22 in the March 17th, 2024, Delaware State News that
23 advertised today's hearing,

24 Exhibit 6, affidavit and legal notice

1 in the March 17, 2024, News Journal that advertised
2 today's hearing.

3 Exhibit 7, notice for today's hearing
4 on the State of Delaware Public Meeting calendar dated
5 March 15, 2024.

6 Exhibit 8, notice for today's hearing
7 as posted on the website for DNREC public hearings
8 dated March 15, 2024.

9 Exhibit 9, regulatory flexibility
10 Analysis and Impact statement form published in
11 Delaware Register of Regulations April 1 a, 2024.

12 Exhibit 10, the Department's
13 presentation at today's hearing.

14 This completes the Department's
15 presentation. Thank you.

16 MS. SMITH: Thank you, Ms. Engler.

17 I have received the electronic versions
18 of the proposed exhibits by the Department and hereby
19 mark these exhibits as Department's Exhibits 1 through
20 10.

21 (Exhibit 1 through Exhibit 10 were
22 marked for identification.)

23 Now that the Department's presentation
24 has concluded, we will turn our attention to those who

1 pre-registered for opportunity to offer verbal comment
2 at tonight's hearing. Per the protocol set forth on
3 DNREC's public hearing webpage, those wishing to offer
4 verbal comment during the virtual hearing must have
5 preregistered with DNREC no later than noon on the day
6 of the hearing.

7 The order of those comments in tonight
8 was established as a result of the Department's
9 preregistration process. All comments -- all
10 commenters must adhere to the DNREC protocols with
11 regard to offering verbal comment, including making
12 their comments as concise as possible, respecting the
13 three-minute time limit, and limiting their comments
14 to the subject matter of this hearing.

15 There is only one preregistered
16 commenter tonight. To assist the commenter with
17 regard to the count -- to the amount of time they
18 have, there is a visual timer that will appear on the
19 screen to count down the three minutes. When it's the
20 speaker's time to comment, the speaker's audio will be
21 unmuted, their identity will be confirmed, and the
22 timer will begin. At the end of the three minutes,
23 the speaker's audio will be automatically placed back
24 on mute.

1 Please note there is no video feed of
2 the commenter. It is audio only. The comment will be
3 transcribed by the court reporter and thereby
4 incorporated into the hearing record.

5 If the speaker is not able to finish
6 their comment within the three-minute time period, the
7 Department does encourage them to submit their
8 completed comment in writing no later than May 10th.
9 The commenter will be granted no more than three
10 minutes of time to speak for any reason.

11 With that being said, may I have
12 Mr. Jakim Mohammed unmuted.

13 And please state your name and the
14 organization you are representing, if any, and then
15 you may begin your comment.

16 MR. MOHAMMAED: Jakim Mohammed,
17 citizen journalist. Good evening.

18 Tonight, I advocate for a critical
19 proposal upon -- put forth by this division, one that
20 concerns maintenance and consistency with federal
21 requirements. Affirmative action defense provisions,
22 while they may serve a purpose in certain contexts,
23 can introduce complexity and potential ambiguity into
24 regulation processes. By removing these provisions,

1 DNREC streamlines their approach, clarifying
2 expectations for all stakeholders involve. And
3 clarity is paramount, especially in matters of
4 compliance and regulation. It fosters understanding
5 and reducing the likelihood of misinterpretation and
6 ultimately enhances accountability.

7 Moreover, aligning our regulations with
8 the federal requirements is not merely a matter of
9 administrative convenience; it's strategic and
10 imperative that we do so. Consistency with federal
11 standards not only facilitate compliance, but also
12 bolsters our standings within the bordered regulation
13 framework. It enhances interoperability with federal
14 agencies and promotes coordination in enforcement
15 efforts and strengthens our ability to address
16 emerging challenges in a unified manner.

17 I believe that this is a long time
18 coming and DNREC should have done this a long time
19 ago, before EPA. But we do -- us on the Route 9
20 corridor -- wish that this particular affirmative
21 defense was stricken out long ago.

22 Thank you for your consideration.

23 MS. SMITH: Thank you, Mr. Mohammad.

24 That will now conclude the public

1 comment portion of tonight's hearing. I want to thank
2 you all for joining the hearing tonight. Again, if
3 you wish to submit your comment in writing, please
4 follow the instructions that were given in my
5 introductory remarks. And they will also be available
6 on the screen for those that are present online. The
7 hearing record will remain open through May 10, 2024.

8 The hearing is now concluded at 6:21
9 p.m. Thank you all for joining.

10 (Whereupon, the hearing concluded at
11 6:21 p.m.)

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CERTIFICATE

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.

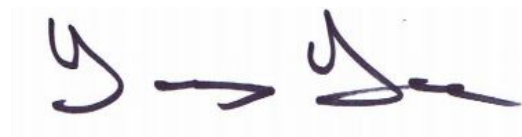
Andrew Weader

ANDREW WEADER
Notary Public in and for the
Commonwealth of Pennsylvania

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CERTIFICATE OF TRANSCRIBER

I, LARRY LARA, 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.

A handwritten signature in dark ink, appearing to read 'LARRY LARA', is written over a light gray rectangular background.

LARRY LARA

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1 DELAWARE RULES OF CIVIL PROCEDURE

2 Part V. Depositions and Discovery

3 Title V, Rule 30

4
5 (e) Submission to witness; changes; signing. When
6 the testimony is fully transcribed, the deposition
7 shall be submitted to the witness for examination
8 and shall be read to the witness, unless such
9 examination and reading are waived by the witness
10 and by the parties. Any changes in form or
11 substance which the witness desires to make shall
12 be entered upon the deposition by the officer with
13 a statement of the reasons given by the witness for
14 making them. The deposition shall then be signed by
15 the witness, unless the parties by stipulation
16 waive the signing or the witness is ill or cannot
17 be found or refuses to sign. If the deposition is
18 not signed by the witness within 30 days after the
19 date when the reporter notifies the witness and
20 counsel by mail of the availability for examination
21 by the witness, the officer shall sign it and state
22 on the record the fact of the waiver or of the
23 illness or absence of the witness or the fact of
24 the refusal to sign together with the reason, if
25 any, given therefor; and the deposition may then be

1 used as fully as though signed, unless on a motion
2 to suppress under Rule 32(d) the Court holds that
3 the reasons given for the refusal to sign require
4 rejection of the deposition in whole or in part.
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10 DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES
11 ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.
12 THE ABOVE RULES ARE CURRENT AS OF APRIL 1,
13 2019. PLEASE REFER TO THE APPLICABLE STATE RULES
14 OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.
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VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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