



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.: 2022-A-0022

RE: Approving Final Regulations to Amend 7 DE Admin. Code 1126 - *Motor Vehicle Emissions Inspection Program*

Date of Issuance: December 14, 2022

Effective Date of the Amendment: January 11, 2023

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 the proposed regulation amendments ("Amendments") to 1126 - *Motor Vehicle Emissions Inspection Program* ("Regulation"). Specifically, the Department is amending the Regulation for Sussex County's vehicle Inspection and Maintenance ("I/M") program to: (1) align with Delaware's House Bill 246 (2017) ("HB246") as codified in 21 *Del.C.* § 2143, expanding the vehicle I/M program model year exemption from five to seven years; (2) replace the current curb idle tailpipe test with On-Board Diagnostic Test ("OBD") on vehicles that weigh up to 8,500 pounds gross vehicle weight, beginning with model year 1996 and newer; (3) require vehicles that weigh 8,501 up to 14,000 pounds gross vehicle weight, beginning with vehicle model year 2008, to undergo an OBD test; (4) modify that in addition to the curb idle tailpipe test, vehicle model year 1995 and older will also be required to include gas cap tests; (5) add language to clarify and prevent tampering of emission controls; and (6) phase in an increased cost of repairs for receiving a program waiver in Sussex County. In turn, the proposed Amendments will establish identical emissions testing requirements statewide.

The Clean Air Act ("CAA") authorized the U.S. Environmental Protection Agency ("EPA") to establish the National Ambient Air Quality Standards ("NAAQS") for criteria pollutants shown to threaten human health, welfare, and the environment. Throughout the State, Delaware has 11 monitoring stations to measure air pollution concentrations of the pollutants through their ambient air monitoring network. Most of the monitoring stations are concentrated in the northern urban/industrial areas, such as New Castle County, that have the highest population and number of pollutant sources. When levels of pollutants measure above NAAQS, the EPA designates the area as nonattainment.

Today, the largest source of ozone pollution in Delaware is from the onroad cars and trucks. Motor vehicles are significant contributors of volatile organic compounds, carbon monoxide, and nitrogen oxide emissions. A control measure to reduce these emissions is the implementation of a motor vehicle I/M program.

In 1977, the CAA established a vehicle I/M program to reduce pollutants and set the standards to meet NAAQS. Delaware began the development of the I/M program in 1979 through a State Implementation Plan ("SIP"). In 1982, Delaware then established 7 DE Admin. Code 1126 to regulate the I/M program for New Castle County. Soon after, on January 1, 1983, the I/M program was formally adopted into Delaware's SIP. Subsequent to establishing the regulation and SIP for the New Castle County I/M program, Delaware expanded the I/M program to all three counties to include Kent County and Sussex County. During that time, the EPA designated Sussex County as "marginal" nonattainment and New Castle County and Kent County were designated as "severe" nonattainment, under the one-hour ozone standard.

In 1990, the CAA amended the vehicle I/M program to require that polluted areas adopt either the "basic" or "enhanced" I/M programs, depending on the severity of the problem and the population of the area. The "basic" vehicle I/M requirements were provided for moderate ozone nonattainment areas, and marginal ozone areas with existing or previously required I/M programs with populations of 200,000 or more. The "enhanced" vehicle I/M requirements were provided for more polluted areas classified as serious, severe, and extreme nonattainment areas with populations of 200,000 or more. The EPA's rule for the "enhanced" I/M program established two standards codified in 40 CFR 51.351(f) - *High Enhanced Performance Standard* and 40 CFR 51.351(g) - *Low Enhanced Performance Standard*. The "high enhanced" performance standard achieves a greater reduction in emissions and uses a highly technical test method. The "low enhanced" performance standard provides flexibility for nonattainment areas that are required to implement enhanced I/M programs and can meet the Act's emission reduction requirements for reasonable further progress (referred to as 15% plans) and attainment from other sources. States may select the low enhanced performance standard if they have an approved SIP for 15%.

As a result of Sussex County being designated as “marginal” non-attainment, Delaware implemented the performance standards for the “basic” I/M program in Sussex County. Similarly New Castle and Kent County were nonattainment, with being designated as “severe” and Delaware implemented the “Low Enhanced” I/M program. Subsequent to the CAA revisions in 1990, Delaware revised the SIP to address the “low enhanced” performance standards for Kent and New Castle County. The SIP revisions consisted of revisions to Regulation 1126 and a new Regulation 1131. It should be noted that New Castle County and Kent County were then regulated under 7 DE Admin. Code 1131, the “low enhanced” I/M program, to address higher levels of pollutants.

In 2017, Delaware enacted HB246 to provide a higher level of service to DMV customers and provide a more efficient renewal processes for vehicle owners. The enactment of HB246 increased the exemption for vehicle emission inspections from 5-years to 7-years, for all new vehicle models. The enactment of this legislation reduces the number of inspections per year by approximately 45,000 vehicles and enables all owners of vehicles within the most recent 7-year vehicle model to easily renew their registration.

The passage of HB246 meant fewer inspections in Kent and New Castle County and this meant an increase of 19.2 tons of nitrogen oxides and 15.3 tons of volatile organic compounds. Fewer inspections in Sussex County meant an increase of 1.1 tons per year in volatile organic compounds with no emissions benefit. These emission increases triggered the Department to review the vehicle emission program and implement measures to reduce the levels of emissions impacted by the new legislation. It should be noted that Sussex County reported no impact on nitrogen oxides.

The Department worked with the Department of Motor Vehicles (“DMV”) to analyze several scenarios to offset the aforementioned emission increases caused by HB246. The Department concluded the best scenario to provide a sufficient reduction of emission increases would be to add an on-board diagnostic test for vehicles weighing 8,500 pounds up to 14,000 pounds, a single-speed idle test for vehicle model years 1968 to 1995 weighing up to 8,500 pounds, and a gas cap test for vehicle model years 1975 to 1995 weighing up to 8,500 pounds. This scenario will reduce emissions from the current emission levels by 391.1 tons per year of CO, 101.6 tons per year of NOx and 45.6 tons per year of VOC’s. This scenario would provide the most beneficial reduction in vehicle emissions for all three counties.

The Department then consulted with EPA’s Region 3 staff and it was decided that the emission reductions attributed to adding onboard diagnostic testing programs in Sussex County could be used to offset, in part, the emissions increases attributed to the vehicle emissions exemption extension for Kent and New Castle Counties. As Delaware drivers travel through the three counties, the use of Sussex

County reductions towards offsetting Kent and New Castle County's vehicle emissions supports the use for offsetting emission reductions.

As a part of the review process of Delaware's vehicle I/M program, the Department conducted one in-person public meeting, and two additional virtual public meetings to address the proposed changes and receive feedback from those in attendance. A survey was conducted after the meetings and the Department received two responses in regard to the Sussex County vehicle I/M program. After the public meetings, the Department considered the public comments and then proceeded with the formal promulgation of the Amendments.

Further, the Amendments maintain consistency with current federal regulations, 40 CFR 51.50 Subpart S - Inspection and Maintenance Program Requirements, the CAA (42 U. S. C. 7522(a)) Section 203 and State Regulation 21 *Del. C. Ch. 21, Registration of Vehicles* (§§ 2109, 2110, and 2143). As such, the Amendments encourage proper vehicle maintenance, discourage tampering of vehicle emission controls by vehicle owners, reduce vehicle emissions, improve air quality, help maintain a healthy environment, and help provide improved health related impacts.

The Department published its initial proposed Amendments in the September 1, 2022 *Delaware Register of Regulations*. After the public hearing notice was issued, the Department revised the proposed Amendments to include a non-substantive change. The virtual public hearing regarding this matter was held on September 29, 2022. 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 15 days following the public hearing. The hearing record formally closed for comment in this matter at close of business on October 14, 2022, with no comments received by the Department during this phase of the formal promulgation. It should be noted that the proposed *revised* Amendments were fully vetted at the time of the virtual public hearing.

Thereafter, Hearing Officer Theresa Newman prepared her report dated November 3, 2022 ("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: (1) expand the vehicle I/M program model year exemption from five to seven years; (2) replace the current curb idle tailpipe test with OBD on vehicles that weigh up to 8,500 pounds gross vehicle weight, beginning with model year 1996 and newer; (3) require vehicles that weigh 8,501 up to 14,000 pounds gross vehicle weight, beginning with model year 2008, to undergo an OBD test; (4) modify that in addition to curb idle tailpipe test, vehicle model years 1995 and older will also be required to include gas cap tests; (5) add language to clarify and prevent tampering of emission controls; and (6) phase in an increased cost of repairs for receiving a program waiver in Sussex County. 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 *revised* 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 proposed *revised* Amendments, including at the time of the virtual public hearing held on September 29, 2022 and during the 15 days subsequent to the hearing (through October 14, 2022), before making any final decision;
4. Promulgation of the proposed *revised* Amendments to 1126 - *Motor Vehicle Emissions Inspection Program* will enable the Department to: (1) expand the vehicle I/M program model year exemption from five to seven years; (2) replace the current curb idle tailpipe test with OBD on vehicles that weigh up to 8,500 pounds gross vehicle weight, beginning with vehicle model year 1996 and newer; (3) require vehicles that weigh 8,501 up to 14,000 pounds gross vehicle weight, beginning with vehicle model year 2008, to undergo an OBD test; (4) modify that in addition to curb idle tailpipe test, vehicle model year 1995 and older will also be required to include gas cap tests; (5) add language to clarify and

- prevent tampering of emission controls; and (6) phase in an increased cost of repairs for receiving a program waiver in Sussex County;
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 September 1, 2022 *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*; and
 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