

1 Proposed amendments to 7 DE Admin. Code 1352
2 "Aboveground Storage Tank"

3
4 Docket #2023-R-WH-0007

5
6
7 Moderated by Theresa Smith

8 Wednesday, August 30, 2023

9 6:27 p.m.

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12 DNREC Building

13 89 Kings Highway

14 Dover, DE 19901

15 (302) 739-9000

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20 Reported by: Andrew Weader

21 JOB NO.: 6053152

A P P E A R A N C E S

List of Attendees:

Theresa Smith, DNREC Hearing Officer

Eileen Butler, Division of Waste and Hazardous
Substances Planner

Tanesha Perry, DNREC Administrative Assistant

Virginia Jackson, Additional Administrative Assistant
DNREC

Michael Moyer, DNREC

Sandra Carl, CROMPCO

Suzannae Halter, DNREC

Patrick McGovern, DNREC

Stephen Peterson, DNREC

Matthew Conner, DNREC

Andrew Weader, Court Reporter

Alex Dyer, Public Attendee

Karl Brenton, Public Attendee

James Messick Jr., Public Attendee

Michael Seningen, DNREC

Richard N, Public Attendee

Wyatt Marek, DNREC

Carlos Gonzalez, DNREC

Sascha Mohammed, Public Attendee

Travis Walls, Public Attendee

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P R O C E E D I N G S

MS. SMITH: Okay. Good evening again. Today is Wednesday, August 30, 2023, and it is now 6:27 p.m. We will begin the second portion of tonight's virtual hearing. Again my name is There's Smith and Secretary Garvin has appointed me to serve as the hearing officer for tonight's formal proceeding.

For ADA compliance tonight's formal proceeding offers closed captioning and a variation of languages. Before I begin the introductory remarks I will now hand it over to Tanesha Perry with the Department to provide further details on how to utilize these features through the Zoom platform.

MS. PERRY: Hello. My name is Tanesha Perry. I am Administrative Specialist 3 with the Office of Secretary. I am here to assist the hearing officer tonight. I'd like to make sure everyone is aware that the Zoom platform we're using has the ability for closed captioning in multiple languages.

To start closed captioning if you're

1 using a computer at the bottom of your screen you
2 should see a show captions button. If you do not see
3 the show captions button you may have to select the
4 three dots that say more. Once you find your show
5 captions button you should click the carat pointing up
6 which will bring up a translations options. You can
7 select your preferred language from there. If your
8 preferred language isn't listed you can select more,
9 and all of the languages will be listed.

10 If you're on a smartphone at the bottom
11 of your screen select the captions button indicated by
12 CC. If your preferred language is not listed at the
13 bottom you may have to select the three dots that say
14 more. You should then select meeting settings with
15 the gear icon next to it. Once the settings page
16 comes up, located at the very bottom select
17 translation language. From there you'll be able to
18 select your preferred language, then select done at
19 the top right corner and then done again.

20 If the captions are not automatically
21 popping up yet you may need to select captions again

1 and select show captions. Now I'll turn it back over
2 to the hearing officer, Theresa Smith.

3 MS. SMITH: Thank you, Ms. Perry. We
4 are here this evening to provide a virtual platform
5 for the State of Delaware's Department of Natural
6 Resources and Environmental Control to conduct its
7 virtual hearing on Docket number 2023-R-WH-0007, the
8 proposed revisions to 7 DE Admin Code 1352
9 "Aboveground Storage Tanks."

10 First and foremost this hearing is
11 being conducted virtually. No one is together in the
12 same room. Everyone is participating independently at
13 their own respective locations. While we are not
14 physically gathered tonight Zoom does generate a list
15 of those who are virtually present for the proceeding,
16 so the department will have a record of those who have
17 electronically joined this event.

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

1 department would then open the verbal comment portion
2 of the hearing following the department's
3 presentation, the department did not receive
4 registration for verbal comment tonight. It is
5 important to note that the department offered the
6 opportunity to register to give verbal comment as
7 noticed in the legal ads and online. Those that would
8 have wished to provide a verbal comment would have had
9 to register by 12 p.m. today to which there were no
10 registrants by that time.

11 There is a court reporter virtually
12 present who will prepare a verbatim transcript of this
13 hearing pursuant to the statutory requirements 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 who
18 are attending the hearing tonight to also visit the
19 hearing webpage dedicated to this matter for
20 additional details concerning the proposed
21 regulations. The hearing webpage can be found online

1 under the administrative law section of DNREC's
2 website that will be listed at the conclusion of
3 tonight's hearing.

4 Before we begin the presentation please
5 be advised that the following protocols remain in
6 place for all DNREC public hearings. All comment
7 received must be limited solely to the subject matter
8 of tonight's hearing. All comments pertinent to the
9 subject matter of the virtual hearing will be
10 incorporated into the record being generated in this
11 matter. In order to ensure that everyone who wishes
12 to offer comment for the secretary's consideration is
13 accommodated the record in this matter shall remain
14 open for a minimum of 15 days following tonight's
15 proceeding.

16 There is one authentic record of this
17 formal proceeding tonight, and it is the official
18 court reporter's verbatim transcript. The statutory
19 purpose of tonight's hearing is to get a record with
20 regard to the department's proposed actions, a record
21 consisting of the transcript of the hearing tonight,

1 all comments, all exhibits, and eventually the hearing
2 officer's report will be reviewed by Secretary Garvin.
3 The secretary will ultimately issue an order following
4 that review process containing his decision on this
5 matter and the reasons therefor.

6 Per DNREC standard hearing protocols
7 there will be no Q and A or chat sessions permitted
8 during the hearing. It is important to note that no
9 decision has already been made by the department, nor
10 will any decision be made tonight with regard to the
11 proposed regulatory matter. As previously stated,
12 DNREC wishes to ensure everyone is enabled to offer
13 their comments for inclusion into the record being
14 generated in this matter. In light of the
15 Administrative Procedures Act the department is
16 required to, at a minimum, provide a comment period of
17 a minimum of 15 days after the hearing.

18 As noticed in the legal ads and online
19 the department stated that the public comment period
20 will be open through Thursday, September 14, 2023.
21 Comments may be submitted through a comment form link

1 on the hearing webpage, via email on
2 dnrechearingcomments@delaware.gov, or via the US
3 Postal Services at the physical address for DNREC
4 indicated on the hearing webpage or the public noticed
5 previously issued in this matter. Written comments to
6 DNREC may not be submitted using social media
7 platforms such as Twitter, Facebook, YouTube, or text
8 messaging.

9 Please remember that all comment
10 received either through USPS or via the electronic
11 mechanisms noted just now, as long as it is received
12 by the department on or before September 14th, will
13 bear the exact same weight and will be considered
14 equally by the secretary prior to making his final
15 decision in this matter. Lastly the ultimate decision
16 regarding this matter is made by DNREC Secretary
17 Garvin. The formal proceeding tonight acts as a
18 mechanism to enable the department to thoroughly vet
19 the regulatory matter to the public and to let the
20 public know the various ways to which comment may be
21 submitted for Secretary Garvin's consideration if so

1 desired.

2 I will now hand it over to Eileen
3 Butler with the Division of Waste and Hazardous
4 Substances to provide the department's presentation.

5 MS. BUTLER: Thank you, Theresa.
6 Welcome to the Division of Waste and Hazardous
7 Substances public hearing on the proposed changes to
8 the aboveground storage tank regulations. My name is
9 Eileen Butler, and I will be presenting the proposed
10 changes for you this evening.

11 The division has made a number of minor
12 changes throughout the regulation to comply with
13 Delaware's regulatory style manual, mostly having to
14 do with numbering and clarifying statements. The
15 department recognized that there was a need to clarify
16 the standards for identification and remediation of
17 hydrocarbon releases from aboveground storage tanks.
18 With that effort we are incorporating by reference the
19 Delaware Risk-Based Corrective Action Protocol,
20 otherwise known as DERBCAP, as well as the
21 Hydrogeologic Investigation Guidance and Vapor

1 Intrusion Guidance that are referenced in DERBCAP.

2 More specifically there are a number of
3 definitions that were not included in the regulation
4 that are included in the statute, and we chose to
5 include them in the regulation at this time for ease
6 of reference. We also included an industry standard
7 definition for best management practices, and the
8 definition for tier zero as it relates to DERBCAP soil
9 sampling for release identification during tank
10 activities. As I indicated previously, changes to how
11 numbers are represented have been amended to comply
12 with the style manual, and we added criteria for those
13 seeking exemption from AST tier zero sampling
14 requirements as well.

15 We incorporated language to individual
16 sections throughout part B detailing site assessment
17 requirements and relocated other requirements into
18 DERBCAP. Those requirements, however, have not
19 changed, they were just moved. We changed the
20 definition of an AST to stipulate that each
21 compartment in a compartmentalized tank is considered

1 a single AST.

2 After publication in the Delaware
3 register I reviewed what was submitted by the division
4 to the registrar's office and what was actually
5 published in the register, and I noticed a number of
6 minor errors such as underlining words that should not
7 be underlined or vice versa, missing a comma where one
8 was inserted, striking a word that should not have
9 been struck out.

10 All are formatting errors, no errors
11 were substantive, and all were identified in what is
12 called an errata table. This example of the errata
13 table identifies what was originally published in the
14 register and what needs to be amended in the version
15 published in the register. The table is seven pages
16 long and has been submitted as an exhibit which is
17 available for your review.

18 Now I'd like to discuss the three
19 standards that we are incorporating into regulation.
20 Incorporation by reference is a method by which a
21 document is made part of the regulation simply by

1 referring to it. While the text of an incorporated
2 document does not appear in the regulation, the
3 provisions of the incorporated document are as fully
4 enforceable as any other regulation. Just like, for
5 example, the other reference standards outlined in
6 section 3 of part A in the AST regulations.

7 The Delaware Risk-Based Corrective
8 Action Protocol, DERBCAP, is based on the national
9 ASME standard for risk-based corrective action and is
10 being incorporated by reference into the AST
11 regulations. Some regulatory requirements associated
12 with corrective action are outlined in this document
13 and are directly tied to sampling and reporting
14 requirements. DERBCAP provides a tiered approach to
15 evaluate risk to human health and ecological
16 receptors.

17 To remain consistent with other
18 Delaware programs an excess cancer risk of 10 to the
19 minus 5 is assumed in all calculations, and with
20 regards to the toolkit when calculating risk-based
21 screening levels you need to be using the most updated

1 version of the toolkit, 2.53 DE Delaware specific
2 version which is available at the link provided on
3 this screen.

4 The overall scope of the revisions,
5 including the format of the document, is similar to
6 the January 2000 version. We updated some definitions
7 and references and revised the risk-based screening
8 levels to current standards. As mentioned previously
9 we incorporated tier zero sampling requirements for
10 ASTs in this document. Appendices 2 through 7 in the
11 protocol detail the input to the toolkit model
12 resulting in the updated action levels and RBSLs in
13 the guide. Tier zero action levels and tier 1 risk-
14 based screening levels are provided in tables 2 and 4
15 in the guide respectively.

16 The fate and transport model used to
17 calculate updated action levels and screening levels
18 has been updated to the current version, version 2.53
19 DE, of the risk-based corrective action toolkit for
20 DERBCAP. There have been several changes to the risk
21 calculations; parameters have been adjusted to

1 calculate updated risk-based screening level numbers
2 that reflect current toxicity values.

3 This slide shows those parameters that
4 have been updated. Risk is now age adjusted; body
5 weight of adult increased to 80 kilograms; exposure
6 duration is 26 years rather than 30 years; water
7 ingestion rate for a child decreased while water
8 ingestion rate for an adult increased; noncarcinogenic
9 risk is now based on child risk; and the cleanup
10 levels are defaulting to MCLs set by drinking water
11 standards supported by toxicology and scientific
12 knowledge.

13 We wanted to show you in this table
14 that there was a modification of the distance
15 categories. We pinpoint risk-based screening levels
16 based on distance to point of exposure as seen in the
17 circle on the top of your screen. The Hydrogeologic
18 Investigation Guidance document is referenced in
19 DERBCAP, and as such is also considered a standard by
20 incorporation into the regulations.

21 Definitions and standard references

1 were updated, but the overall scope of the revisions
2 including the format of the document is similar to the
3 2012 version. And lastly, similar to the HIG the
4 Vapor Intrusion Guidance has also been included in
5 this effort because it is referenced in DERBCAP. The
6 Vapor Intrusion Guidance now includes the petroleum
7 vapor intrusion pathway, and we revised risk
8 assessments and updated definitions and standard
9 references.

10 The next three slides will highlight
11 the exhibits that the division is respectfully
12 submitting to the hearing officer as evidence that the
13 division complied with the 24-step regulatory
14 development process to amend the aboveground storage
15 tank regulations. All exhibits are available for
16 public review and are as follows.

17 Exhibit 1 are the proposed aboveground
18 storage tanks regulations that were published in
19 August 1, 2023, register of regulations.

20 Exhibit 2 is the summary of changes to
21 those proposed AST regulations.

1 Exhibit 3 is the signed start action
2 notice #2023-03.

3 Exhibit 4 is the State of Delaware
4 public meeting calendar announcing the workshop on
5 proposed changes to regulations governing aboveground
6 storage tank systems and underground storage tanks, as
7 published on the webpage on May 25.

8 Exhibit 5 was the affidavit of
9 publication, the workshop on proposed regulations
10 governing underground storage tank systems and
11 aboveground storage tanks that was in The News Journal
12 published in the May 21 and May 24, 2023, edition,
13 advertising the workshop.

14 Exhibit 6 is the affidavit of
15 publication, the workshop on proposed regulations
16 governing underground storage tank systems and
17 aboveground storage tanks that was in the Delaware
18 State News published on the May 21 and May 24, 2023,
19 edition, advertising the workshop.

20 Exhibit 7 is the legal notice clipping,
21 the actual clipping, of public workshop from the

1 newspaper on 1352 aboveground storage tank regulations
2 dated May 21 in The News Journal.

3 And Exhibit 8 is the legal notice
4 clipping of the public workshop on 1352 aboveground
5 storage tank regulations dated May 24 in The News
6 Journal as well.

7 Exhibit 9 was the email dated May 30,
8 2023, that was sent to the interested parties list of
9 the June 13, 2023, workshop on proposed changes to
10 regulations governing underground storage tank systems
11 and aboveground storage tank systems.

12 Exhibit 10 is the register notice of
13 public hearing on 1352 aboveground storage tank
14 regulations scheduled for august 30th.

15 Exhibit 11 is the affidavit of
16 publication, the legal notice of a public hearing, in
17 the Delaware State News published August 6, 2023,
18 advertising the August 30, 2023, public hearing on
19 aboveground storage tank regulations.

20 Exhibit 12 is the affidavit of
21 publication, the legal notice of public hearing in The

1 News Journal published August 6, 2023, advertising the
2 august 30, 2023, public hearing on aboveground storage
3 tank regulations.

4 Exhibit 13 is the legal notice
5 clipping, the actual clipping from the newspaper,
6 regarding the public hearing on 1352 aboveground
7 storage tank regulations dated august 6, 2023, in The
8 News Journal.

9 Exhibit 14 is the State of Delaware
10 public meeting calendar announcing the hearing on
11 proposed changes to regulations governing underground
12 storage tank systems and aboveground storage tanks as
13 published on the webpage on august 9, 2023.

14 Exhibit 15 is the email dated august 7,
15 2023, informing the interested parties list of the
16 August 30, 2023, public hearing on proposed changes to
17 regulations governing underground storage tank systems
18 and aboveground storage tanks.

19 Exhibit 16 is the errata for admin code
20 1352.

21 Exhibit 17 is the Delaware Risk-Based

1 Corrective Action Protocol, Volume 2, dated January
2 2023.

3 Exhibit 18 is the Hydrogeologic
4 Investigation Guidance, Volume 2, dated January 2023.

5 Exhibit 19 is the the Vapor Intrusion
6 Guidance document dated January of 2023.

7 And finally Exhibit is 20 the
8 department PowerPoint presentation for the August 30,
9 2023, public hearing on aboveground storage tank
10 regulations.

11 That sums up the changes for this
12 regulatory update. And as I indicated earlier, once
13 final changes are incorporated into the State's
14 Administrative Code we plan to initiate a larger
15 regulatory development update for the AST regulations
16 that will incorporate further consolidation and
17 reorganization to improve clarity and simplify the
18 regulations.

19 Here is my contact information, and
20 again the link to our new regulations under
21 development tab on our website. This is the link to

1 the page that will provide any information on future
2 workshops, documents to share, dates for the public
3 hearing, but if you're not currently receiving
4 information from the division directly through the
5 interested persons email list please provide your
6 contact information to me and I'll be glad to add you
7 to that list.

8 Thank you again for your interest and
9 for attending tonight's hearing.

10 MS. SMITH: Thank you, Ms. Butler.
11 Again, the department did receive electronic versions
12 of the proposed exhibits that you went over just
13 moments ago, and I hereby mark these exhibits as
14 Department's Exhibits 1 through 20. As the department
15 received no registration for public comment by 12 p.m.
16 today there will not be a verbal comment portion of
17 tonight's hearing.

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

1 virtually present. Again, the hearing record will
2 remain open through Thursday, September 14, 2023.

3 I want to thank you all for attending
4 the virtual hearings tonight. The hearing is now
5 concluded at 6:49 p.m.

6 (Whereupon, the meeting concluded at
7 6:49 p.m.)

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CERTIFICATE OF DEPOSITION OFFICER

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
State of Delaware

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CERTIFICATE OF TRANSCRIBER

I, JILLIAN PORTER, 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.



JILLIAN PORTER

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