



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

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SECRETARY

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Secretary's Order No.: 2022-A-0010

**RE: Approving Final Amendments to 7 DE Admin. Code 1102,
subsections 12.3.2 and 12.4.2: *Permits***

Date of Issuance: June 27, 2022

Effective Date of the Amendment: August 11, 2022

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), and pursuant to 7 *Del.C.* §§6003-6004, 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 the Department's proposed regulatory amendments to 7 DE Admin. Code 1102, subsections 12.3.2 and 12.4.2: *Permits* ("Amendments"). The Department's Division of Air Quality ("DAQ") is proposing to amend the aforementioned subsections of 7 DE Admin. Code 1102 to update the public notice requirements for general permits.

The Department has the statutory basis and legal authority to promulgate these proposed Amendments, pursuant to 7 *Del.C.* §§6003-6004.

In 2016, the United States Environmental Protection Agency ("EPA") issued a final rule (81 FR 71613), subsequently codified at 40 CFR 70.7(h)(2), that updated the list of contents to be identified in the public notices for Title V facilities. The proposed Amendments to 7 DE Admin. Code 1102 will ensure consistency with both the specific wording of EPA's updated final rule referenced above and the regulatory language found in 7 DE Admin. Code 1130, *Title V State Operating Permit Program*.

Delaware law requires a DAQ Natural Minor permit for equipment that has the potential to discharge air contaminants into the atmosphere. Specifically, 7 DE Admin. Code 1102 establishes the permitting procedures and requirements for Delaware's Natural Minor permits, issued to all sources whose uncontrolled emissions exceed ten (10) pounds per day. Sources whose total uncontrolled emissions exceed Major Source emission levels require an additional permit called a Title V Operating permit.

The objective of the proposed Amendments is to update the public notice requirements for Natural Minor permits, in order to maintain consistency with the language of the EPA's updated final rule and Delaware's language found in 7 DE Admin. Code 1130, *Title V State Operating Permit Program.*" As noted above, the EPA recently updated the list of contents to be identified in public notices for Title V permits, see 81 FR 71613, 40 CFR 70.7(h)(2).

Section 12.0 of 7 DE Admin. Code 1102 was adopted by the Department to implement public notification requirements for Natural Minor Permits. The regulation requires the DAQ to provide for public participation and comment when reviewing and issuing permits. There is also a requirement to advertise permit application information in at least two (2) Delaware newspapers, in accordance with 7 *Del.C.* §§6003-6004. Members of the public also have an opportunity to request a hearing regarding the permit application if one has not already been scheduled by the Department.

The Department's proposed Amendments to subsections 12.3.2 and 12.4.2 will now require the following additional information to be included for all public notices for Natural Minor permits, in order to standardize Delaware's public notice requirements for both Title V Operating permits and Natural Minor permits:

- The name, address, and telephone number of a person (or an email or website address) from whom interested persons may obtain additional information; and
- The time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled).

The Department published the initial proposed Amendments in the October 1, 2021, *Delaware Register of Regulations ("Register")*. Subsequent to publication of the proposed Amendments in the *Register*, but prior to the public hearing, the DAQ discovered minor clerical errors in the Department's proposed Exhibit 1. The errors were corrected by DAQ staff, and the existing language in Exhibit 1 regarding applicability for a natural minor permit was clarified.

The corrected proposed Exhibit 1 was then posted on the DNREC hearing web page dedicated to this hearing matter. Accordingly, the Department held the public hearing regarding this regulatory action on October 27, 2021, at which time the corrective action taken by staff regarding DNREC's proposed Exhibit 1 was explained for the benefit of the hearing record ("Record") being generated in this matter.

Only one member of the public (Emily Rodden from the New Castle Prevention Coalition) offered comments at the time of the hearing regarding the proposed Amendments to 7 DE Admin. Code 1102, and those comments were supportive in nature. 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. Following her review of the Record, Hearing Officer Vest prepared her Hearing Officer's Report, dated March 10, 2022 ("Report"), which expressly incorporated into the Record the Department's proposed Amendments, attached to her Report as Appendix "A." The Report documents the proper completion of the required regulatory development process, establishes the Record, and recommends the adoption of the Department's proposed Amendments, as attached to the Report as Appendix "A."

Reasons and Conclusions

The Department is currently proposing the adoption of the aforementioned proposed amendments to 7 DE Admin. Code 1102, *Permits*. As noted previously, the proposed Amendments will update the Department's DAQ regulations regarding public notice publication requirements for Natural Minor permits, in order to maintain consistency with the specific wording of EPA's final rule and Delaware's public notice publication requirements found in 7 DE Admin. Code 1130, *Title V State Operating Permit Program*."

Based on the Record developed by the Department's experts and established by the Hearing Officer's Report, I find that the Department has provided appropriate reasoning regarding the need for the proposed Amendments, and that the same is well-supported. I further find that the Department's experts fully developed the Record to support adoption of the proposed Amendments, which will enable the Department to ensure consistency regarding DNREC public notice publication requirements, update current regulatory language to mirror that of EPA's final rule and federal regulations regarding public notice publication requirements, and provide greater clarity and understanding to the regulated community regarding general permits that are pending before the Department.

Thus, for the reasons stated above, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments to 7 DE Admin. Code 1102, subsections 12.3.2 and 12.4.2: *Permits*, be promulgated as final, in the customary manner provided by law.

In conclusion, the following reasons and conclusions are hereby entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code 1102, subsections 12.3.2 and 12.4.2: *Permits*, pursuant to 7 *Del.C.* §§6003-6004;

2. The Department has jurisdiction under its statutory authority to issue an Order adopting the proposed Amendments as final;

3. The Department provided adequate public notice of the 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 subsequent to the time of the public hearing (through November 11, 2021), in order to consider all public comment on the same before making any final decision;

4. Promulgation of the proposed Amendments will enable the Department to ensure consistency regarding DNREC public notice publication requirements, update current regulatory language to mirror that of EPA's final rule and federal regulations regarding public notice publication requirements, and provide greater clarity and understanding to the regulated community regarding general permits that are pending before the Department;

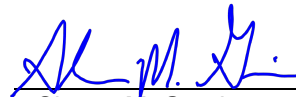
5. The Department has reviewed the proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and believes the same to be lawful, feasible, and desirable, that it will not establish reporting requirements or substantive additional costs for individuals or small businesses, and that the recommendations as proposed should be applicable to all Delaware individuals or small businesses equally;

6. The Department's proposed Amendments, as published in the October 1, 2021, *Delaware Register of Regulations*, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, the same should be approved as final Amendments, which shall go into effect ten days after publication in the next available issue of the *Delaware Register of Regulations*;

7. The Hearing Officer's Report, including its established Record and the recommended proposed Amendments, as set forth therein in Appendix "A," are hereby adopted to provide additional reasons and findings for this Order;

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 as final the proposed 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, as the Department determines is appropriate.



Shawn M. Garvin
Secretary