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DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
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Secretary's Order No.: 2026-A-0040

RE: Approving Final Revision to Delaware's State Implementation Plan ("SIP"): *Serious Non-Attainment Plan for New Castle County for the 2015 8-hour Ozone National Ambient Air Quality Standard*

Date of Issuance: November 12, 2026

Effective Date of the Amendment: December 11, 2026

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 *Serious Non-Attainment Plan for New Castle County for the 2015 8-hour Ozone National Ambient Air Quality Standard* ("NAAQS"). Delaware is required by Section 110 of the federal *Clean Air Act* ("CAA") to submit to U.S. Environmental Protection Agency ("EPA") a SIP that provides for the implementation, maintenance, and enforcement of the NAAQSs established by the EPA.

A SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and inventories. 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.

In 2015, EPA promulgated a revised NAAQS for ground-level ozone at a level of 70 parts per billion (ppb). Ground-level ozone, formed in the atmosphere by photochemical reactions among volatile organic compounds (VOC), oxides of nitrogen (NOx), and carbon monoxide (CO) in the presence of sunlight, is a

serious air pollutant that harms human health and the environment. The revised NAAQS for ground-level ozone is expected to provide better protections of public health and environment. Promulgation of a revised NAAQS triggers a requirement for the EPA to designate areas as nonattainment, attainment, or unclassifiable, and to classify the nonattainment areas based upon the severity of nonattainment at the time of designation. Non-Attainment areas classified as “moderate” or above (i.e. Serious, Severe, Extreme) the NAAQS, are required to identify control measures that will reduce emissions from pollutant sources.

On June 4, 2018, EPA Final Rule 83 FR 25776, designated 51 areas of the country as non-attainment under the 2015 8-hour Ozone NAAQS. The Philadelphia-Wilmington-Atlantic City (PA-NJ-MD-DE) Area (“Philadelphia NAA”) which includes New Castle County in Delaware, were included in that final rule. The EPA classified the Philadelphia NAA as “marginal” and required them to meet attainment level by August 3, 2021; however, they failed to meet the attainment deadline.

Consequently, on October 7, 2022, pursuant to Final Rule FR 60897, the EPA reclassified the Philadelphia NAA as moderate non-attainment and established a deadline of August 3, 2024, for the Philadelphia NAA to achieve attainment of the NAAQS. In accordance with 40 CFR Part 51, Subpart I, the Department submitted a moderate ozone SIP to the EPA outlining how Delaware intended to achieve attainment.

Following submission of the SIP, Delaware and other states with the Philadelphia NAA recognized that attainment would likely not be achieved by the deadline of August 3, 2024, as attainment determinations are based on ozone monitoring data collected during the preceding ozone seasons. In consideration of the attainment deadline and monitoring data, Delaware, along with other states of the Philadelphia NAA, proactively sought voluntary reclassification of the non-attainment areas to a “serious” status.

On July 30, 2024, pursuant to 89 FR 61025, the EPA reclassified New Castle County, from “moderate” to “serious” nonattainment for the 2015 8-hour Ozone NAAQS. Areas reclassified as serious nonattainment are subject to more stringent CAA planning and emissions control requirements. Accordingly, states designated as serious non-attainment are required to submit revisions to their SIP that incorporate emissions controls and other measures necessary to satisfy the CAA requirements for serious nonattainment areas, with an attainment deadline of August 3, 2027.

Although the Philadelphia NAA was designated as serious nonattainment, Delaware has continued to demonstrate compliance with the 2015 ozone NAAQS since 2019. Specifically, Kent and Sussex Counties have maintained attainment designations, while New Castle County was designated as nonattainment because of its inclusion in the larger Philadelphia NAA. Furthermore, available data demonstrated that New Castle County did not contribute to the ozone violations within the Philadelphia NAA. Based on these findings, Delaware

determined that continued inclusion of New Castle County in the larger Philadelphia nonattainment area was no longer reasonable or scientifically justifiable.

In accordance with Section 107 (d) (3) (D) of the CAA, Delaware submitted a request to the EPA to remove New Castle County from the Philadelphia NAA and establish it as a separate non-attainment area.

On June 4, 2026, pursuant to 91 FR 33610, the EPA revised the Philadelphia NAA boundaries for the 2008 and 2015 ozone NAAQS and established a standalone nonattainment area for New Castle County, Delaware. The revised designation encompasses all of New Castle County, including the monitoring sites at Lum's Pond, Martin Luther King, Brandywine Creek State Park, and Bellefonte II. This action allows Delaware to address New Castle County's air quality and nonattainment planning requirements independently of the other areas within the Philadelphia NAA.

In conjunction with the final rule, the EPA issued Clean Data Determinations ("CDDs") for New Castle County under both the 2008 and 2015 ozone NAAQS, indicating that the County was attaining both standards. However, the CDDs do not eliminate Delaware's obligation to address the redesignation to serious nonattainment, pursuant to EPA's final rule. It should be noted that because of the CDDs from the EPA, provisions related to attainment demonstration and the scheduled incremental reductions through Reasonable Further Progress no longer apply to the New Castle County NAA.

Accordingly, the Department is proposing revisions to Delaware's SIP to address the applicable requirements for the serious classification of the New Castle County nonattainment area under the 2015 8-hour ozone NAAQS.

The proposed SIP revisions include the following elements:

- Delaware's updated 2017 Base Year Inventory, providing a comprehensive estimate of annual air emissions;
- Previously approved control measures, including the Clean Fuels Vehicle Program, and alternative control measures;
- Reasonably Available Control Technology for facilities where controls are technologically feasible and economically viable;
- An analysis of ozone air quality status and trends;
- Performance Standard Modeling and Certification of the Enhanced Inspection and Maintenance Program; and

In addition to the proposed SIP revision, the Department is also proposing a letter to the EPA, to withdraw the following suspended components of the previously submitted moderate ozone SIP: Reasonable

Further Progress, Revised 2017 Base Year Emissions Inventory, 2023 Mobile Budgets for Transportation Conformity, Reasonably Available Control Measures, Attainment Demonstration, Control Measures, and Contingency Measures.

The Department has the statutory basis and legal authority to act with regard to the proposed SIP revision pursuant to 7 **Del.C.** Ch. 60 (a) and (c). The Department published the General Notice of this proposed SIP revision, and of the September 22, 2026, public hearing to be held in this matter, in the September 1, 2026, *Delaware Register of Regulations*. The hearing record remained open for comment following the public hearing through October 7, 2026. One public comment was received by the Department that addressed rollbacks of control measures. However, the Department's proposed SIP revision does not include rollbacks or rescissions of Delaware's control measures. Accordingly, no further action was necessary to address the comment as part of this 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 Smith, prepared a Hearing Officer's Report dated November 6, 2026 ("Report"). The Report documents the proper completion of the required SIP revision process, establishes the Record, and recommends the approval of the proposed SIP revision into Delaware's SIP document. The Department will meet the attainment plan requirements associated with the 2015 8-hour ozone NAAQS and provide EPA with the revision to Delaware's SIP - *Serious Non-Attainment Plan for New Castle County for the 2015 8-hour Ozone National Ambient Air Quality Standard*, as attached to the Report as Appendix "A."

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 - *Serious Non-Attainment Plan for New Castle County for the 2015 8-hour Ozone National Ambient Air Quality Standard*, meets the attainment plan requirements associated with the 2015 8-hour ozone NAAQS. 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 modifications 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 (a) and (c);

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 modifications, 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 proposed SIP modification, and held the Record open for receipt of public comment subsequent to the date of the hearing (through October 7, 2026), 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 proposed SIP modifications as set forth in Appendix "A," is hereby adopted to provide additional reasons and findings for this Order;
5. Promulgation of the proposed SIP modification will enable the Department to meet the attainment plan requirements associated with the 2015 8-hour ozone NAAQS and provide EPA with the revision to Delaware's SIP - *Serious Non-Attainment Plan for New Castle County for the 2015 8-Hour Ozone National Ambient Air Quality Standard*;
6. The Department's proposed SIP revision, as published in the September 1, 2026 *Delaware Register of Regulations*, is set forth in Appendix "A" as noted above, and 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;
8. The Department shall submit this Order approving as final revisions to Delaware's 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; and
9. The Department shall serve and publish its Order on its internet site.

/s/Gregory Patterson
Gregory Patterson
Secretary