HEARING OFFICER'S REPORT

TO: The Honorable Gregory Patterson
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: *Serious Non-Attainment Plan for New Castle County for the 2015 8-hour Ozone National Ambient Air Quality Standard*

DATE: November 6, 2026

I. BACKGROUND AND PROCEDURAL HISTORY:

A virtual public hearing was held on Tuesday September 22, 2026, 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 *Serious Non-Attainment Plan for New Castle County for the 2015 8-hour Ozone National Ambient Air Quality Standard.*

The U.S. Environmental Protection Agency ("EPA") established the National Ambient Air Quality Standard ("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.

In 2015, the EPA promulgated a revised NAAQS for ground-level ozone to 70 parts per billion. When an area measures pollutant levels above NAAQS, the EPA designates that area as nonattainment and classifies the area based on the pollutant levels. Non-Attainment areas classified as "moderate" or above (i.e. Serious, Severe, Extreme) the NAAQS, are required to identify control measures that will reduce emissions from pollutant sources. Moreover, Section 110 of the *Clean Air Act* ("CAA") requires non-attainment areas to submit to EPA a State Implementation Plan ("SIP") that provides for the implementation, maintenance, and enforcement of the NAAQS. A SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and inventories.

On June 4, 2018, EPA Final Rule 83 FR 25776, 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") which includes New Castle County in Delaware, were included in that final rule. The EPA classified the Philadelphia NAA as "marginal" and required them to meet attainment level by August 3, 2021; however, they failed to meet the attainment deadline.

Consequently, on October 7, 2022, pursuant to Final Rule FR 60897, the EPA reclassified the Philadelphia NAA as moderate non-attainment and required the Philadelphia NAA to achieve attainment of the NAAQS by August 3, 2024. It should be noted that although New Castle County was designated as non-attainment, Kent and Sussex County were designated as attainment.

In accordance with 40 CFR Subpart I, the Department submitted their moderate ozone SIP to the EPA identifying how Delaware will achieve attainment status. Following the SIP submission to the EPA, Delaware, along with other Philadelphia NAA states, recognized that attainment would likely not be achieved by the deadline, given that attainment determinations are based on ozone monitoring data from the preceding ozone season. To that, Delaware, along with other states of the Philadelphia NAA, proactively sought voluntary reclassification of the non-attainment areas to a "serious" status.

On July 30, 2024, pursuant to 89 FR 61025, the EPA reclassified New Castle County, from "moderate" to "serious" nonattainment for the 2015 8-hour Ozone NAAQS. Areas reclassified as serious nonattainment are subject to more stringent CAA planning and emissions control requirements. Accordingly, states designated as serious non-attainment are required to submit revisions to their SIP that incorporate emissions controls and other measures necessary to satisfy the CAA requirements for serious nonattainment areas, with an attainment deadline of August 3, 2027.

Although the Philadelphia NAA was ruled nonattainment, Delaware has continued to demonstrate compliance with the 2015 ozone NAAQS since 2019, and it was shown that New Castle County did not contribute to ozone violations within the Philadelphia NAA. Based on these findings, Delaware determined that continued inclusion of New Castle County, in the larger Philadelphia non-attainment area, was no longer reasonable or scientifically justifiable.

Accordingly, on August 15, 2025, pursuant to Section 107 (d) (3) (D) of the CAA, Delaware submitted a request to the EPA to remove New Castle County from the Philadelphia NAA and establish it as a separate non-attainment area.

On June 4, 2026, pursuant to 91 FR 33610, the EPA revised the Philadelphia NAA for the

2008 and 2015 Ozone Standard, and created a standalone NAA for New Castle County, Delaware. The revised nonattainment boundary encompasses all of New Castle County which includes the monitoring sites at Lum's Pond, Martin Luther King, Brandywine Creek State Park, and Bellefonte II. This action allows Delaware to address New Castle County's nonattainment status independently of the other areas within the Philadelphia NAA. As a result, Delaware has greater flexibility to develop and implement nonattainment planning measures and emissions controls that reflect the county's individual air quality conditions and circumstances while continuing to meet the applicable CAA requirements. In addition, this approach supports a more effective and efficient air quality management in Delaware.

Along with that final rule, the EPA also issued a Clean Data Determination ("CDD") for New Castle County for the 2015 and 2008 ozone NAAQS, which indicated that the area is attaining the ozone standards. Although New Castle County received a CDD for New Castle County, the original redesignation to serious nonattainment, pursuant to EPA's final rule, still requires Delaware to submit revisions to its SIP. Because of the Clean Data Determination from the EPA, provisions related to attainment demonstration and the scheduled incremental reductions through Reasonable Further Progress no longer apply to the New Castle County NAA.

The Department is proposing revision to Delaware's SIP to meet the requirements associated with the 2015 8-hour ozone NAAQS. The proposed revisions include the following elements to meet the more stringent requirements and addresses the requirements for the serious classification of the New Castle County, Delaware, NAA under the 2015 8-hour ozone NAAQS:

- Delaware's updated 2017 Base Year Inventory, providing a comprehensive estimate of annual air emissions;
- Previously approved control measures, including the Clean Fuels Vehicle Program, and alternative control measures;
- Reasonably Available Control Technology for facilities where controls are technologically feasible and economically viable;
- An analysis of ozone air quality status and trends;
- Performance Standard Modeling and Certification of the Enhanced Inspection and Maintenance Program; and

In addition to the proposed SIP revision, the Department is also proposing a letter to the EPA, to withdraw the following suspended components of the previously submitted moderate ozone SIP: Reasonable Further Progress, Revised 2017 Base Year Emissions Inventory, 2023 Mobile Budgets for Transportation Conformity, Reasonably Available Control Measures, Attainment

Demonstration, Control Measures, and Contingency Measures.

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 (a) and (c). The Department published a General Notice of the aforementioned proposed SIP revision, and of the September 22, 2026, public hearing held in this matter, in the September 1, 2026, *Delaware Register of Regulations*. There were eight (8) 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 October 7, 2026, with one 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 September 22, 2026; 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 Schiliro, Environmental Scientist III, Division of Air Quality, developed the Record with the relevant documents in the Department's files.

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 October 7, 2026, with one public comment received by the Department. After review of the comment that addressed rollback of control measures, it was determined that the comment did not relate to Department's action, as the proposed SIP does not include any rollbacks or rescissions of Delaware's control measures.

Accordingly, the Department's proposed *Delaware State Implementation Plan Revision Serious Classification Requirements for New Castle County for the 2015 8-Hour Ozone National Ambient Air Quality Standard* 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 *Delaware State Implementation Plan Revision Serious Classification Requirements for New Castle County for the 2015 8-Hour Ozone National Ambient Air Quality Standard*. 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 (a) and (c);

2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Ch. 60, to issue an Order adopting the proposed SIP modifications as final;

3. The Department provided adequate public notice of the proposed 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 SIP modifications, and held the Record open for receipt of public comment subsequent to the date of the hearing (through October 7, 2026), consistent with Delaware law, in order to consider the same before making any final decision;

4. Promulgation of the proposed SIP modifications will enable the Department to meet the attainment plan requirements associated with the 2015 8-hour ozone NAAQS and provide EPA with the *Delaware State Implementation Plan Revision Serious Classification Requirements for New Castle County for the 2015 8-Hour Ozone National Ambient Air Quality Standard*;

5. The Department's proposed 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 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 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.

Theresa L. Smith
Public Hearing Officer