

## HEARING OFFICER'S REPORT

**TO:** The Honorable Gregory Patterson  
Cabinet Secretary, Department of Natural Resources and Environmental Control

**FROM:** Lisa A. Vest  
Public Hearing Officer, Office of the Secretary  
Department of Natural Resources and Environmental Control

**RE:** *Revised Proposed Amendments to 7 DE Admin. Code 1147: CO<sub>2</sub> Budget Trading Program ("RGGI") - Hearing Docket No. 2026-R-A-0003*

**DATE:** October 12, 2026

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### **I. BACKGROUND AND PROCEDURAL HISTORY:**

A virtual public hearing was held on Tuesday, July 28, 2026, at 6:00 p.m. via the State of Delaware Zoom Platform by the Department of Natural Resources and Environmental Control ("DNREC" or "Department") to receive comment on proposed regulatory amendments to 7 DE Admin. Code 1147: *CO<sub>2</sub> Budget Trading Program*, more commonly referred to as the *Regional Greenhouse Gas Initiative*, or "RGGI" ("Amendments"). Since 2009, Delaware (along with other participating states) have implemented a regional program known as RGGI to reduce CO<sub>2</sub> emissions. In 2025, the states comprising RGGI finalized program revisions. Thus, the purpose of this proposed promulgation is to formally amend Delaware's existing CO<sub>2</sub> Budget Trading Program regulation (7 DE Admin. Code 1147) to reflect those revisions.

The proposed Amendments to 7 DE Admin. Code 1147 include, among other minor program adjustments, adjusting Delaware's portion of the regional cap beginning in 2027-2037; replacing Emissions Containment Reserve with increased minimum reserve price; amending the quantity of allowances in the Cost Containment Reserve; adding an additional Cost Containment Reserve; updating the regional base CO<sub>2</sub> allowance amount; and removing offsets from RGGI design beginning in 2027.

To serve as background on this proposed regulatory promulgation, RGGI is the nation's first multi-state initiative created to cap and reduce carbon dioxide emissions from the electricity generating sector. Over RGGI's history, there have been nine states (including Delaware) that have consistently participated in the program.<sup>1</sup> As of the time of this proposed regulatory promulgation, the participating RGGI states are Delaware, Connecticut, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and Virginia.

The RGGI program is composed of individual CO<sub>2</sub> Budget Trading Programs in each participating state. Through independent statutes or regulations, based on the RGGI Model Rule, each state's CO<sub>2</sub> Budget Trading Program limits CO<sub>2</sub> emissions from electric power plants, issues CO<sub>2</sub> allowances, and establishes participation in regional CO<sub>2</sub> allowance auctions. Within the RGGI states, fossil fuel-fired electric power generators with a capacity of twenty-five megawatts or greater (also called "regulated sources") are required to hold allowances equal to their CO<sub>2</sub> emissions over a three-year control period.

RGGI states establish a regional cap on the amount of CO<sub>2</sub> emissions that fossil fuel-fired power plants can emit by issuing a limited number of tradeable CO<sub>2</sub> allowances. Each allowance represents an authorization for a regulated power plant to emit one (1) short ton of CO<sub>2</sub>. Regulated sources can use a CO<sub>2</sub> allowance issued by any participating state to demonstrate compliance in any state. These allowances may be acquired by the regulated sources by purchasing them at regional auctions or through secondary markets, thereby allowing market forces to determine the most cost-effective means of reducing CO<sub>2</sub> emissions and creating market certainty to drive long-term investment in clean energy.

The stated RGGI program goals are as follows: (1) stabilize, then reduce, greenhouse gas ("GHG") emissions; (2) invest in energy efficiency, renewables and climate policies and programs; (3) create a market for carbon; (4) demonstrate that a state-led regional program can work; and (5) implement a professional auction model.

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<sup>1</sup> New Jersey participated in RGGI from 2009 to 2011 and then resumed its participation starting in 2020. Virginia participated in RGGI from 2021 through 2023 and then resumed participation in July 2026.

A review of what has occurred in the states that have participated in RGGI since 2009 reveals the following:

- RGGI states experienced a 46% reduction in carbon dioxide pollution since 2009, even as the regional economy grows.
- RGGI allowance auctions have yielded more than \$9 billion to power investment in the clean energy future of the participating states.
- RGGI states' reinvestments of auction proceeds to date have directly benefited over eight (8) million households and 400,000 businesses in the region and will save ratepayers over twenty billion dollars on their energy bills through energy efficiency programs and other consumer support.
- Independent research by the Analysis Group found that RGGI produced \$5.7 billion in net economic benefits and added 48,000 job-years to RGGI states' economies between 2009 – 2020.
- RGGI participation has coincided with reduced costs for consumers, with average residential and commercial bills in RGGI states declining faster than the rest of the United States.

Additionally, investments in peak demand reduction and energy efficiency programs funded through RGGI have advanced reliability goals in the region, while reducing emissions and consumer bills. In 2024, RGGI investments have saved consumers in participating states money on their energy bills, created jobs, and reduced carbon emissions. Over the program's lifetime, RGGI is projected to save participants an estimated \$2.6 billion on energy bills and avoid 4.4 million short tons of harmful CO<sub>2</sub> emissions.

The *Delaware Climate Change Solutions Act of 2023* (7 Del.C. Ch.100) established GHG emission reduction targets of fifty percent by 2030 and net-zero emissions by 2050 (both targets are based on a 2005 baseline). The RGGI program is the foundational mitigation policy achieving Delaware's GHG goals. Delaware has already made significant progress in reducing its GHG emissions and has a path forward toward net-zero emissions by 2050.

Delaware has eight (8) compliance entities that operate generating units greater than 25 megawatts and are powered by fossil fuels: (1) Constellation Christiana Substation; (2) Constellation Edge Moor; (3) Constellation Hay Road; (4) DCO Energy Garrison Energy Center; (5) City of Dover – Van Sant; (6) DEMEC – Warren F. Sam Beasley; (7) Delaware City Refinery; and (8) Dover Energy Center. These facilities are known as Delaware’s RGGI units and must purchase a CO<sub>2</sub> allowance for every ton of CO<sub>2</sub> emitted<sup>2</sup>.

As called for in the RGGI Memorandum of Understanding, the participating RGGI states have committed to conduct routine Program Reviews of the individual CO<sub>2</sub> Budget Trading Programs. The First Program Review was begun in 2012, with results announced on February 7, 2013. The Second Program Review was begun in 2016, with announced results and an updated Model Rule provided to participating RGGI states on December 19, 2017.

The individual Program Reviews are rigorous and comprehensive evaluations, supported by an extensive stakeholder process that engages the regulated community, environmental nonprofits, consumer and industry advocates, and other interested stakeholders. Additionally, the Program Reviews are to consider each program’s successes and impacts, and to determine what design element adjustments are needed to continue to provide the stability, certainty, and reliability upon which consumers and energy providers rely.

Amendments to the Model Rule are developed by the RGGI state staff, as part of each RGGI state’s individual Program Review. In line with this commitment, the RGGI states have announced outcomes as a result of the Third Program Review that took place on July 3, 2025. The design updates further the commitment of the participating RGGI states commitments to affordable energy, public health, and the environment, and continued pollution reduction while supporting economic growth and great resiliency, as the market-based design enables the reduction of CO<sub>2</sub> emissions at the lowest consumer cost.

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<sup>2</sup> It should be noted that NRG’s Indian River Power Plant #4 shut down in February 2025 and has a compliance obligation for the sixth control period.

At the present time, the participating RGGI states are currently undertaking their individual state processes to implement the determined design changes agreed upon as part of the recently completed Third Program Review. During such Program Reviews, the RGGI states each draw on electricity sector and economic modeling, customer bills analysis, public input, and lessons learned over the history of the RGGI Program. Since its inception, RGGI has utilized a market-based mechanism to cap and cost-effectively reduce emissions.

Under the updated Model Rule, Delaware (along with the other participating RGGI states) commits to the following actions:

- Reduction of the regional emissions cap in 2027 from 75.7 million tons of CO<sub>2</sub> to approximately 69.8 million tons. Allowances decline by approximately 8.5 million tons of CO<sub>2</sub> annually (approximately 10.5% of the 2025 budget) thereafter through 2033. From 2034 through 2037, the cap will decline by approximately 2.4 million tons of CO<sub>2</sub> annually (approximately 3% of the 2025 budget). Subsequent years are set to match the 2037 emissions cap. No adjustments are made to the bank allowances, which continue to be available for compliance purposes. As of July 2026, the estimated bank of privately held allowances in excess of RGGI compliance obligations is approximately 60 million tons. Setting the regional cap beyond 2037 will be addressed in the next RGGI Program Review scheduled to begin no later than 2028.
- To ensure availability of RGGI allowances to meet grid reliability needs and protect against cost volatility, the Department's proposed Amendments contain language to revise the existing Cost Containment Reserve ("CCR"). The CCR is a reserve of allowances made available at auction if the auction clearing price exceeds a predetermined trigger price. Additionally, the proposed Amendments increase the size of the CCR and implement a second tier of CCR allowances available at auction at a higher trigger price.

- Increase of the minimum reserve price (i.e., the lowest price at which RGGI allowances may be sold at auction). Beginning in 2027, the updated Model Rule removes the Emissions Containment Reserve (“ECR”) and replaces it with an increased minimum reserve price that matches the existing ECR trigger price trajectory. The new minimum reserve price is \$9.00 in 2027, increasing by seven percent (7%) annually thereafter.
- During the Third RGGI Program Review, stakeholders raised concerns that offset allowances permitted covered sources to meet their compliance obligation without reducing emissions at their facilities (since RGGI’s inception in 2009, there has been very limited interest in sponsorship of an offset project). Moving forward, the participating RGGI states have determined that RGGI offset allowances will no longer be awarded or otherwise distributed under the RGGI Program.
- The Department’s proposed Amendments remove the offset project types for landfill methane capture and destruction, sequestration of carbon due to reforestation, improved forest management, and avoided methane emissions from agricultural manure management operations, as the updated Model Rule eliminates the language regarding RGGI offset allowances.

Other provisions contained within the Department’s proposed Amendments, consistent with the updated Model Rule, include the following: (1) any existing offset allowances awarded by a participating state prior to January 1, 2027, are fully fungible within the constraints of the RGGI Program; (2) updates to streamline the monitoring, reporting, and recordkeeping section are being made, so as to mirror the federal requirements established in 40 CFR Part 75; and (3) numerous administrative, clerical changes are being made to the definition section of the existing regulations.

Throughout the aforementioned Third Program Review, the RGGI states held a number of public meetings to solicit comments and receive feedback. The outcomes of the Third Program Review were decided by consensus among all the participating RGGI states through careful deliberation, technical modeling and analysis, and robust stakeholder engagement. Additional state commitments alongside the updated Model Rule include the following:

- RGGI states to adopt the updated Model Rule to be effective January 1, 2027.
- Commencement of the Fourth Program Review to begin no later than 2028.
- Removal from circulation any allowances that were offered at auction but remain unsold.

Upon initiating DNREC's Regulatory Development Process, the Department's Division of Air Quality ("AQ") held a key stakeholder meeting on March 26, 2026. Thereafter, an in-person public workshop was held on April 30, 2026, to vet the proposed Amendments to the public and solicit public input to the draft language. Following that public workshop, Department staff finalized the proposed Amendments and published same in the *Delaware Register of Regulations* on July 1, 2026. Public notice of the proposed Amendments and public hearing to be held on July 28, 2026, was also published in both the *News Journal* and the *Delaware State News* and posted on the *State of Delaware Public Meeting Calendar*, on July 1, 2026, as well.

The following section of this Hearing Officer's Report ("Report") provides a brief description of the Amendments proposed at this time by the Department regarding Delaware's existing 7 DE Admin. Code 1147:

**Section 1 - General Provisions:** Definitions have been amended to reflect the following: removal of offsets; clarification of the CO<sub>2</sub> allowance transfer deadline; update of the CCR trigger price definitions for CCR 1 and CCR 2; removal of definitions associated with the ECR, adjusted budget, and the bank of allowances; and update of the definition for the minimum reserve price.

**Section 5 – CO<sub>2</sub> Allowance Allocations:** Existing language amended to reflect the following: the new base budget for 2027 through 2037 and subsequent years; updated existing CCR language to include the second tier CCR; removal of language for the ECR and the third control period bank adjustment. No future bank adjustments are proposed. Additional language proposed to provide flexibility and cost containment for Delaware’s RGGI program. The Department will allocate allowances to the Delaware Auction Account.

**Section 8 – Monitoring and Reporting:** Existing language amended for monitoring, reporting and recordkeeping requirements to align and be consistent with federal requirements for power plants that are already subject to 40 CFR Part 75.

**Section 9 – Auction of CCR Allowances:** Existing language updated with regard to the auction provisions of the two CCR tiers and the removal of the ECR.

**Section 10 – Offsets:** The Department is proposing to remove Section 10 in its entirety and to mark it as “RESERVED.”

As noted previously, in addition to the specific Amendments noted above, the Department has proposed numerous other edits throughout Delaware’s existing RGGI regulations to (1) mirror the federal requirements as set forth in 40 CFR Part 75; (2) reflect minor administrative clarifications (i.e., to promote consistent use of terms and provide additional clarity for the benefit of the regulated community, etc.); and (3) where appropriate, provide clerical correction to existing formatting and style to comply with the current *Delaware Administrative Code Drafting and Style Manual*.

The Department has the statutory basis and legal authority to promulgate the above proposed Amendments, pursuant to 7 *Del.C.* §§6043-6047, Delaware’s *Regional Greenhouse Gas Initiative and CO<sub>2</sub> Emission Trading Program*; 7 *Del.C.* Ch. 100, *Delaware Climate Change Solutions Act of 2023*; and the general authority provided to the Department under 7 *Del.C.* Ch. 60.

Department staff, as well as members of the public, attended the public hearing held on July 28, 2026. Comments were received from the public by the Department at the time of the public hearing, as well as during both the pre- and post-hearing phases of this promulgation. Pursuant to 29 *Del.C.* §10118(a), the Record remained open subsequent to the date of the public hearing for receipt of public comment through August 14, 2026. At the request of this Hearing Officer, the Department's subject matter experts in the AQ provided a Technical Response Memorandum ("TRM"), for the benefit of the Record generated in this matter. The Department's TRM, dated September 9, 2026, is discussed in greater detail below. It should be noted that all 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 public hearing held on July 28, 2026, as provided by Veritext Legal Solutions;
- (2) Thirteen (13) documents introduced by Department staff at the public hearing held on July 28, 2026, and marked by this Hearing Officer at the time of the hearing accordingly as "Department Exhibits 1-13.";
- (3) *Revised* proposed Amendments to 7 *Del.C.* §1147, to be submitted to the Register as the Department's final Amendments in this matter, attached hereto as Appendix "A" and expressly incorporated herein;
- (4) TRM provided by the Division of AQ in response to the public comment received by the Department in this matter, dated September 9, 2026, attached hereto as Appendix "B" and expressly incorporated herein; and
- (5) For ease of review, the Technical Support Document, originally attached to the TRM noted above, dated July 2026, attached hereto as Appendix "C" and expressly incorporated herein.

The Department's person in the Division of AQ primarily responsible for the drafting and overall promulgation of the proposed Amendments, Valerie Gray, Program Administrator, developed the Record with the relevant documents in the Department's files.

It should be noted that general clerical errors to the Department's original proposed Amendments were discovered during the post-hearing phase of this promulgation. Those errors have now been corrected by Department staff, and thus the *revised* proposed Amendments have been readied for submission to the *Delaware Register of Regulations* as the Department's final proposed Amendments in this matter. Due to the fact that the Department's revisions were non-substantive in nature, no further publication or hearing is necessary.

### **III. RECOMMENDED FINDINGS AND CONCLUSIONS:**

Currently pending before the Department is the adoption of the *revised* proposed amendments to 7 DE Admin. Code 1147, Delaware's *CO<sub>2</sub> Budget Trading Program*. As noted previously, the purpose of this regulatory promulgation is to amend Delaware's RGGI program so as to reflect the revisions made to the updated Model Rule, as set forth above. As noted previously, the Department's *revised* proposed Amendments are attached hereto as Appendix "A" and are expressly incorporated herein.

Subsequent to the close of the public comment period on August 14, 2026, the Department's staff in the Division of AQ reviewed all of the comments received from the public in this matter and, at the request of this Hearing Officer, provided a TRM, dated September 9, 2026, in response to the same. As set forth above, a copy of the Department's TRM is attached hereto as Appendix "B" and is expressly incorporated herein. For ease of review, a copy of the Department's Technical Support Document (originally listed as Department's Exhibit 5 in the record and also attached to the TRM provided by AQ), is also attached hereto separately as Appendix "C" and is expressly incorporated herein.

As the TRM notes, the Department received numerous comments from the public regarding the proposed Amendments, both at the time of the public hearing held on July 28, 2026, and during the pre- and post-hearing phases of this promulgation. Many comments were supportive of Delaware's continued participation in the RGGI program and of the proposed Amendments. Other comments voiced concern over the proposed increase in the minimum reserve price and the cost containment reserve trigger prices, the elimination of offset compliance moving forward, and how the proposed revisions ultimately will adversely affect the impact of the RGGI program on Delaware rate payers. Some comments opined that RGGI compliance constitutes an unlawful tax upon electricity rate payers, while others recommend that the Department defer implementation of the proposed Amendments until Delaware has had a better opportunity to better understand the regional generation adequacy concerns, PJM reliability forecasts, electricity demand growth, consumer affordability impacts, and economic development implications. The following section of this Report will group the public comments received into specific areas of concern and summarize the Department's responses to the same.

**1. The RGGI program has an adverse impact on Delaware energy consumers.**

Some comments received by the Department opined that many aspects of the RGGI program will ultimately result in a negative impact on Delaware's rate payers. In support of that concern, commenters offered conclusions for the Department's consideration, including, but not limited to, the following:

(1) The proposed increases in the minimum reserve price and the cost containment reserve trigger prices, coupled with the elimination of the offset compliance alternative, has pushed the price of RGGI allowances higher. These higher allowances lead to higher bids into the PJM connection, which result in a higher price for the electricity that Delaware customers buy;

(2) the recent increased costs associated with PJM's capacity auction was the result of increased operating costs associated with RGGI compliance. As a result of the RGGI increased operating costs, natural gas units will retire or shut down, thus resulting in higher capacity auction prices; and

(3) the Department should evaluate the implementation of the proposed RGGI program changes and encourage prioritization of reliability, customer affordability and investment certainty. Given this, the Department was encouraged to evaluate the interaction between future cap reductions and regional resource adequacy needs.

In response to these concerns, the Department's TRM refers to its Technical Support Document (*see*, Appendix "C," specifically, Sections 6 through 8) for an exhaustive analysis of the impact of the RGGI program on Delaware energy consumers. The Department's subject matter experts in the AQ opine that the Technical Support Document demonstrates the RGGI program has a net positive impact on energy consumers.

With regard to the recommendation that the Department further evaluate the implementation of the proposed RGGI revisions, the Department encourages businesses to participate in future RGGI program reviews to offer their insights into how the program should be adjusted in the future. The TRM notes that the press release regarding the completion of the Third Program Review announced the next such review is to commence no later than 2028, and that the scoping process for that program review was announced this past May.

**2. Certain aspects of the RGGI Program are perceived to be unconstitutional, unlawful, or otherwise not statutorily mandated (i.e., Delaware is not required to adopt every revision to the Model Rule or recommendation from the third RGGI Program Review).**

Some commenters opined that the distribution of RGGI proceeds to the SEU is unconstitutional, and that RGGI compliance amounts to an unlawful tax.

Other comments voiced concern that the Department has not clearly demonstrated that Delaware law requires the implementation of the specific RGGI revisions at this time, particularly as Delaware and the broader PJM region face growing concerns about electricity reliability, generation adequacy, and energy affordability. To that end, requests were received that the Department identify the specific statutory authority that requires the implementation of the proposed Amendments at this time.

In response to this area of concern, the TRM notes that the General Assembly adopted the RGGI authorizing statute (*7 Del C. §6046*) that establishes the distribution of auction revenue to the SEU. With regard to the suggestion that RGGI compliance is an unlawful tax, the Department does not agree. The TRM states that the CO<sub>2</sub> Budget Trading Program is not a tax, but a market-based approach to reducing CO<sub>2</sub> emissions in the power sector and is similar to the existing cap and trade programs for SO<sub>2</sub> and NO<sub>x</sub>. Although there are costs associated with compliance for electricity generating units, the purpose of the program is to stabilize and reduce CO<sub>2</sub> emissions at the lowest possible cost to compliance entities. The program does not result in taxes or fees for electricity rate payers and has not increased electricity rates.

Insofar as the comment that the Department has not clearly demonstrated that Delaware law requires the implementation of these specific revisions at this time, the TRM states the Department disagrees. The Department has the authority to adopt and amend regulations through the authority granted by the General Assembly, as provided in *7 Del. C. Ch. 60*, specifically, at §6010(a). Furthermore, participation in a regional program requires coordination with the participating RGGI states in order to implement the reductions in GHG emissions. The Department's proposed Amendments reflect the outcome of the Third Program Review, as noted above, in order to make progress towards each state's GHG reduction goals.

As noted in the TRM, the General Assembly has found, as set forth in 7 Del.C. §6043(a)(10), that the most cost effective and least burdensome way to control CO<sub>2</sub> emissions is to continue Delaware's participation in the Regional Greenhouse initiative:

*Implementation of a CO<sub>2</sub> reduction program on a large scale, such as regionally, or nationally, is important so as to maximize our efficient use of energy and our contribution to lowering CO<sub>2</sub> emissions while minimizing impacts on electric system reliability and unnecessary costs to Delaware power consumers. Further, costs of the CO<sub>2</sub> cap and trade program are anticipated to be less burdensome if the program is implemented, to the extent possible and practicable, on a regional level.*

Further, the Department believes the proposed Amendments are within the statutes of Delaware Code. Specifically, 7 Del.C. §6044(a) states:

*The General Assembly explicitly authorizes and sanctions the prior and ongoing participation of the Secretary of the Department of Natural Resources and Environmental Control, and the Chair of the Public Service Commission, and their duly authorized representatives, as part of their official duties, to implement and participate in the Regional Greenhouse Gas Initiative (RGGI)*

The Department's TRM states that the General Assembly has further directed Delaware to reduce GHG emissions. As previously referenced herein, the *Delaware Climate Change Solutions Act of 2023* requires Delaware to reduce GHG emissions to achieve net zero emissions by 2050. The RGGI Program is the foundational control strategy and policy for achieving this target.

3. **RGGI will decrease investment in natural gas fired generation – new, repowering, or upgrades. Delaware should encourage investment in reliable electricity generation, not create barriers at a time when reliability concerns are growing and future capacity needs remain uncertain.**

Comments falling into this area of concern point out that fuel switching from coal to natural gas has been one of the most significant contributors to emissions reductions throughout Delaware, the Mid-Atlantic, and the broader RGGI region. Further, that natural gas has been one of Delaware's greatest success stories in emissions reductions. One commenter opined that the reductions in the Delaware allowance budget are significant and raise practical concerns about future investment in electricity generation. Concerns were also voiced about Delaware importing electricity from out-of-state power suppliers; specifically, that Delaware has an opportunity to increase its clean dispatchable electric generation, but the Department's proposed Amendments "...hamstring that ability, keeping Delawareans dependent on out-of-state dispatchable generation."

In response to these concerns, the Department's TRM again points to its Technical Support Document (App. "C," specifically, Section 6.0) and its Appendix "A," which provides detailed information on the modeling performed by the RGGI participating states and the Delaware specific modeling in support of the proposed Amendments. The TRM further notes that the General Assembly has charged Delaware with reducing GHG now based on the information currently available.

The TRM goes on to note that Department fails to understand how the proposed Amendments are a barrier to investments in reliable generation. Again, App. "C" attached hereto contains modeling results that provide details on the amount of natural gas generation projected through the 2037-time horizon. Moreover, natural gas combined cycle and combustion turbine technologies are anticipated to remain consistent through 2037. As noted previously, the General Assembly has found that the most cost effective and least burdensome way to control CO<sub>2</sub> emissions is to continue Delaware's participation in the RGGI initiative.

**4. The Department has failed to fully analyze the economic impact of the proposed elimination of the RGGI offsets program.**

In response to this comment, the Department's TRM notes that a detailed discussion of the program proceeds was provided in AQ's Technical Support Document (*see*, App. "C"). The TRM further notes that the RGGI offset program has been available since 2009, with no applications having been received for projects here in Delaware. That being said, the Department is happy to review this program as part of the upcoming Fourth Program Review, should a project sponsor seek to develop an offset project in Delaware.

In addition to the above areas of concern, comments were received by the Department regarding the accuracy of the information set forth in the Department's RFA/RIS forms filed along with the proposed Amendments in this matter (as required by the *Register of Regulations*). In response to those comments, the TRM notes that the Department agrees that the statutory language quoted for the definition of a "small business" had recently been amended to increase the annual gross receipts from \$4,000,000 to \$10,000,000; however, this increase does not change the applicability of the RGGI program because all entities required to comply have gross receipts in excess of \$10,000,000. As such, the Department does not believe a correction to the RFA is necessary, as the current statutory citation was provided at the time the original proposed Amendments were submitted, and the definition of a small business does not require any Delaware small business to comply with 7 *Del. C.*§1147.

With regard to other comments concerning the failure of the Department to (1) conduct an analysis of the proposed Amendments and (2) identify less costly alternatives to the same in its RIS filed with the *Register of Regulations* in this matter, the TRM again notes the detailed analysis provided in its Technical Support Document (*see*, App. "C," Sections 6-7), including, but certainly not limited to, modeling spreadsheets for the estimated impact of the proposed Amendments and the Cost Benefit analysis for Delaware rate payers. The documentation in Appendix "C" further references information provided on the RGGI website that includes the six (6) stakeholder engagement sessions where alternatives were presented.

Based on the Record developed in this matter, I find and conclude that the Department has provided appropriate reasoning regarding the need for the *revised* proposed Amendments, as set forth above. Accordingly, I recommend promulgation of the same, in the customary manner provided by law.

Further, the Department concludes and specifically directs the following:

1. The Department has the statutory basis and legal authority to act with regard to the *revised* proposed amendments to 7 *Del.C.* §1147, *CO2 Budget Trading Program*, pursuant to 7 *Del.C.* §§6043-6047, Delaware's *Regional Greenhouse Gas Initiative and CO<sub>2</sub> Emission Trading Program*; 7 *Del.C.* Ch. 100, *Delaware Climate Change Solutions Act of 2023*; and the general authority provided to the Department under 7 *Del.C.* Ch. 60;
2. The Department has jurisdiction under its statutory authority, as noted above, to issue an Order adopting the *revised* proposed Amendments as final;
3. The Department provided proper public notice of the original proposed Amendments and all proceedings in a manner required by law and regulations, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at the time of the public hearing held on July 28, 2026, and during the days subsequent to the public hearing through August 14, 2026, in order to consider all public comment on the same before making any final decision;
4. As a direct result of the review performed by Department staff during the post-hearing phase of this promulgation, clerical error was discovered. That error has now been corrected, and the Department's *revised* proposed Amendments have been readied for submission to the *Delaware Register of Regulations* as final Amendments. Given that the corrected error was non-substantive in nature, no further publication or hearing is necessary in this matter;

5. Promulgation of the *revised* proposed Amendments will enable DNREC to amend Delaware's existing CO2 Budget Trading Program regulation to (1) mirror the federal requirements as set forth in 40 CFR Part 75; (2) reflect minor administrative clarifications (i.e., to promote consistent use of terms and provide additional clarity for the benefit of the regulated community, etc.); and (3) where appropriate, provide clerical correction to existing formatting and style to comply with the current *Delaware Administrative Code Drafting and Style Manual*;
6. The Department has reviewed the *revised* proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and believes the same to be lawful, feasible, and desirable, that it will not establish substantive additional costs for individuals or small businesses and that the recommendations as proposed should be applicable to all Delaware individuals or small businesses equally;
7. Further, the Department has reviewed the *revised* proposed Amendments in the light of 7 *Del.C.* §10003 and 29 *Del.C.* §10118(b)(3), and has conducted the requisite assessment regarding the impact of this regulation on the achievement of the State of Delaware's GHG emissions reduction target accordingly;
8. The Department's proposed Amendments, as published in the July 1, 2026, *Delaware Register of Regulations*, fully vetted at the public hearing held on July 28, 2026, and then *revised* to correct non-substantive error, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory amendments, to go into effect ten (10) days after their publication in the next available issue of the *Delaware Register of Regulations*;

9. The Department shall submit the *revised* proposed Amendments as final regulatory amendments 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 as the Department determines is appropriate; and
9. The Department shall serve and publish its Order on its internet site.



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LISA A. VEST  
Public Hearing Officer

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Attachments:

Appendix A: *Revised* proposed Amendments to 7 *Del.C.* §1147

Appendix B: TRM (09/09/2026)

Appendix C: Div. of AQ Technical Support Document (July 2026)