



STATE OF DELAWARE  
**DEPARTMENT OF NATURAL RESOURCES AND  
ENVIRONMENTAL CONTROL**  
RICHARDSON & ROBBINS BUILDING  
89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

OFFICE OF THE  
SECRETARY

PHONE  
(302) 739-9000

**Secretary's Order No.: 2020-WH-0033**

**RE:        Approving Final Regulations to Amend Amendments to 7 DE Admin. Code  
             1301 Delaware's Regulations Governing Solid Waste - new Section 14, *Plastic  
             Carryout Bag Ban and At Store Recycling Program* and existing Section 3,  
             *Definitions***

**Date of Issuance: November 17, 2020**

**Effective Date of the Amendment: December 21, 2020**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 7 *Del.C.* §§6006 and 6010, and all other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

**Background, Procedural History and Findings of Fact**

This Order relates to proposed regulation amendments ("Amendments") to 7 DE Admin. Code 1301, *Delaware's Regulations Governing Solid Waste* ("DRGSW"). More specifically, the Department proposes to: (1) create a new Section 14, *Plastic Carryout Bag Ban and At Store Recycling Program*, within the existing regulations; and (2) revise existing Section 3, *Definitions*, to formally define certain terms referred to in the proposed new Section 14.

In June 2019, the General Assembly passed House Bill 130, which amends 7 *Del.C.* §6099A by expanding the existing *At-Store Recycling Program* governing the use of plastic carryout bags. Delaware stores subject to this law will be prohibited from providing plastic carryout bags to customers at the point of sale, thereby encouraging a shift to reusable bags. Subsequently, House Bill 130 was signed into law by Governor Carney on July 29, 2019.

The Department proposes to modify the DRGSW to ensure: (1) plastic carryout bags, as defined by 7 *Del.C.* §6099A, are banned; (2) at-store collection of plastic carryout bags and film are implemented, maintained, and consistent with 7 *Del.C.* Ch. 60 Subchapter IX, Recycling and Waste Reduction; (3) that plastic bags and film enter the marketplace and are not disposed of and (4) that stores collect and report data to support the intent of 7 *Del.C.* §6099A. The adoption of the proposed Amendments will further enable the cleanup of Delaware’s communities and watersheds, reduce storm water and trash management costs to taxpayers, and promote the health and safety of watersheds, wildlife, humans, and the ecosystems food chain.

In compliance with 7 *Del.C.* §6099A, effective January 1, 2021, a store shall not provide any bags to a customer at the point of sale made from plastic not specifically designed and manufactured to be reusable and shall provide reusable plastic bags that meet the requirements as established in 7 *Del.C.* §6099A(a)(4). A store may make available for purchase or distribution at the point of sale a reusable grocery bag that meets the requirements of the aforementioned section. In addition, a store may make paper bags available for no cost or may charge any price at their discretion. A store may only continue the use of plastic carryout bags for the purposes identified in 7 *Del.C.* §6099A(e)(3).

To ensure compliance with 7 *Del.C.* Ch. 60, Subchapter IX, Recycling and Waste Reduction, the Department also proposes to reinforce the “At-Store Recycling Program” (“ASRP”). The goal of the ASRP is to connect the manufacturers who need the material (i.e. plastic carryout bags) to the marketplace that can provide the material to be recycled. Stores that continue to distribute any plastic carryout bags, whether or not exempt, shall be required to have an ASRP. Stores that have adopted practices which eliminate the need for plastic carry out bags, as outlined in the Amendment, do not need to participate in an ASRP as of March 31, 2021.

To further necessitate ASRP compliance, the Department requires stores to annually report the measurement of plastic bags and film collected at the store's collection bin, and to maintain these records for three (3) years. Stores shall also make the records available to DNREC, upon request, to demonstrate compliance of this Amendment.

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these proposed Amendments, pursuant to 7 *Del.C.* §§6010(a) and 6305(a). The Department published its initial proposed regulation Amendments in the October 1, 2020 *Delaware Register of Regulations*. Thereafter, the public hearing regarding this matter was held on October 21, 2020. All notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

It should be noted that, subsequent to publication in the October 1, 2020 *Delaware Register of Regulations*, the Department identified a clerical error contained in the definition of "plastic carryout bag." The clerical error was corrected, as set forth in the *revised* proposed Amendments, and then properly vetted by the Department at the time of the virtual hearing.

There were nine (9) members of the public in attendance with one (1) public comment provided live at the virtual hearing. Pursuant to 29 *Del.C.* §10118(a), the hearing record remained open for receipt of additional written comment for 15 days following the public hearing. The hearing record formally closed for comment in this matter at close of business on November 5, 2020, with twenty-nine (29) written comments having been received by the Department.

Subsequent to the close of the Record with regard to public comment, and at the request of the Hearing Officer, a Technical Response Memorandum ("TRM") was provided by the Department's expert staff in the Division of Waste and Hazardous Substances. I find that the Department's TRM offers a detailed review of the *revised* proposed Amendment, identifies the concerns voiced in the public comments received in this matter, and responds to the same in a balanced manner, accurately reflecting the information contained in the Record.

Hearing Officer Theresa Newman prepared her report dated November 7, 2020 (“Report”), which expressly incorporated the Department’s *revised* proposed Amendments into the hearing record generated in this matter. The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the *revised* proposed Amendments as attached to the Report as Appendix “A.”

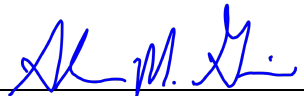
### **Reasons and Conclusions**

Based on the record developed by the Department’s experts in the Division of Waste and Hazardous Substances, and established by the Hearing Officer’s Report, I find that the revised proposed Amendments are well-supported and will enable the Department to: (1) reflect recent changes to Delaware law in the existing DRGSW; (2) provide further regulated guidance to stores affected by the same for compliance assistance purposes; (3) enhance the Department’s cleanup of Delaware’s communities and watersheds, reduce storm water and trash management costs to taxpayers; and (4) promote the health and safety of watersheds, wildlife, humans, and the ecosystems food chain. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments be promulgated as final.

The following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to *7 Del. C. §§6010(a) and 6305(a)*;
2. The Department has jurisdiction under its statutory authority, pursuant to *7 Del.C. Ch.60*, to issue an Order adopting these *revised* proposed Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on October 21, 2020 and during the 15 days subsequent to the hearing (through November 5, 2020), before making any final decision;

4. Promulgation of the *revised* proposed amendments to 7 DE Admin. Code 1301, as set forth herein, will enable the Department to reflect recent changes to Delaware law in the existing DRGSW, provide further regulated guidance to stores affected by the same for compliance assistance purposes, enhance the Department's cleanup of Delaware's communities and watersheds, reduce storm water and trash management costs to taxpayers, and promote the health and safety of watersheds, wildlife, humans, and the ecosystems food chain;
5. The Department has reviewed the revised proposed Amendments in light of the *Regulatory Flexibility Act*, consistent with 29 *Del.C.* §104, and believes the same to be lawful, feasible and desirable, and the recommendations as proposed should be applicable to all Delaware citizens equally;
6. The Department's Hearing Officer's Report, including its established record and the recommended *revised* proposed Amendments as set forth in Appendix "A," are hereby adopted to provide additional reasons and findings for this Order;
7. The Department's proposed regulatory Amendments, as initially published in the October 1, 2020 *Delaware Register of Regulations*, and then subsequently *revised*, as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory Amendments, which shall go into effect twenty days after their publication in the next available issue of the *Delaware Register of Regulations*; and
8. The Department shall submit this Order approving the *revised* proposed Amendments as final regulatory 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.

  
Shawn M. Garvin  
Secretary