

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-0016

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7
8 Moderated by Theresa Smith

9 Tuesday, November 28, 2023

10 6:00 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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A P P E A R A N C E S

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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
2 HEARING OFFICER: Good evening. Thank
3 you for taking the time to join us tonight. The time
4 is now 6:00 p.m. on Tuesday, November 28, 2023.

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

11 Tanesha, you may begin.

12 MS. PERRY: Hello. My name is Tanesha
13 Perry. I am the administrative specialist with Office
14 of the Secretary. I'm here to assist the hearing
15 officer tonight. I'd like to make sure that everyone
16 is aware that the Zoom platform we're using has the
17 ability for 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 "show captions" button. If you do not see
21 the "show captions" button, you may have to select the
22 three dots that say "more."

23 Once you find the "show captions"
24 button, you should click the carrot pointing up which

1 will bring up your translation options. You can
2 select your preferred language from there.

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

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

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

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

22 HEARING OFFICER: Thank you, Ms. Perry.

23 Again, my name is Theresa Smith, as Ms.
24 Perry just said, and Secretary Garvin has appointed me

1 to serve as the hearing officer for tonight's formal
2 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 a virtual public hearing on Docket
7 Number 2023-R-A-0016, the proposed revisions to
8 "Moderate Non-Attainment Plan for New Castle County,
9 for the 2015 8-Hour Ozone National Ambient Air Quality
10 Standard - State Implementation Plan."

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

16 Immediately following the adjournment
17 of the hearing, we will conduct the same hearing
18 platform for the proposed revisions to Delaware's
19 performance standard certification for the Moderate
20 Non-Attainment Plan for New Castle County, for the
21 2015 8-Hour Ozone National Ambient Air Quality
22 Standard, Docket Number 2023-R-A-0017. Much of which
23 will be said now will be said again, so please bear
24 with me as you will hear the same introductory remarks

1 twice this evening.

2 First and foremost, this hearing is
3 being conducted virtually. No one is together in the
4 same room. Everyone is participating independently at
5 their own respective locations.

6 While we are not physically gathered
7 tonight, however Zoom does generate a list of those
8 who are virtually present for the proceeding, so the
9 Department will have a record of those who have
10 electronically joined this event.

11 There is a court reporter virtually
12 present who will prepare a verbatim transcript of this
13 hearing pursuant to the statutory requirement for
14 DNREC to have the same prepared. And as always, that
15 transcript will be posted on the hearing webpage
16 dedicated to this matter as soon as it is received.

17 In addition, I would encourage those
18 who are attending the hearing to also visit the
19 hearing webpage dedicated to this matter for
20 additional details concerning the proposed --

21 The hearing webpage can be found online
22 under the administrative law section of DNREC's
23 website that will be listed at the conclusion of
24 tonight's hearing.

1 At the conclusion of my introductory
2 remarks, I will be turning the hearing over to the
3 Department's staff to provide their presentation for
4 the record being generated in this matter.

5 Whereas the Department would have then
6 opened up verbal comment portion of the hearing
7 following the Department's presentation. The
8 Department did not receive registration for verbal
9 comment tonight.

10 It is important to note that the
11 Department offered the opportunity to register to give
12 verbal comment as noticed in the legal ads and online.
13 Those who wished to have provided a verbal comment
14 would have had to register by 12:00 p.m. today, to
15 which there were no registrants by that time.

16 I would encourage those attending this
17 evening to go to DNREC's hearing webpage, under the
18 "administrative law" section where you can find more
19 details concerning the hearing matter, the hearing
20 record presented tonight, along with related documents
21 that are posted on the Department's hearing webpage
22 dedicated to this matter.

23 Before we begin the presentations,
24 please be advised that the following protocols remain

1 in place for all DNREC public hearings:

2 All comment received must be limited
3 solely to the subject matter of tonight's hearing.
4 All comments pertinent to the subject matter of the
5 virtual hearing will be incorporated into the record
6 being generated in this matter.

7 In light of the Administrative
8 Procedure Act, and to ensure that everyone who wishes
9 to offer comment for the secretary's consideration is
10 accommodated, the Department is required to, at a
11 minimum, provide a comment period of 15 days after the
12 hearing.

13 There's only one authentic record of
14 this formal proceeding tonight, and it is the official
15 court reporter's verbatim transcript.

16 The statutory purpose of tonight's
17 hearing is to build a record with regard to the
18 Department's proposed actions. A record consisting of
19 a transcript of the hearing tonight, all written
20 comments, all exhibits, and eventually the hearing
21 officer's report will be reviewed by Secretary Garvin.

22 The secretary will ultimately issue an
23 order following the review process containing his
24 decision on this matter, and the reasons therefor.

1 Per DNREC's standard hearing protocols,
2 there will be no Q&A or chat session permitted during
3 the hearing.

4 It is important to note that no
5 decision has already been made by the Department, nor
6 will a decision be made tonight with regard to the
7 proposed set matter.

8 As previously stated, DNREC wishes to
9 ensure that everyone is enabled to offer their
10 comments for inclusion into the record being generated
11 in the matter. As noticed in legal ads and online,
12 the Department stated that the public comment will be
13 open through December 13, 2023.

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

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

23 Please remember, all comments received
24 either through USPS or via the electronic mechanisms

1 noted just now, as long as received by the Department
2 on or before December 13th, will bear the exact same
3 weight and be considered equally by the secretary
4 prior to making his final decision.

5 While all comments are appreciated,
6 each comment must be limited solely to the subject
7 matter of tonight's hearing. Multiple comments saying
8 the same thing do not outweigh one singular comment.
9 Simply put, comments are not votes. A single well-
10 supported comment may carry more weight than a
11 thousand form letters.

12 I also want to note that only comments
13 submitted directly to DNREC and entered by myself into
14 the formal hearing record in this matter will be
15 posted on the hearing webpage and be considered by the
16 Department as a part of the hearing matter decision
17 process.

18 The Department has not partnered with
19 any outside organization or websites to assist with
20 the public submission of comments in this matter, so
21 again, only submit comments to DNREC directly.

22 Lastly, the ultimate decision regarding
23 this matter is made by DNREC's Secretary Garvin. This
24 formal proceeding tonight acts as a mechanism to

1 enable the Department to thoroughly vet the hearing
2 matter to the public and to let the public know
3 various ways which comment may be submitted for
4 Secretary Garvin's consideration, if so desired.

5 I will now hand it over to Carolyn Cook
6 with the Division of Air to provide the Department's
7 presentation.

8 MS. COOK: Good evening. My name is
9 Carolyn Cook and I'm an environmental scientist with
10 the Airshed Planning & Inventory Group for the
11 Division of Air Quality in the Delaware Department of
12 Natural Resources & Environmental Control.

13 The purpose of this hearing is to take
14 public comments on Delaware's proposed revisions to
15 the Moderate Non-Attainment Plan for New Castle County
16 for the 2015 8-Hour Ozone National Ambient Air Quality
17 Standard.

18 Delaware's state implementation plan
19 identifies how Delaware will attain and maintain air
20 quality. As defined in Title 40 of the Code of
21 Federal Regulations at part 52, subpart I.

22 The Environmental Protection Agency
23 promulgated a revised National Ambient Air Quality
24 Standard for Ground Level Ozone in 2015 of 70 parts

1 per billion. New Castle County was designated as non-
2 attainment for this new standard. Kent and Sussex
3 Counties were designated as attainment for this new
4 standard.

5 Ground level ozone, one of the
6 principle components of smog, is a serious air
7 pollutant that harms human health and the environment.
8 High levels of ozone can damage their respiratory
9 system and cause breathing problems, throat
10 irritation, coughing, chest pains, and greater
11 susceptibility to respiratory infection.

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

16 Among those non-attainment areas is the
17 Philadelphia, Wilmington, Atlantic City non-attainment
18 area consistent of Pennsylvania, New Jersey, Maryland,
19 and Delaware. Also known as the Philadelphia non-
20 attainment area, including New Castle County in
21 Delaware.

22 In the Environmental Protection
23 Agency's designation process, the Philadelphia non-
24 attainment area was designated as marginal. The

1 attainment deadline for marginal non-attainment areas
2 was August 3, 2021. Failing to attain by the
3 applicable attainment date requires that non-
4 attainment areas be reclassified to moderate non-
5 attainment for the 2015 Ozone National Ambient Air
6 Quality Standard.

7 On October 7, 2022, the Environmental
8 Protection Agency redesignated the Philadelphia non-
9 attainment area as moderate non-attainment for the
10 2015 Ozone National Ambient Air Quality Standard based
11 upon the failure of the non-attainment area to record
12 data below the 70 parts per billion standard.

13 Areas reclassified to moderate face
14 more stringent Clean Air Act requirements designated
15 to achieve attainment of the National Ambient Air
16 Quality Standard by no later than August 3, 2024.

17 Accordingly, the state air agencies in
18 the Philadelphia non-attainment area were required to
19 submit state implementation plan revisions called
20 "non-attainment plans," and implement requirements to
21 satisfy the statutory and regulatory requirements for
22 moderate areas for the 2015 Ozone National Ambient Air
23 Quality Standard.

24 This proposed revision to Delaware's

1 state implementation plan includes Delaware's non-
2 attainment plan for the 2015 8-Hour Ozone National
3 Ambient Air Quality Standard.

4 Having been designated as moderate,
5 Delaware must include the following elements in the
6 state implementation plan: Attainment modeling
7 demonstrates that the New Castle County portion of the
8 Philadelphia, Wilmington, Atlantic City, Pennsylvania,
9 New Jersey, Maryland, Delaware moderate non-attainment
10 area will attain the 2015 8-Hour Ozone National
11 Ambient Air Quality Standard in 2023.

12 Reasonable further progress ensures
13 that the air quality in New Castle County makes steady
14 and incremental progress toward attaining the 2015
15 8-Hour Ozone National Ambient Air Quality Standard.

16 Control measures in emission reductions
17 detail existing controls needed to attain the 2015
18 8-Hour Ozone National Ambient Air Quality Standard.

19 Mobile vehicle emission budgets are
20 Delaware's 2023 mobile source budgets, or portions of
21 total allowable emissions that are allocated to
22 on-road mobile sources for transportation conformity
23 determination.

24 Contingency measures are specific

1 control measures to be implemented if the area fails
2 to make reasonable further progress, fails to meet any
3 applicable milestone, or fails to attain the National
4 Ambient Air Quality Standard by the applicable
5 attainment date.

6 A base-year inventory establishes a
7 baseline emissions inventory. For this non-attainment
8 plan, the base year was 2017. Reasonably available
9 control technology is the lowest emission limitation
10 that a particular source is capable of meeting by the
11 application of control technology that is reasonably
12 available.

13 Reasonably available control measures
14 are measures necessary to achieve attainment as soon
15 as possible.

16 Delaware's gasoline vapor recovery
17 program includes systems for gasoline vapor recovery
18 of emissions from the fueling of motor vehicles. A
19 non-attainment new source review certification
20 certifies the adequacy of Delaware's non-attainment
21 new source review program.

22 Delaware's motor vehicle inspection and
23 maintenance program identifies problems with vehicle
24 emission control systems and ensures their repairs.

1 The general emission offset requirement offsets the
2 annual emissions increase from new sources or source
3 modifications to provide a new air quality benefit.
4 The ratio shall be at least 1.15 to 1 for moderate
5 non-attainment areas.

6 In today's hearing, the Department is
7 proposing additional non-substantive amendments to the
8 non-attainment plan in response to the Environmental
9 Protection Agency's pre-hearing review, including
10 typos and grammatical errors, removal of most
11 references and background regarding Sussex and Kent
12 Counties as they are not part of the Philadelphia non-
13 attainment area, and miscellaneous clarifications.

14 The Department now enters the following
15 exhibits into the public record to support the
16 approval of the state implementation planned
17 revisions.

18 Exhibit 1, Environmental Protection
19 Agency's final rule, 2015 Ozone National Ambient Air
20 Quality Standard reclassification of areas classified
21 as marginal.

22 Exhibit 2, register notice for the
23 proposed revision to Delaware's state implementation
24 plan, moderate non-attainment plan for New Castle

1 County for the 2015 8-Hour Ozone National Ambient Air
2 Quality Standard published in Delaware Register of
3 Regulations on November 1, 2023.

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

6 Exhibit 4, affidavit and legal notice
7 in the October 22, 2023, News Journal.

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

10 Exhibit 6, legal notice as posted on
11 the website for the Department of Natural Resources &
12 Environmental Controls public notices dated October
13 22, 2023.

14 Exhibit 7, proposed moderate non-
15 attainment plan for New Castle County for the 2015
16 8-Hour Ozone National Ambient Air Quality Standard
17 with appendixes as published in the November 1, 2023,
18 Delaware Register.

19 Exhibit 8, revised proposed moderate
20 non-attainment plan for New Castle County for the 2015
21 8-Hour Ozone National Ambient Air Quality Standard
22 with edits proposed by the Department in today's
23 public hearing.

24 Exhibit 9, final version of revised

1 proposed moderate non-attainment plan for New Castle
2 County for the 2015 8-Hour Ozone National Ambient Air
3 Quality Standard proposed by the Department in today's
4 public hearing.

5 Exhibit 10, the Department's
6 presentation at today's hearing.

7 This completes the Department's
8 presentation. Thank you.

9 HEARING OFFICER: Thank you, Ms. Cook.

10 I have received the Department's
11 exhibits as you just went over and I hereby mark those
12 as Department's Exhibits 1 through 10.

13 As the Department received no
14 registration for public comment by 12:00 p.m. today,
15 there will not be a verbal comment portion of this
16 hearing.

17 Again, if you wish to submit public
18 comment in writing, please follow the instructions
19 that were given during my introductory remarks and are
20 also available on the screen for those who are
21 virtually present.

22 Again, the hearing record will remain
23 open through December 13, 2023. I want to thank you
24 all for attending this portion of the hearing and this

1 hearing is now concluded at 6:20 p.m.

2 (Exhibits 1 through 10 were marked for
3 identification.)

4 (Whereupon, at 6:20 p.m., the
5 proceeding was concluded.)

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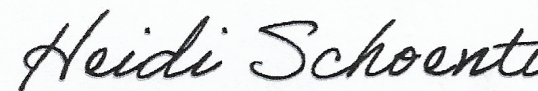
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CERTIFICATE

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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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