

1 Delaware's Moderate Non-Attainment Plan for New Castle
2 County for the 2015 8-Hour Ozone National Ambient Air
3 Quality Standard

4
5 Docket No. 2023-R-A-0017

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7
8 Moderated by Theresa Smith

9 Tuesday, November 28, 2023

10 6:22 p.m.

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13 Remote Proceeding

14 Wilmington, DE 19801

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20 Reported by: Heidi Schoentube

21 JOB NO.: 6162199

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- List of Attendees:
- Theresa Smith, Hearing Officer
- Carolyn Cook, Division of Air Quality
- Kelsey Pangman, Division of Air Quality
- Renaë Held, DNREC
- Tanesha Perry, Office of Secretary
- Yagna Shah, DNREC
- James Coverdale
- Angela M.
- Kat
- Taylor Englert
- Justin

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P R O C E E D I N G S

1 HEARING OFFICER: Good evening, again.
2 We will now begin the second hearing for tonight. The
3 time is now 6:22 p.m. on Tuesday, November 28, 2023.

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

11 MS. PERRY: Thank you, Hearing Officer.

12 Hello. My name is Tanesha Perry. I am
13 the administrative specialist III with the Office of
14 the Secretary. I'm here to assist the hearing officer
15 tonight. I'd like to make sure everyone is aware that
16 the Zoom platform we're using has the ability to
17 closed captioning in multiple languages.

18 To start closed captioning, if you're
19 using a computer, at the bottom of your screen, you
20 should see a "show captions" button. If you do not
21 see the "show captions" button, you may have to select
22 the three dots that say "more."

23 Once you find your "show captions"
24

1 button, you should click the carrot pointing up which
2 will bring up your translation options. You can
3 select your preferred language from there.

4 If your preferred language isn't
5 listed, you can select "more" and all of the languages
6 will be listed.

7 If you're on a smartphone, at the
8 bottom of your screen, select the "captions" button
9 indicated by CC. If your preferred language is not
10 listed at the bottom, you may have to select the three
11 dots that say "more."

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

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

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

23 HEARING OFFICER: Thank you, Ms. Perry.

24 Again, my name is Theresa Smith, and

1 Secretary Garvin has appointed me to serve as the
2 hearing officer for tonight's formal proceeding.

3 We are here this evening to provide a
4 virtual platform for the State of Delaware's
5 Department of Natural Resources & Environmental
6 Control to conduct its virtual public hearing on the
7 proposed revisions to Delaware's performance standard
8 certification for the "Moderate Non-Attainment Plan
9 for New Castle County, for the 2015 8-Hour Ozone
10 National Ambient Air Quality Standard - State
11 Implementation Plan." Docket Number 2023-R-A-0017.

12 The purpose of the hearing is to build
13 a record in regard to the hearing matter by providing
14 a formal legal platform for the public to learn about
15 the proposed revisions and to enable the public to
16 offer live comment.

17 First and foremost, this hearing is
18 being conducted virtually. No one is together in the
19 same room. Everyone is participating independently at
20 their own respective locations.

21 While we are not physically gathered
22 together, Zoom does generate a list of those who are
23 virtually present for this proceeding. So the
24 Department will still have a record of those who have

1 electronically joined this event.

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

8 In addition, I would encourage those
9 who are attending the hearing to also visit the
10 hearing webpage dedicated to this matter for
11 additional details concerning the proposed regulation
12 -- I'm sorry -- set.

13 The hearing webpage can be found online
14 under the administrative law section of DNREC's
15 website and will be listed at the conclusion of
16 tonight's hearing.

17 At the conclusion of the introductory
18 remarks, I will be turning the hearing over to the
19 Department's staff to provide their presentation for
20 the record being generated in this matter.

21 Whereas the Department would have then
22 opened up verbal comment portion of the hearing
23 following the Department's presentation. The
24 Department did not receive registration for verbal

1 comment tonight.

2 It is important to note that the
3 Department offered the opportunity to register and to
4 give verbal comment as noticed in the legal ads and
5 online. Those who have wished to have provided a
6 verbal comment would have had to register by 12:00
7 p.m. today, to which there were no registrants by that
8 time.

9 I'd like to encourage those that are
10 attending the hearing to visit DNREC's hearing
11 webpage, again, under the "administrative law" section
12 where you can find more details concerning the hearing
13 matter, including the hearing record presented
14 tonight, along with related documents that are posted
15 on the Department's hearing webpage dedicated to this
16 matter.

17 Before we begin the presentations,
18 please be advised that the following protocols remain
19 in place for all DNREC public 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 this
23 virtual hearing will be incorporated into the record
24 being generated in this matter.

1 In light of the Administrative
2 Procedure Act, and to ensure that everyone who wishes
3 to offer comment for the secretary's consideration is
4 accommodated, the Department is required to, at a
5 minimum, provide a comment period of 15 days after the
6 hearing.

7 There is only one authentic record of
8 the formal proceeding tonight, and it is the official
9 court reporter's verbatim transcript.

10 The statutory purpose of tonight's
11 hearing is to build a record with regard to the
12 Department's proposed actions. A record consisting of
13 the transcript of the hearing tonight, all written
14 comments, all exhibits, and eventually the hearing
15 officer's report will be reviewed by Secretary Garvin.

16 The secretary will ultimately issue an
17 order following that review process containing his
18 decision on this matter, and the reasons therefor.

19 Per DNREC's standard hearing protocols,
20 there will be no Q&A or chat session permitted during
21 the hearing.

22 It is important to note that no
23 decision has already been made by the Department, nor
24 will a decision be made tonight with regard to the

1 proposed set matter.

2 As previously stated, DNREC wishes to
3 ensure that everyone is enabled to offer their
4 comments for inclusion into the record being generated
5 in the matter. As noticed in the legal ads and
6 online, the Department stated that the public comment
7 will be open through December 13, 2023.

8 Comments may be submitted through a
9 comment form link on the hearing webpage, via email to
10 dnrechearingcomments@delaware.gov, or via the U.S.
11 Postal Services at the physical address for DNREC
12 indicated on the hearing webpage and/or the public
13 notices previously issued for this matter.

14 Written comments to DNREC may not be
15 submitted using social media platforms such as
16 Twitter, Facebook, YouTube, or text messaging.

17 Please remember that all comments
18 received either through USPS or via the electronic
19 mechanisms noted just now, as long as it is received
20 by the Department on or before December 13th, will
21 bear the exact same weight and be considered equally
22 by the secretary prior to making his final decision in
23 this matter.

24 While all comments are appreciated,

1 each comment must be limited solely to the subject
2 matter of tonight's hearing. Multiple comments saying
3 the same thing do not outweigh one singular comment.
4 Simply put, comments are not votes. A single well-
5 supported comment may carry more weight than a
6 thousand form letters.

7 I also want to note that only comments
8 submitted directly to DNREC and entered by myself into
9 the formal hearing record in this matter will be
10 posted on the hearing webpage to be considered by the
11 Department as a part of the set matter decision
12 process.

13 The Department has not partnered with
14 an outside organization or any websites to assist with
15 the public submission of comments in this matter. So
16 again, only submit comments directly to DNREC.

17 Lastly, the ultimate decision regarding
18 this matter is made by DNREC's Secretary Garvin. This
19 formal proceeding tonight acts as a mechanism to
20 enable the Department to thoroughly vet the set matter
21 to the public and to allow public know the various
22 ways which comments may be submitted for Secretary
23 Garvin's consideration, if so desired.

24 I will now hand it over to Kelsey

1 Pangman with the Division of Air to provide the
2 Department's presentation.

3 Ms. Pangman, you may begin.

4 MS. PANGMAN: Good evening. My name is
5 Kelsey Pangman and I am an environmental scientist
6 with the Airshed Planning & Inventory Group for the
7 Division of Air Quality in the Delaware Department of
8 Natural Resources & Environmental Control.

9 The purpose of this hearing is to take
10 public comments on Delaware's performance standard
11 certification for the Moderate Non-Attainment Plan for
12 New Castle County for the 2015 8-Hour Ozone National
13 Ambient Air Quality Standard.

14 Delaware's state implementation plan
15 identifies how Delaware will attain and maintain air
16 quality as defined in Title 40 of the Code of Federal
17 Regulation as part 52, subpart I.

18 The Environmental Protection Agency
19 promulgated a revised national ambient air quality
20 standard for ground level ozone in 2015 of 70 parts
21 per billion. New Castle County was designated as non-
22 attainment for this new standard.

23 Kent and Sussex Counties were
24 designated as attainment for this new standard.

1 Ground level ozone, one of the principle components of
2 smog, is a serious air pollutant that harms human
3 health and the environment. High levels of ozone can
4 damage the respiratory system and cause breathing
5 problems, throat irritation, coughing, chest pain, and
6 greater susceptibility to respiratory infection.

7 On June 4, 2018, the Environmental
8 Protection Agency designated 51 areas of the country
9 as non-attainment under the 2015 8-Hour Ozone National
10 Ambient Air Quality Standard.

11 Among those non-attainment areas is the
12 Philadelphia, Wilmington, Atlantic City non-attainment
13 area consisting of Pennsylvania, New Jersey, Maryland,
14 and Delaware. Also known as the Philadelphia non-
15 attainment area, including New Castle County in
16 Delaware.

17 This proposed revision to Delaware's
18 state implementation plan includes Delaware
19 performance standard certification for the New Castle
20 County inspection and maintenance program.

21 The performance standard certification
22 was developed for the Delaware's current inspection
23 and maintenance program. The performance standards
24 established the level of emission reductions that

1 mandatory inspection and maintenance programs must
2 meet or exceed.

3 The performance standard certification
4 is Delaware's demonstration that the vehicle
5 inspection and maintenance program for New Castle
6 County meets the basic performance standard for the
7 moderate non-attainment area.

8 An inspection and maintenance program
9 helps reduce emissions of volatile organic compounds,
10 carbon monoxide, and nitrogen oxides through
11 identifying high-emitting vehicles.

12 The performance standards certification
13 analysis uses the latest version of the Environmental
14 Protection Agency's motor vehicle emissions simulator,
15 version 3.1.0.

16 The analysis compares Delaware's
17 inspection and maintenance program to the
18 Environmental Protection Agency's inspection and
19 maintenance standard. Two scenarios were modeled.

20 The first scenario, also known as the
21 statewide plan, was representative of New Castle's
22 inspection and maintenance program for the attainment
23 year 2023.

24 The second scenario was the performance

1 standard benchmark also known as the basic performance
2 standard, which represents the Environmental
3 Protection Agency's defined basic inspection and
4 maintenance program.

5 An inspection and maintenance program
6 has met the performance standard if the grams per mile
7 emission rate for volatile organic compounds and
8 nitrogen oxides are equal to or less than the emission
9 rate calculated for the relevant performance standard.

10 New Castle County adheres to the basic
11 inspection and maintenance program and is not allowed
12 exceedances of the standard.

13 New Castle County has an emission rate
14 that is lower than the basic performance standard for
15 volatile organic compounds and nitrogen oxides,
16 resulting in Delaware's current inspection and
17 maintenance program, achieving the performance
18 standard.

19 In today's hearing, the Department is
20 proposing additional non-substantive amendments to the
21 performance standards certification document. In
22 response to the Environmental Protection Agency's pre-
23 hearing review, including typos and grammatical
24 errors, removal of most references and background

1 regarding Sussex and Kent Counties as they are not
2 part of the Philadelphia non-attainment area, and
3 miscellaneous clarifications.

4 Now we would like to enter ten exhibits
5 shown on the next slide into the public record to
6 support the proposed revisions to Delaware's state
7 implementation plan.

8 Exhibit 1, Environmental Protection
9 Agency's final rule, 2015 ozone national air quality
10 standard reclassification of areas classified as
11 marginal.

12 Exhibit 2, register notice for the
13 proposed revisions to Delaware's state implementation
14 plan, basic performance standards certification for
15 New Castle County inspection and maintenance program,
16 published in Delaware's Register of Regulations on
17 November 1, 2023.

18 Exhibit 3, affidavit and legal notice
19 in the October 22, 2023, Delaware State News.

20 Exhibit 4, affidavit and legal notice
21 in the October 22, 2023, News Journal.

22 Exhibit 5, hearing notice on the State
23 of Delaware public meeting calendar, October 17, 2023.

24 Exhibit 6, legal notice on Delaware's

1 Department of Natural Resource & Conservation website.

2 Exhibit 7, proposed basic performance
3 standard and certification for New Castle County
4 inspection and maintenance program, with appendixes,
5 as published in the November 1, 2023, Delaware
6 Register.

7 Exhibit 8, revised proposed basic
8 performance standards certification for New Castle
9 County inspection and maintenance program, proposed by
10 the Department in today's public hearing.

11 Exhibit 9, final version of revised
12 proposed basic performance standards certification for
13 New Castle County inspection and maintenance program,
14 proposed by the Department in today's public hearing.

15 Exhibit 10, the Department's
16 presentation at today's hearing.

17 This completes the Department's
18 presentation. Thank you.

19 HEARING OFFICER: Thank you, Ms.
20 Pangman.

21 I have received the electronic version
22 of the proposed exhibits by the Department and I
23 hereby mark these exhibits as Department's Exhibits 1
24 through 10.

1 As the Department has received no
2 registration for public comment by 12:00 p.m. today,
3 there will not be a verbal comment portion of this
4 hearing.

5 Again, if you wish to submit public
6 comment in writing, please follow the instructions on
7 the screen and -- on the screen, and that I provided
8 before.

9 The hearing record will remain open
10 through December 13, 2023. As previously mentioned,
11 the court reporter's transcript will be posted on the
12 hearing webpage dedicated to this matter as soon as it
13 is received.

14 I want to thank you all for attending
15 the virtual hearing tonight and the hearing is now
16 concluded at 6:40 p.m. Thank you.

17 (Exhibits 1 through 10 were marked for
18 identification.)

19 (Whereupon, at 6:40 p.m., the
20 proceeding was concluded.)

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CERTIFICATE

I, HEIDI SCHOENTUBE, 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.



HEIDI SCHOENTUBE
Notary Public in and for the
State of Delaware

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CERTIFICATE OF TRANSCRIBER

I, JACOBAY RADTKE, 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.



JACOBAY RADTKE

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