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Visible Emissions

(7 DE Admin. Code 1114)

Docket No. 2023-R-A-0027

Moderated by Theresa Smith

Tuesday, August 27, 2024

6:55 p.m.

Remote Proceeding

DNREC Division of Air Quality

100 West Water Street, Suite 6A

Dover, DE 19904

Reported by: Andrew Weader

JOB NO: 6827107

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List of Attendees:

Kelsey Pangman, DNREC Division of Air Quality

(by videoconference)

Renae Held, DNREC Division of Air Quality Supervisor

(by videoconference)

Yagna Shah, DNREC (by videoconference)

Tina Merrill, DNREC AQ (by videoconference)

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P R O C E E D I N G S

1
2 THE REPORTER: We're on the record at
3 6:55 p.m.

4 THE HEARING OFFICER: Okay. Good
5 evening. The time is now 6:55 p.m. on Tuesday, August
6 27, 2024. My name is Theresa Smith, and Secretary
7 Garvin has appointed me to serve as a hearing officer
8 for tonight's formal proceeding.

9 For ADA compliance, tonight's formal
10 proceeding offers closed captioning in a variation of
11 languages. To use the closed captioning feature from
12 your computer, click on the "Show Captions" button
13 located at the bottom of your screen. If you don't
14 see that Show Captions button, you may need to select
15 the three dots that say "More."

16 Once you find your Show Captions
17 button, you should click on the carrot pointing up,
18 which will bring up translation options. From there,
19 you can click on your preferred language. If you
20 don't see it, you may need to select More, and that
21 will bring up the rest of the languages available.

22 If you're using a smartphone, select
23 the captions button at the bottom of your screen
24 indicated by CC. Again, if your preferred languages

1 are not listed at the bottom, you may have to select
2 the three dots that say More. You should then select
3 "Meeting Settings" with the gear icon next to it.

4 Once the settings page comes up,
5 located at the very bottom, select "Translation
6 Language," and from there, you'll be able to select
7 your preferred language, and then select "Done" at the
8 top right corner and Done again. If the captions are
9 not automatically popping up, you may need to select
10 "Captions" again and select "Show Captions."

11 So again, first and foremost, I would
12 like to thank you all for remaining. This is now the
13 last of the four hearings scheduled tonight. This
14 virtual platform allows the state of Delaware's
15 Department of Natural Resources and Environment to
16 conduct its virtual public hearing on the proposed
17 revisions to Docket Number 2023-R-A-0027 (7 D Admin
18 Code 1114) Visible Emissions.

19 The purpose of the hearing is to build
20 a record in regard to the hearing matter by providing
21 a formal legal platform for the public to learn about
22 the proposed revisions and to enable the public a way
23 to offer live comment.

24 This hearing is being conducted

1 virtually. No one is together in the same room.
2 Everyone is participating independently at their own
3 respective locations. While we are not physically
4 gathered tonight, Zoom does generate a list of those
5 who are virtually present for this proceeding, so that
6 the department will have a record of those who have
7 electronically joined.

8 There is a court reporter virtually
9 present who will prepare a verbatim transcript of the
10 hearing pursuant to the statutory requirements for
11 DNREC to have the same prepared, and as always, that
12 transcript will be posted on the hearing webpage in
13 this matter as soon as it is received.

14 In addition, I would encourage those
15 who are attending the hearing to also visit the
16 hearing webpage dedicated to this matter for
17 additional details concerning the proposed revisions
18 to 7 D Admin Code 1114. The hearing record presented
19 tonight, along with other related documents, are
20 posted on the DNREC hearing webpage dedicated to this
21 matter. The hearing webpage can be found online under
22 the administrative law section of DNREC's website,
23 that will be listed towards the end of tonight's
24 hearing.

1 At the conclusion of my introductory
2 remarks, I will be turning the hearing record over to
3 department's staff to provide their presentation for
4 the record being generated in this matter. Whereas
5 the department would then open up for verbal comment
6 following the department's presentation, the
7 department did not receive registration for verbal
8 comment tonight.

9 It is important to note the department
10 did offer the opportunity to register for verbal
11 comment, as noticed in the legal ads and online.
12 Those who have wished to provide a verbal comment
13 would have needed to register by 12:00 p.m. today, to
14 which there were no registrants by that time.

15 Before we begin the presentation,
16 please be advised of the following protocols that
17 remain in place for all of DNREC's public hearings.
18 All comments received must be limited solely to the
19 subject matter of tonight's hearing. All comments
20 pertinent to the subject matter of the virtual hearing
21 will be incorporated into the record being generated
22 in this matter.

23 In light of the Administrative
24 Procedures Act, and to ensure that everyone who wishes

1 to offer comment for Secretary's consideration is
2 accommodated, the department is required to, at a
3 minimum, provide a comment period of 15 days after the
4 hearing.

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

8 The statutory purpose of tonight's
9 hearing is to build a record with regard to the
10 department's proposed action. A record consisting of
11 the transcript of the hearing tonight, all written
12 comments, all exhibits, and eventually, the hearing
13 officer's report will be reviewed by Secretary Garvin.
14 The secretary will ultimately issue an order following
15 that review process containing his decision on this
16 matter and the reasons therefore.

17 Per DNREC's standard hearing protocols,
18 there will be no Q&A session permitted during the
19 hearing.

20 It is important to note no decision has
21 already been made by the department, nor will any
22 decision be made tonight with regard to the proposed
23 regulatory matter.

24 As previously stated, DNREC wishes to

1 ensure that everyone is enabled to offer their
2 comments for inclusion into the record being generated
3 in this matter. As noticed in the legal ads and
4 online, the department stated that the public comment
5 period will be open through September 11, 2024.

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

12 Written comments to DNREC may not be
13 submitted using social media platforms such as
14 Twitter, Facebook, YouTube, or text messaging. Videos
15 either submitted by commenters or third-party speakers
16 will not be accepted, as file attachments to written
17 comments as hyperlinks within written comments or
18 embedded in email submissions.

19 Please remember that all comment
20 received either through U.S.P.S. or via the electronic
21 mechanisms noted, as long as received by the
22 department on or before September 11th, will bear the
23 exact same weight and will be considered equally by
24 the department prior to making his final decision in

1 this matter.

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

9 I also want to note that comments
10 submitted directly to DNREC and entered by myself into
11 the formal hearing record in this matter will be
12 posted on the hearing webpage and be considered by the
13 department as a part of the decision process. The
14 department has not partnered with any outside
15 organization or websites to assist the public
16 submissions of comments in this matter, so again, only
17 submit comments directly to DNREC.

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

1 I will now hand it over to
2 Kelsey Pangman with the Division of Air Quality to
3 provide the department's presentation.

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

9 The purpose of this hearing is to
10 receive public comments on the proposed updates to
11 Title 7 of the Delaware Administrative Code Regulation
12 1114 Visible Emissions.

13 Regulation 1114 controls the emissions
14 of visible air contaminants. Regulation 1114 is part
15 of Delaware's State Implementation Plan. A State
16 Implementation Plan is a federally enforceable plan
17 that is developed by states to explain how they will
18 comply with the Clean Air Act to improve air quality.

19 When regulations that are part of the
20 State Implementation Plan are amended, states are
21 required to submit the proposed amendments to the
22 Environmental Protection Agency for approval. If the
23 amendments are approved by the Environmental
24 Protection Agency, they become part of the State

1 Implementation Plan and become federally enforceable.

2 On June 30, 2011, the Sierra Club filed
3 a petition with the Environmental Protection Agency
4 administrator concerning the treatment of excess
5 emissions during periods of startup, shutdown, and
6 malfunction; specifically, how those emissions are
7 treated in State Implementation Plan provisions that
8 the Environmental Protection Agency approved in the
9 past.

10 A startup is the setting and operation
11 of a process or a piece of equipment, and a shutdown
12 is the stopping of a process or piece of equipment. A
13 malfunction is the sudden and unavoidable breakdown of
14 a process or control equipment. During periods of
15 startup, shutdown, and malfunction, equipment is not
16 running at peak efficiency resulting in excess
17 emissions during these times. Air pollution emitted
18 during these periods may adversely impact the health
19 of people nearby and contribute to smog and other
20 problems in communities that are further downwind.

21 On June 12, 2015, the Environmental
22 Protection Agency took final action on the Sierra Club
23 petition. This final rule is commonly known as the
24 2015 State Implementation Plan Call. In the 2015

1 State Implementation Plan Call, the Environmental
2 Protection Agency clarified its startup, shutdown,
3 malfunction policy interpretation that State
4 Implementation Plan provisions cannot include
5 exemptions for excess emissions during startup,
6 shutdown, and malfunction events.

7 The Environmental Protection Agency
8 directed Delaware to correct specific startup,
9 shutdown, and malfunction provisions in their State
10 Implementation Plan, giving a submissions deadline of
11 November 22, 2016. Title 7 Delaware Administrative
12 Code 1114 was one of the Delaware regulations included
13 in the 2015 State Implementation Plan call.

14 On November 22, 2016, Delaware
15 submitted a response to the 2015 State Implementation
16 Call. The State Implementation Plan submittal
17 proposed the removal of Title 7 Delaware
18 Administrative Code 1114 from the State Implementation
19 Plan in its entirety in order to remove the offending
20 startup, shutdown, and malfunction exemption language
21 from the State Implementation Plan.

22 It should be noted that Delaware did
23 not agree with the Environmental Protection Agency's
24 position that the startup, shutdown, and malfunction

1 components of Delaware's State Implementation Plan
2 were deficient in relation to the 2015 State
3 Implementation Plan Call.

4 Delaware believed that the startup,
5 shutdown, and malfunction components of its State
6 Implementation Plan were protective of the National
7 Ambient Air Quality Standards for particulate matter
8 and not deficient. Therefore, Delaware maintained
9 Regulation 1114 as a state-only regulation.

10 On October 23, 2023, the Environmental
11 Protection Agency issued a final rule disapproving
12 Delaware's November 22, 2016, State Implementation
13 Call submittal for Regulation 1114. Therefore,
14 Delaware is proposing to amend Regulation 1114 in
15 response to the Protection Agency's disapproval to
16 comply with the 2015 State Implementation Plan Call.

17 The objective of the proposed
18 amendments to Regulation 1114 is to comply with the
19 2015 State Implementation Call to remove exemptions of
20 startup, shutdown, and malfunction. The amendments
21 address section 1.0, General Provisions and section
22 2.0, Requirements to set a new startup, shutdown, and
23 malfunction emission limit for opacity.

24 The proposed amendments remove the

1 offending exemption from the regulation as shown by
2 the strikeout and create a new 30-day rolling average
3 emission limit and a new 40 percent opacity for more
4 than 6 consecutive minutes in any 1-hour requirement.
5 That would apply to startup and shutdown of equipment
6 as indicated by the underlying text.

7 Now, we would like to enter 11 exhibits
8 shown on the next two slides into the public record to
9 support the proposed amendments to Title 7 of the
10 Delaware Administrative Code Regulation 1114, Visible
11 Emissions.

12 This completes the department's
13 presentation of the proposed amendments to Regulation
14 1114. Thank you.

15 THE HEARING OFFICER: Thank you,
16 Ms. Pangman. Has there been any changes to the
17 exhibits as proposed and posted on the hearing
18 webpage?

19 MS. PANGMAN: No changes.

20 THE HEARING OFFICER: Thank you.

21 I have received the electronic versions
22 of the proposed exhibits and hereby mark the exhibits
23 as Department's Exhibits 1 through 11.

24 //

1 (Department Exhibits 1 through 11 were
2 marked for identification.)

3 THE HEARING OFFICER: As the department
4 received no registration for public comment by 12:00
5 p.m. today, there will be no verbal comment portion of
6 the hearing tonight. Again, if you wish to submit
7 comments in writing, please follow the instructions
8 that were given earlier in my remarks, and it's also
9 available on the screen for those who are virtually
10 present.

11 The hearing will remain open through
12 September 11, 2024. As previously mentioned, the
13 court reporter's transcript will be posted on the
14 hearing webpage dedicated to this matter as soon as it
15 is received.

16 I want to thank you all for attending
17 the virtual hearings tonight. This hearing is now
18 concluded, as all hearings are now concluded, at 7:11
19 p.m.

20 THE REPORTER: We're off the --

21 THE HEARING OFFICER: Thank you all for
22 joining.

23 THE REPORTER: We're off the record at
24 7:11 p.m.

(Whereupon, at 7:11 p.m., the
proceeding was concluded.)

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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, SIOBHAN MACKEY, 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.



SIOBHAN MACKEY

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