

## 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: *Basic Inspection & Maintenance Performance Standard Certification for New Castle County*

**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 *Basic Inspection & Maintenance Performance Standard Certification for New Castle County*. In accordance with Section 110 of the *Clean Air Act* (“CAA”), areas designated as non-attainment are required to submit to U.S. Environmental Protection Agency (“EPA”) a SIP that provides for the implementation, maintenance, and enforcement of the National Ambient Air Quality Standard (“NAAQS”). A SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and inventories. More specifically, Delaware is required to certify that it has met the basic Inspection and Maintenance (I/M) performance standard for the New Castle County nonattainment area for the ozone NAAQS, through the submission of the SIP.

The EPA established the 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. On road vehicle emissions contribute to ground-level ozone pollution by emitting carbon monoxide, ozone-forming hydrocarbons, nitrogen oxides, and air toxics.

In 2015, the EPA promulgated a revised NAAQS for ground-level ozone of 70 parts per billion (ppb). In effort to reduce criteria pollutants, the EPA monitors air quality sites to determine levels of pollution. When an area measures pollutant levels above NAAQS, the EPA designates that area as nonattainment and classifies the area based on the pollutant levels. Depending on the attainment classification, non-attainment areas are required by Section 182 of the CAA to implement a “basic” or an “enhanced” I/M program. The objective of an I/M program is to reduce emissions of volatile organic compounds, carbon monoxide, and nitrogen oxides through identifying high-emitting vehicles. Areas classified as moderate ozone nonattainment, plus marginal ozone areas with existing or previously required I/M programs, are required to implement, at a minimum, the basic I/M program.

On June 4, 2018, the EPA designated 51 areas of the country as non-attainment under the 2015 8-hour Ozone NAAQS. The Philadelphia-Wilmington-Atlantic City (PA-NJ-MD-DE) Area (“Philadelphia NAA”) was amongst one of the non-attainment areas and was classified as “Marginal” by the EPA. 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. The Philadelphia NAA was 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 that the Philadelphia NAA failed to meet attainment standards by the deadline and the Philadelphia NAA was reclassified as “Moderate” non-attainment. In the same final rule, states with existing I/M programs that are reclassified as “Moderate” are required to conduct and submit a Performance Standard Modeling (“PSM”) analysis to demonstrate the state’s I/M program meets the regulations defined at 40 CFR Part 51, subpart S. Under the same final rule, moderate nonattainment areas are required to make any necessary program revisions as part of their moderate area SIP submissions. This is

done to ensure that I/M programs are operating at or above the basic I/M performance standard level for the 2015 ozone NAAQS. The SIP revisions should implement controls to satisfy the statutory and regulatory requirements for Moderate non-attainment areas according to the deadlines established in the final rule.

Delaware's New Castle County is governed by 7 DE Admin. Code 1131 and meets the "Low Enhanced" I/M requirements due to prior NAAQS designation for ozone. The "Low-Enhanced" I/M program requirements are more stringent than the Basic I/M program requirements, therefore Delaware is required to only perform the analysis and certify their program. No further revisions are required to the SIP, as the more stringent requirements of the Low-Enhanced I/M program supersede the Basic I/M program.

The Department utilized EPA's Motor Vehicle Emission Simulator (MOVES3.1.0) for the performance standard certification modeling analysis. The Department conducted two analyses, comparing Delaware's I/M program to EPA's I/M standards. The first scenario was representative of New Castle County's Low-Enhanced I/M program for the attainment year 2023. The second scenario was representative of EPA's basic inspection and maintenance program defined in 40 CFR 50.352(e).

Utilizing the RunSpec, a system used to define elements prior to inputting the data into MOVES3.1.0, the Department created separate databases for each scenario. The input database includes the county specific parameters of the on-road fleet such as vehicle miles traveled, age distribution of 13 EPA vehicle types, fuel types, and the I/M program data. Additionally, the Department followed Section 3.1 of *EPA's Performance Standard Modeling for New and Existing Vehicle Inspection and Maintenance (I/M) Programs Using the MOVES Mobile Source Emissions Model*, for selecting the appropriate parameters to create the data.

To meet the performance standard, the grams per mile emission rate for volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) are equal to or less than the emissions rate calculated for the relevant performance standard. The analysis shows that the New Castle County Low-Enhanced I/M program for the attainment year 2023, the VOC and NO<sub>x</sub> emission rate measured 0.2085 grams per mile. The EPA's basic I/M program measured 0.2148 grams per mile. The Department determined that, utilizing New Castle County's emission rate under the Low-Enhanced I/M program is less than the emission rate using EPA's basic I/M program, therefor Delaware's I/M program achieves the performance standard set forth by the EPA.

Accordingly, the Department is proposing revision to Delaware's SIP to meet performance standards, as defined Inspection and Maintenance regulations (40 CFR Part 51, subpart S) and the CAA. The Department is submitting revisions to the SIP to include Delaware's Performance Standard Certification for the New Castle County's I/M program to certify that Delaware has met the performance standard for their New Castle County nonattainment area for the ozone NAAQS.

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 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 at 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, Kelsey Pangman, Environmental Scientist II, 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 *Basic Inspection & Maintenance Performance Standard Certification for New Castle County* 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 *Basic Inspection & Maintenance Performance Standard Certification for New Castle County*. 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 performance standards, as defined Inspection and Maintenance regulations at 40 CFR Part 51, subpart S and the CAA, and provide EPA with revisions to Delaware's SIP - *Basic Inspection & Maintenance Performance Standard Certification for New Castle County*;
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