



STATE OF DELAWARE  
**DEPARTMENT OF NATURAL RESOURCES AND  
ENVIRONMENTAL CONTROL**  
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OFFICE OF THE  
SECRETARY

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**Secretary's Order No.: 2021-A-0009**

**RE:        *Approving Final Regulations to Amend 7 DE Admin. Code 1124, Control of  
Volatile Organic Compound Emissions, Section 36.0, Vapor Emission Control  
at Gasoline Dispensing Facilities***

**Date of Issuance: March 11, 2021**

**Effective Date of the Amendment: April 11, 2021**

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 promulgation.

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

This Order relates to proposed regulation amendments ("Amendments") to 7 DE Admin. Code 1124, *Control of Volatile Organic Compound Emissions, Section 36.0, Vapor Emission Control at Gasoline Dispensing Facilities* ("Regulation"). Specifically, the Department proposes to amend the Regulation to update the California Air Resources Board ("CARB") Executive Orders (as modified between July 17, 2019 and June 3, 2020) referenced in the Amendments regarding Stage I enhanced vapor recovery systems used at Delaware gasoline dispensing facilities. The proposed Amendments include updates of the latest Executive Order numbers, the effective dates, and will provide the regulated community with additional Stage I enhanced vapor recovery ("EVR") system component flexibility.

On July 11, 2020 the Department adopted amendments to the Regulation (hereafter referred to as the “2020 Amendment”) to establish adjustments to the Regulation and specific compliance schedules. The 2020 Amendment requires gasoline dispensing facilities in Delaware to install one of the Stage I EVR systems certified in CARB Executive Orders to meet 98% volatile organic compound’s emission control efficiency. The CARB Executive Orders demonstrate compliance with the CARB certification and list the individual components that can be used within a certified Stage I EVR system. Six (6) CARB Executive Orders for Stage I EVR systems were incorporated into the 2020 Amendment.

During the time of the Department’s regulatory development of the 2020 Amendments, CARB modified their Executive Orders for Stage I EVR systems from July 17, 2019 through June 3, 2020. The Department is now incorporating these modifications in the Amendments to reflect the most recent updates to CARB Executive Order numbers VR-1010-T, VR-102-U, VR-104-K, VR-105-I, VR401-F, VR-402-E, and VR-202-Z. The latest update to the CARB Executive Orders include: (1) modifications to the Husky Model 5885 Pressure/Vacuum vent valve; (2) the extension of certifications of the modified 5885 Pressure/Vacuum vent valve to May 31, 2021; (3) the addition of OPW 723 Pressure/Vacuum vent valve for E85 applications; and (4) the addition of the Franklin Fueling aluminum drop tube and Defender Overfill Protection Valve to the equipment list as alternate parts in Executive Order VR 102.

More specifically, the Amendments include the title number changes of CARB Executive Orders referenced in the following Regulation subsections: (1) 36.4.1.1.1 through 36.4.1.1.4; (2) 36.4.1.2.1 through 36.4.1.2.2, (3) 36.10.2, and (4) 36.11.3.1 through 36.11.3.6. In addition, the Amendments include adding a phrase in subsection 36.1.3 to specify July 1, 2019 as the effective date of 40 CFR 80.22(j).

The Department published its initial proposed Amendments in the November 1, 2020 *Delaware Register of Regulations*. Thereafter the public hearing notice was issued, the Department revised the proposed Amendments to include a non-substantive change. Referenced in subsections 36.5.1, 36.5.3, and 36.11.5, the non-substantive change revises the CARB Executive Order “VR-202-W (August 30, 2018)” to “VR-202-Z (November 5, 2019)”.

The virtual public hearing regarding this matter was held on December 8, 2020. There were two (2) members of the public in attendance at the virtual public hearing. Pursuant to 29 *Del.C.* §10118(a), the hearing record remained open for receipt of written comment for 30 days following the public hearing. The hearing record formally closed for comment in this matter at close of business on January 7, 2021, with one (1) comment received by the Department during the phase of this formal promulgation. It should be noted that the proposed *revised* Amendments were fully vetted at the time of the virtual public hearing.

Subsequent to the close of record, the Department’s Division of Air Quality staff prepared a Technical Response Memorandum to address the comment received by the public.

Thereafter, Hearing Officer Theresa Newman prepared her report dated January 27, 2021 (“Report”), which expressly incorporated the Department’s 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 proposed *revised* Amendments as attached to the Report as Appendix “A.”

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these proposed *revised* Amendments, pursuant to 7 *Del.C.* §6010(a) and (c). 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.

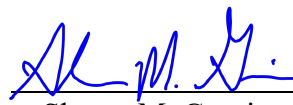
## Reasons and Conclusions

Based on the record developed by the Department's staff in the Division of Air Quality, and established by the Hearing Officer's Report, I find that the proposed *revised* regulatory Amendments are well-supported and will enable the Department to update the CARB Executive Orders (as modified between July 17, 2019 and June 3, 2020) referenced in the Amendments regarding Stage I EVR systems used at Delaware gasoline dispensing facilities and will provide the regulated community with additional Stage I EVR system component flexibility. I further find that the Department's Air Quality experts fully developed the record to support adoption of these Amendments. 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 hereby 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 (c)*;
2. The Department has jurisdiction under its statutory authority, pursuant to *7 Del.C. Ch. 60*, to issue an Order adopting these proposed *revised* 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 virtual public hearing held on December 8, 2020 and during the 30 days subsequent to the hearing (through January 7, 2021), before making any final decision;
4. Promulgation of the proposed *revised* Amendments to *7 DE Admin. Code 1124: Section 36.0, Vapor Emission Control at Gasoline Dispensing Facilities*, will enable the Department to update CARB Executive Order numbers and effective dates (as modified between July 17, 2019 and June 3, 2020), referenced in the Amendments regarding Stage I EVR systems used at Delaware gasoline dispensing facilities, and provide the regulated community with additional Stage I EVR system component flexibility;

5. The Department has reviewed the proposed *revised* Amendments in the 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 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 November 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 ten days after their publication in the next available issue of the Delaware Register of Regulations;
8. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and
9. The Department shall submit this Order approving the proposed revised 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