



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-0024

**RE: Approving Final Revision to Delaware's State Implementation Plan ("SIP"):
*Motor Vehicle Emissions Inspection Program; Plan for Implementation (PFI) for 7 DE Admin Code
1126 and 7 DE Admin. Code 1131; formally known as Delaware's Low Enhanced Inspection and
Maintenance Program, Plan for Implementation***

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 Department's proposed revision to Delaware's State Implementation Plan ("SIP") addressing the *Low Enhanced Inspection and Maintenance Program, Plan for Implementation (PFI)*. Delaware is required by Section 110 of the federal Clean Air Act ("CAA") to submit to the U.S. Environmental Protection Agency ("EPA") a SIP that provides for the implementation, maintenance, and enforcement of the National Ambient Air Quality Standard ("NAAQS") established by the EPA.

A SIP is a state plan that identifies how that state will attain and maintain air quality that conforms to each primary and secondary NAAQS. The SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and inventories. Delaware submitted its initial SIP to EPA in 1979. Delaware periodically submits revisions to the SIP as required by the CAA to address air quality nonattainment and maintenance issues. The CAA requires that any proposed SIP revision be made available for public comment and presented at a public hearing prior to submitting to EPA for adoption.

Delaware House Bill 246 (“HB246”), passed and signed into law in 2017, codified 21 *Del.C.* §2143, which expanded the model year exemption for vehicle safety and emissions testing from five to seven years. While the new law reduced vehicle inspections by 45,000 per year, it adversely increased vehicle emissions. The expanded vehicle exemption resulted in emissions increases of 19.2 tons per year in nitric oxide (“NOx”) and 15.3 tons per year in volatile organic compounds (“VOCs”) for Kent and New Castle counties. Sussex County had an increase of 1.1 tons per year in VOCs, however there was no impact on NOx emissions in this county.

As a result of HB246, the Department has determined it necessary to amend the I/M programs and the SIP to address the vehicle exemption, as well as offset the vehicle emission increases attributed to the exemption. The Department must submit revisions of Delaware’s regulations pertaining to I/M to the EPA for review and approval, in accordance with Section 110(l) of the CAA. For SIP revisions that will or could potentially lead to a change in emissions or ambient concentrations of a pollutant or its precursors, the Section 110(l) demonstration should address all pollutants whose emissions and/or ambient concentrations may change as a result of the SIP revision.

The Department analyzed many scenarios, using EPA’s Motor Vehicle Emission Simulator (MOVES) model, to offset emissions increases caused by HB246. It was concluded that by implementing a more stringent On-Board Diagnostic Test (“OBD”) program in Sussex County, emissions could be reduced and be used to offset, in part, the emission increases attributed to the vehicle exemption. This conclusion is supported by the number of vehicles that travel each day between the three Delaware counties and the use of emission reductions from Sussex County can be applied to the increased emissions in Kent and New Castle counties.

The Department’s amendments to 7 DE Admin. Code 1126 - *Motor Vehicle Emissions Inspection Program* (“Regulation 1126”) and 7 DE Admin. Code 1131 - *Low Enhanced Emissions Inspection and Maintenance Program* (“Regulation 1131”) will reduce vehicle emissions and assist in the equitable distribution of emission reductions responsibilities between New Castle, Kent and Sussex counties. The amendments to both Regulation 1126 and Regulation 1131 align with HB246, expand the inspection model year exemption from five to seven years and include additional language to clarify and prevent tampering of emission controls.

The Amendments to Regulation 1126 will require OBD for vehicles 1996 and newer with a weight of up to 8,500 pounds, replacing the current curb idle tailpipe test on vehicles in the same vehicle weight range. The amendment will require vehicles that weigh 8,501 up to 14,000 pounds gross vehicle weight, beginning with model year 2008, to undergo an OBD test. In addition to the curb idle tailpipe test, vehicle model years 1995 and older will be required to complete a gas cap pressure test. To obtain an emission waiver in Sussex County, the amendment will increase the cost repair requirement to achieve parity with New Castle County and Kent County by the year 2027. A phased-in schedule will include no change for pre-1981 model year repair costs, remaining at \$75.00, however for vehicle models 1981 and newer, the repair cost will increase to \$200 in years 2023-2023, and then to \$450 for years 2025-2026.

The Amendments to Regulation 1131 will add the OBD Test requirement for vehicles that weigh 8,501 up to 14,000 pounds gross vehicle weight, beginning with model year 2008. In addition, for vehicle model years 1981 through 1995, the current two speed curb idle tailpipe test will be discontinued and replaced by a curb idle tailpipe test. The tailpipe pipe test for vehicle model years 1968 through 1980 will remain unchanged. Vehicle model years 1975 through 1995 will also be required to complete a gas cap test, but the pressure integrity test of the vehicle's evaporative canister and fuel system will be removed.

The Department's revisions will also correct a mistake to the SIP that was approved by the EPA in 2006. The SIP was mistakenly included as a part of 7 DE Admin. Code 1100 and titled as *1131 Low Enhanced Inspection and Maintenance Program; Plan for Implementation (PFI)* however the SIP should be a standalone document and separate from regulatory language. It should be noted, the SIP incorporates the State's vehicle I/M programs, including both Regulation 1131 and Regulation 1126. The Department finds it necessary to revise the title of the SIP, herein after referred to as, *Motor Vehicle Emissions Inspection Program; Plan for Implementation (PFI) for 7 DE Admin Code 1126 and 7 DE Admin. Code 1131*. The revisions to the SIP will enable the Department to demonstrate for review and approval by the EPA, the revisions to Delaware's regulations pertaining to I/M program in accordance with Section 110(l) of the CAA and incorporate the same into Delaware's SIP document.

The Department has the statutory basis and legal authority to act with regard to the proposed SIP revision pursuant to 7 Del.C. Chapter 60. The Department published the General Notice of this proposed SIP revision, and of the September 29, 2022 public hearing to be held in this matter, in the September 1, 2022 *Delaware Register of Regulations*. The Record remained open for comment subsequent to the aforementioned public hearing through October 14, 2022. No public comment was received by the Department during any phase of this hearing matter. All proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Theresa Newman, prepared a Hearing Officer's Report dated November 11, 2022 ("Report"). The Report documents the proper completion of the required SIP revision process, establishes the Record, and recommends the approval of the aforementioned proposed SIP revision into Delaware's SIP document, thus enabling the Department to provide EPA with the *Motor Vehicle Emissions Inspection Program; Plan for Implementation for 7 DE Admin Code 1126 and 7 DE Admin. Code 1131*, as attached to the Report as Appendix "A." Additionally, the Report strikes *7 DE Admin. Code 1131 Low Enhanced Inspection and Maintenance Program; Plan for Implementation (PFI)* as attached to the Report as "Appendix "B".

Reasons and Conclusions

Based on the Record developed by the Department's experts and established by the Hearing Officer's Report, I find that the Department's proposed revision to Delaware's SIP addresses the *Motor Vehicle Emissions Inspection Program; Plan for Implementation for 7 DE Admin Code 1126 and 7 DE Admin. Code 1131*. I further find that the Department's experts in the Division of Air Quality fully developed the Record to support adoption of the proposed SIP revision as final. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the same 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 SIP revision, pursuant to *7 Del.C. Ch. 60*;
2. The Department has jurisdiction under its statutory authority, pursuant to *7 Del.C. Ch. 60*, to issue an Order adopting this proposed SIP revision as final;
3. The Department provided adequate public notice of this proposed SIP revision, and all proceedings associated with the same, in a manner required by the law and regulations. The Department provided the public with an adequate opportunity to comment on the aforementioned proposed SIP revision, and held the Record open for receipt of public comment subsequent to the date of the hearing (through October 14, 2022), consistent with Delaware law, in order to consider the same before making any final decision;
4. The Department's Hearing Officer's Report, including its established Record and the recommended SIP revision as set forth in Appendix "A," is hereby adopted to provide additional reasons and findings for this Order;

5. Promulgation of the proposed SIP revisions will enable the Department to establish Delaware's *Motor Vehicle Emissions Inspection Program; Plan for Implementation for 7 DE Admin Code 1126 and 7 DE Admin. Code 1131*, in accordance with Section 110(l) of the CAA and strike 7 DE Admin. Code *1131 Low Enhanced Inspection and maintenance Program; Plan for Implementation (PFI)* in its entirety;

6. The Department's proposed SIP revision, as published in the September 1, 2022 *Delaware Register of Regulations*, and as set forth in Appendix "A" and Appendix "B" as noted above, is adequately supported, is not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it is approved as a final revision to Delaware's SIP document, which shall become effective immediately upon the signing of this Order;

7. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and

8. The Department shall submit this Order approving as final the proposed Delaware SIP document 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

