

## HEARING OFFICER'S REPORT

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

**FROM:** Theresa Smith, Regulatory Specialist, Office of the Secretary, Dept. of  
Natural Resources and Environmental Control

**RE:** Proposed Revision to the Delaware State Implementation Plan: *Moderate Non-Attainment Plan for New Castle County for the 2015 8-hour Ozone National Ambient Air Quality Standard*

**DATE:** January 14, 2023

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### **I. BACKGROUND AND PROCEDURAL HISTORY:**

A virtual public hearing was held on Tuesday November 28, 2023, at 6:00 p.m. via the State of Delaware Zoom platform by the Department of Natural Resources and Environmental Control (“DNREC,” “Department”) to receive comment on the proposed revisions to the Delaware State Implementation Plan (“SIP”) for the *Moderate Non-Attainment Plan for New Castle County for the 2015 8-hour Ozone National Ambient Air Quality Standard*.

The U.S. Environmental Protection Agency (“EPA”) established the National Ambient Air Quality Standard (“NAAQS”) for criteria pollutants shown to threaten human health, welfare, and the environment. Ground-level ozone is one of the many criteria pollutants monitored by the EPA to determine levels of pollution based on the NAAQS. As a principal component of “smog”, ground-level ozone is known to damage the respiratory system and cause breathing problems, throat irritation, coughing, chest pains, and greater susceptibility to respiratory infection to human health.

In 2015, the EPA promulgated a revised NAAQS for ground-level ozone to 70 parts per billion (ppb). When an area measures pollutant levels above NAAQS, the EPA designates that area as nonattainment and classifies the area based on the pollutant levels. Non-Attainment areas classified as “moderate” or above (i.e. Serious, Severe, Extreme) the NAAQS, are required to identify control measures that will reduce emissions from pollutant sources.

Moreover, Section 110 of the *Clean Air Act* (“CAA”) requires non-attainment areas to submit to EPA a State Implementation Plan (“SIP”) that provides for the implementation, maintenance, and enforcement of the NAAQS. A SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and inventories.

On June 4, 2018, EPA Final Rule 87 FR 60897, under the 2015 8-hour Ozone NAAQS the EPA designated 51 areas of the country as non-attainment. The Philadelphia-Wilmington-Atlantic City (PA-NJ-MD-DE) Area (“Philadelphia NAA”) 2018-2020 design value measured 0.074 parts per million (ppm) which is equal to 74 ppb and does not meet the attainment level for the ground-level ozone NAAQS. Consequently, the EPA designated the Philadelphia NAA as nonattainment and classified the area as “marginal”. The Philadelphia NAA includes New Castle County in Delaware, five counties in eastern Pennsylvania, one county in Maryland and nine counties in southern New Jersey. These non-attainment areas were then required to meet attainment level by August 3, 2021.

Under the EPA Final Rule 87 FR 60897, dated October 7, 2022, it was determined by the EPA that the Philadelphia NAA failed to meet attainment standards established in the NAAQS by August 3, 2021. In the same rule, the EPA reclassified the Philadelphia NAA as moderate non-attainment. Accordingly, state agencies of the areas designated as moderate non-attainment are required to submit State SIP revisions and implement controls to satisfy the statutory and regulatory requirements for moderate areas for the 2015 ozone NAAQS according to the deadlines established in the final rule. Areas reclassified to moderate face more stringent CAA requirements designed to achieve attainment of the NAAQS. It should be noted that although New Castle County was designated as non-attainment, Kent and Sussex County were designated as attainment therefor the revisions to the SIP will focus on New Castle County only.

In accordance with 40 CFR Part 52 Subpart I, the Department is required to identify, through a SIP, how Delaware will achieve attainment of the NAAQS by August 3, 2024. The Department is proposing revision to Delaware’s SIP to meet the requirements associated with the 2015 8-hour ozone NAAQS. As previously mentioned, New Castle County was reclassified as moderate nonattainment, and the proposed revisions include the following elements to meet the more stringent requirements:

- Attainment Modeling – demonstrates that the New Castle County portion of the Philadelphia-Wilmington, Atlantic City, PA-NJ-MD-DE moderate NAA will attain the 2015 8-hour Ozone NAAQS in 2023.
- Reasonable Further Progress (RFP) – to ensure that the air quality in New Castle County makes steady and incremental progress toward attaining the 2015 8-hour Ozone NAAQS.
- Control Measures and Emission Reductions – to detail existing controls needed to attain the 2015 8-hour Ozone NAAQS.
- Mobile Vehicle Emission Budgets – Delaware’s 2023 mobile source budgets (portions of

total allowable emissions that are allocated to On-road mobile sources) for transportation conformity determination.

- Contingency Measures – specific control measures to be implemented if the area fails to make RFP, fails to meet any applicable milestone, or fails to attain the NAAQS by the applicable attainment date.

- Base Year Inventory – establishes a baseline emissions inventory (2017).

- Reasonably Available Control Technology – the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available.

- Reasonably Available Control Measures – measures necessary to achieve attainment as soon as possible.

- Gasoline Vapor Recovery – systems for gasoline vapor recovery of emissions from the fueling of motor vehicles.

- Non-Attainment New Source Review (NNSR) Certification – certifies the adequacy of Delaware’s NNSR program.

- Motor Vehicle Inspection and Maintenance Program – identifies problems with vehicle emission control systems and assures their repairs.

- General Emission Offset Requirement – offsets the annual emissions increase from new sources or source modifications to provide a new air quality benefit. The ratio shall be at least 1.15 to 1 for Moderate NAAs.

The Department has the statutory basis and legal authority to act with regard to the proposed SIP revision described herein, pursuant to 7 *Del.C.* Chapter 60. The Department published a General Notice of the aforementioned proposed SIP revision, and of the November 28, 2023, public hearing held in this matter, in the November 1, 2023, *Delaware Register of Regulations*. Subsequent to the publication of the General Notice, the Department proposed additional revisions to the SIP, in response to EPA’s pre-hearing review. The Department is proposing non-substantive amendments to the SIP modifications, that include grammatical revisions, removal of most references and background regarding Sussex and Kent Counties, as they are not part of the Philadelphia NAA, and other

clarifications throughout the SIP document.

The proposed *revised* SIP modifications were thoroughly vetted during the hearing held on November 28, 2023, and the revisions were deemed non-substantive, and no further action was required by the Department. There were four (4) members of the public in attendance, with no public comment provided during the virtual hearing. Pursuant to Delaware law, the hearing record (“Record”) remained open for fifteen (15) days subsequent to the public hearing for receipt of public comment. The Record formally closed with regard to public comment on December 13, 2023, with no written comment received by the Department in this matter. As set forth above, all proper 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 of the virtual public hearing held on November 28, 2023; and (2) ten (10) exhibits introduced by the responsible Department staff at the time of the aforementioned public hearing and marked by this Hearing Officer accordingly as “Department Exhibits 1-10”. The Department’s responsible staff member for the drafting and overall promulgation of these proposed SIP Amendments, Carolyn Cook, Environmental Scientist, Division of Air Quality, developed the Record with the relevant documents in the Department’s files.

The proposed SIP revision was initially published in the *Delaware Register of Regulations*. Subsequent to publication, the Department made non-substantive revisions to the initially proposed SIP, and they were thoroughly vetted by the Department at the virtual public hearing on November 28, 2023.

Pursuant to Delaware law, the record remained open subsequent to the date of the public hearing for the purpose of allowing public comment to be received regarding this matter. The hearing record closed for comment in this matter on December 13, 2023, with no public comment having been received by the Department during any phase of this hearing matter.

Accordingly, the Department’s *revised* proposed SIP modifications to the *Moderate Non-Attainment Plan for New Castle County for the 2015 8-hour Ozone National Ambient Air Quality Standard* is attached hereto as Appendix “A” and is expressly incorporated herein by reference. All proper notification and noticing requirements concerning this proposed promulgation were met by the Department in this matter.

### **III. RECOMMENDED FINDINGS AND CONCLUSIONS:**

Based on the record developed, I find and conclude that the Department has provided appropriate reasoning regarding the need for the proposed *revised* SIP modifications to the *Moderate Non-Attainment Plan for New Castle County for The 2015 8-Hour Ozone National Ambient Air Quality Standard*. Accordingly, I recommend promulgation of the same 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 aforementioned proposed SIP revision, pursuant to 7 *Del.C.* Ch. 60;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Ch. 60, to issue an Order adopting the proposed *revised* SIP modifications as final;
3. The Department provided adequate public notice of the proposed *revised* SIP modifications, and all proceedings associated with the same, in a manner required by the law and regulations. The Department provided the public with an adequate opportunity to comment on the proposed *revised* SIP modifications, and held the Record open for receipt of public comment subsequent to the date of the hearing (through December 13, 2023), consistent with Delaware law, in order to consider the same before making any final decision;
4. Promulgation of the proposed *revised* SIP modifications will enable the Department to meet the attainment plan requirements associated with the 2015 8-hour ozone NAAQS, as set forth in 40 CFR Part 52 Subpart I and provide EPA with revisions to Delaware's SIP - *Moderate Non-Attainment Plan for New Castle County for the 2015 8-Hour Ozone National Ambient Air Quality Standard*;
5. The Department's proposed *revised* SIP modifications, as set forth in Appendix "A" are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, the Department's proposed *revised* SIP modifications should be approved as a final revision to Delaware's SIP document, which shall become effective immediately upon the signing of the Secretary's Order dedicated to this proposed *revised* SIP modification as set forth above;

6. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and
7. The Department shall submit the proposed revised SIP modification as a final SIP revision to the *Delaware Register of Regulations* for publication in its next available issue and provide such other notice as the law and regulation require and the Department determines is appropriate.



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Theresa L. Smith  
Public Hearing Officer