

HEARING OFFICER'S REPORT

TO: The Honorable Shawn M. Garvin
Cabinet Secretary, Department of Natural Resources and Environmental Control

FROM: Lisa A. Vest
Public Hearing Officer, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: Proposed Regulation Amendments to existing firearm regulations of DNREC and DDA, as follows, to wit: 7 DE Admin. Code 9201: *Regulations Governing State Parks*; 7 DE Admin. Code 3900: *Wildlife*; and 3 DE Admin. Code 402: *State Forests*.

DATE: April 9, 2018

I. BACKGROUND AND PROCEDURAL HISTORY:

A public hearing was held on Monday, March 12, 2018, at 6:00 p.m. at the Department of Natural Resources and Environmental Control ("DNREC", "Department"), 89 Kings Highway, Dover, Delaware to receive comment on proposed regulatory amendments ("Amendments") as follows, to wit: 7 DE Admin. Code 9201: *Regulations Governing State Parks*; 7 DE Admin. Code 3900: *Wildlife*; and 3 DE Admin. Code 402: *State Forests*. This public hearing was held jointly between DNREC and the Delaware Department of Agriculture ("DDA") to provide members of the public an opportunity to comment on these proposed regulatory amendments, necessitated as a result of the recent decision of the Delaware Supreme Court in *Bridgeville R&P Club, et al., v. Small*, 176 A.3d 632 (Del. 2017), which expanded the scope of legal possession of firearms within Delaware's State Parks, State Forests, and State Wildlife areas. Delaware State Parks and State Wildlife areas are under DNREC jurisdiction, while State Forests are under DDA jurisdiction.

Both DNREC and DDA have proposed amendments to each agency's existing firearm regulations affected by the Court's decision in *Bridgeville*. It should be noted that this Hearing Officer's Report addresses all of the above referenced proposed regulatory amendments, as the same are being promulgated by both agencies concurrently. The public hearing of March 12, 2018 was held jointly by DNREC and DDA, with all three proposed promulgations being incorporated into one formal hearing record. Therefore, one formal Hearing Officer's Report will suffice for the formal review of all three of these proposed promulgations. It should be noted that there will be three separate Secretary's Orders issued in this matter (i.e., one for each proposed promulgation), with each Order being signed by the respective Cabinet Secretary having the authority to promulgate such regulatory Amendments.

In the *Bridgeville* decision, the Court found that portions of existing firearm regulations of both DNREC and DDA violated the Delaware Constitution, in that they were overly broad in their prohibitions. Without valid regulations, firearms would essentially be unregulated (1) within Delaware's State Forest lands, including facilities such as education centers, lodges and offices; (2) within Delaware's State Parks; and (3) on land and waters administered by the Department's Division of Fish and Wildlife, including facilities such as visitor centers, educational facilities, and offices. Thus, on December 26, 2017, pursuant to 29 *Del.C.* §10119, both DNREC and DDA adopted emergency regulation amendments to those portions of each agency's existing regulations affected by the *Bridgeville* decision.

The emergency regulations of DNREC and DDA, as published in the *Delaware Register of Regulations* on January 1, 2018, are intended as interim measures, necessary to avoid the risk of harm to public health, safety, and welfare, pending the formal adoption of regulation amendments pursuant to the Administrative Procedures Act ("APA"), within the 120-day period

(renewable for an additional sixty days) allotted to emergency regulations. It should be noted that, once finalized and adopted, the formal regulatory Amendments of both DNREC and DDA will immediately supersede the emergency regulations, pursuant to both the APA and 29 *Del.C.* §10115.

With the aforementioned emergency regulations in effect, both DNREC and DDA then began the formal adoption of the proposed regulations, so as to comply with the *Bridgeville* decision. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 7 *Del.C.* §§103(b) and 4701(a)(4), as well as 29 *Del.C.* §8003(7). Similarly, DDA has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 3 *Del.C.* §1011 and 29 *Del.C.* §8103(8).

The commencement of the formal regulatory development process was begun by both DNREC and DDA with the publication of each agency's proposed regulation Amendments in the February 1, 2018 *Delaware Register of Regulations*. Thereafter, public workshops were held jointly by both agencies in each county throughout the State of Delaware in February 2018. As noted above, the joint public hearing in this matter was held on March 12, 2018, where the aforementioned proposed Amendments were then presented and thoroughly vetted to members of the public. All proper notification and noticing requirements concerning this matter were met by both DNREC and DDA. Proper notice of the hearing was provided as required by law.

II. SUMMARY OF THE PUBLIC HEARING RECORD:

The public hearing record consists of the following documents: (1) a verbatim transcript; and (2) twenty-eight documents compiled by responsible Department staff during the course and scope of this formal promulgation, marked by this Hearing Officer as Department Exhibits 1-28; and (3) Response Memorandum from Ralph K. Durstein, III, Esq., Deputy Attorney General,

dated April 7, 2018, which offered a formal response to the comments received by the Department in this matter. The Department's person primarily responsible for the drafting and overall promulgation of these proposed Amendments, Mr. Durstein (as referenced above), developed the record with the relevant documents in the Department's files.

The joint hearing held on March 12, 2018 was heavily attended by members of the public, with comment being received by the Department at that time. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the hearing for the purpose of allowing additional public comment to be received regarding this proposed promulgation. The hearing record closed for comment in this matter on March 27, 2018, with additional public comment having been received by the Department during the post-hearing phase of this formal promulgation.

After the comment period formally closed, the Department performed a thorough review of the record, including, but certainly not limited to, all of the comments received on the proposed Amendments. At the request of this Hearing Officer, Mr. Durstein prepared a formal Response Memorandum to the same. Mr. Durstein's Response Memorandum details the full range of comments contained in the formal hearing record, including those from the public, as well as from other contributors, such as the Delaware Association of Second Amendment Lawyers, the National Rifle Association of America, and the Giffords Law Center.

These proposed regulatory Amendments were necessitated by the Delaware Supreme Court's decision in *Bridgeville*, and the resulting need for the existing firearms regulations of both DNREC and DDA to comply with the same. As Mr. Durstein so aptly notes in his Response Memorandum, the Court has drawn the lines to delineate how State agencies may

regulate firearms, and DNREC and DDA believe that they have respected those limits with these proposed regulatory Amendments.

In *Bridgeville*, the Court specifically described the types of areas within which firearms could be restricted. The proposed regulatory Amendments limit the possession and use of firearms in defined common areas, such as visitor centers, lodges, educational facilities and dormitories, family campgrounds, bathhouses, playgrounds, recreational facilities, and guarded beaches. In adhering to the Court's guidance, only those with concealed-carry permits or law enforcement credentials may carry firearms into these and other "designated areas". The limits on firearms in crowded areas on State lands are consistent with the statutory limits on the use of deadly force, which, as Mr. Durstein points out in his Memorandum, "...protects innocent third parties from the risk of harm from gunfire. *See* 11 *Del.C.* §470." Moreover, the proposed regulatory Amendments specifically state that "[f]irearms may be carried within areas administered by the Division, outside of designated areas, by any person not prohibited by 11 *Del. C.* §1448." This language is found in all three sets of the proposed regulation amendments, specifically, 3 DE Admin. Code 402 at Section 8.8.4; 7 DE Admin. Code 3900 at Section 8.3.4.10; and 7 DE Admin. Code 9201 at Section 21.1.5.

Mr. Durstein's Response Memorandum exhaustively reviews all aspects of the comment received by the Department, and offers a thorough and rational discussion of all concerns raised based on the hearing record generated in this matter. I find that Mr. Durstein's Response Memorandum does an excellent job of identifying all of the relevant issues and discussing them in a thorough and balanced manner, accurately reflecting the information contained in the record.

For the Secretaries' review, a copy of the proposed Amendments as published by both DNREC and DDA in the February 1, 2018 *Delaware Register of Regulations* are attached hereto as Appendix "A". Additionally, a copy of Mr. Durstein's Response Memorandum dated April 7, 2018, which is expressly incorporated into this Hearing Officer's Report, is attached hereto as Appendix "B". Again, all proper notification and noticing requirements concerning this proposed promulgation were met by the Department in this matter.

III. RECOMMENDED FINDINGS AND CONCLUSIONS:

Based on the record developed, I find and conclude that the Department has provided appropriate reasoning regarding the need for the aforementioned proposed regulatory Amendments. Accordingly, I recommend promulgation of the same in the customary manner provided by law.

Further, I recommend the Secretaries' adoption of the following findings and conclusions:

1. The Department has the statutory basis and legal authority to act with regard to its proposed amendments to 7 DE Admin. Code 9201: *Regulations Governing State Parks*; 7 DE Admin. Code 3900: *Wildlife*, pursuant to 7 *Del.C.* §§103(b) and 4701(a)(4), as well as 29 *Del.C.* §8003(7). Similarly, DDA has the statutory basis and legal authority to act with regard to its proposed regulatory promulgation, pursuant to 3 *Del.C.* §1011 and 29 *Del.C.* §8103(8);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Ch. 60, to issue an Order adopting its proposed regulatory Amendments as final. Similarly, DDA has jurisdiction under its statutory authority, pursuant to 3 *Del.C.* §101(3), to issue an Order adopting its proposed regulatory Amendments as final;

3. The Department and DDA provided adequate public notice of the proposed regulatory Amendments, and all proceedings associated with the same, in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory Amendments, including at the time of the public hearing held on March 12, 2018, and held the record open through close of business on March 27, 2018, consistent with 29 *Del.C.* §10118(a), in order to consider public comment on the same before making any final decision;

4. Promulgation of the proposed regulatory Amendments will enable both DNREC and DDA to comply with the Delaware Supreme Court's decision in *Bridgeville R&P Club, et al., v. Small*, 176 A.3d 632 (Del. 2017), which expanded the scope of legal possession of firearms within Delaware's State Parks, State Forests, and State wildlife areas;

5. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and has selected Exemption "B1" concerning same, as these proposed regulatory Amendments are not substantially likely to impose additional costs or burdens upon individuals and/or small businesses;

6. The proposed regulatory Amendments of both DNREC and DDA, as published in the February 1, 2018 *Delaware Register of Regulations*, and 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 should be approved by each agency's respective Secretary 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

7. The Department shall submit the proposed regulatory Amendments of both DNREC and DDA as final regulatory 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 and the Department determines is appropriate.



LISA A. VEST
Public Hearing Officer

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Attachments/Appendix:

Appendix A: Proposed Reg. Amendments

Appendix B: Response Memo. Durstein (4/7/18)

APPENDIX “A”

Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

Proposed Regulations

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the *Register of Regulations*. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

DEPARTMENT OF AGRICULTURE**DELAWARE FOREST SERVICE**

Statutory Authority: 3 Delaware Code, Section 1011 and 29 Delaware Code, Section 8103(8)
(3 **Del.C.** §1011 and 29 **Del.C.** §8103(8))
3 **DE Admin. Code** 402

PUBLIC NOTICE**402 State Forest Regulations****1. TITLE OF THE REGULATIONS:**

3 **DE Admin. Code** 402 State Forest Regulations

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

3 **DE Admin. Code** 402 State Forest Regulations are being proposed for amendment to comply with the decision of the Delaware Supreme Court in *Bridgeville R&P Club v. DNREC* (Dec. 7, 2017) that invalidated portions of the existing regulations governing firearms. The emergency regulations promulgated on December 26, 2017 will be superseded by these regulations.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

These regulations are issued by the Secretary pursuant to the power conveyed by the General Assembly for the Delaware Department of Agriculture to promulgate necessary regulations to protect forest lands, 3 **Del.C.** §1011, and to "[e]stablish and promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State," 29 **Del.C.** §8103(8).

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 3 DE Admin. Code 402 State Forest Regulations will open February 1, 2018 and public comments will be accepted in accordance with 29 Del.C. §10118. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on March 12, 2018 beginning at 6:00 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

Michael A. Valenti
Delaware Department of Agriculture
2320 S. DuPont Highway, Dover, DE 19901
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***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/february2018/proposed/21 DE Reg 604RFA 02-01-18.pdf>

402 State Forest Regulations
(Break in Continuity of Sections)

8.0 Hunting Rules and Regulations

(Break in Continuity Within Section)

8.8 Target shooting is prohibited. Firearms are allowed for legal hunting ~~only~~ and are otherwise prohibited within designated safe areas on State Forest lands, except as set forth below.

8.8.1 Designated areas shall include State Forest Offices, education centers, and lodges, and shall be identified by appropriate signage.

8.8.2 Active duty and qualified retired law enforcement officers may possess firearms within areas administered by the Department, including designated areas, provided that proper and current credentials shall be produced upon request.

8.8.3 Delaware residents holding an active current permit to carry a concealed deadly weapon may carry a firearm within areas administered by the Department, including designated areas, provided that the permit shall be produced upon request. Residents of other states holding an equivalent permit or license to carry a concealed firearm may be permitted to carry a concealed firearm at the discretion of the Department.

8.8.4 Firearms may be carried within areas administered by the Department, outside of designated areas, by any person not prohibited by 11 Del.C. §1448.

8.8.5 Law enforcement officers may limit the discharge of firearms and the use of other weapons within areas administered by the Department, in order to protect public safety and preserve the peace.

8.8.6 Any person possessing a firearm shall display identification upon request, sufficient to enable a law enforcement officer to undertake a background check.

***Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

402 State Forest Regulations

(302)739-9914

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

[http://regulations.delaware.gov/register/february2018/proposed/21 DE Reg 613RFA 02-01-18.pdf](http://regulations.delaware.gov/register/february2018/proposed/21%20DE%20Reg%20613RFA%2002-01-18.pdf)

3300 Non-Tidal Finfish

3301 Definitions

- 1.0 For purposes of Regulations 3301 through 3311, the following words and terms shall have the following meaning, unless the context clearly indicates otherwise:

(Break in Continuity Within Section)

"Red Clay Creek". from the dam just below the boundary between the State of Delaware and the Commonwealth of Pennsylvania to the bridge at Yorklyn Road;

***Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

3300 Non-Tidal Finfish

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 103 and 29 Delaware Code, Section 8003(7) (7 Del.C. §103 and 29 Del.C. §8003(7))
7 DE Admin. Code 3900

**REGISTER NOTICE
SAN # 2018-01**

3900 Wildlife

1. TITLE OF THE REGULATIONS:
7 DE Admin. Code 3900 Wildlife

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

7 DE Admin. Code 3900 Wildlife is being proposed for amendment to comply with the decision of the Delaware Supreme Court in *Bridgeville R&P Club v. DNREC* (Dec. 7, 2017) that invalidated portions of the existing regulations governing firearms. The emergency regulations promulgated on December 26, 2017 will be superseded by these regulations.

3. POSSIBLE TERMS OF THE AGENCY ACTION:
None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

These regulations are issued by the Secretary pursuant to the power conveyed by the General Assembly for DNREC to promulgate necessary regulations to protect wildlife, 7 Del.C. §103, and to "[e]stablish and promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State". 29 Del.C. §8003(7).

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:
None

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7 DE Admin. Code 3900 Wildlife will open February 1, 2018 and public comments will be accepted in accordance with 29 Del.C. §10118. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on March 12, 2018 beginning at 6:00 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

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***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/february2018/proposed/21 DE Reg 614RFA 02-01-18.pdf>

3900 Wildlife
(Break in Continuity of Sections)

8.0 General Rules and Regulations Governing Land and Waters Administered by the Division
(Break in Continuity Within Section)

8.3 Hunting and Firearms.

(Break in Continuity Within Section)

8.3.4 Firearms on Division Areas.

- 8.3.4.1** It shall be unlawful for any person to possess a firearm ~~on lands or waters within areas designated in 8.3.4.6 below~~ administered by the Division ~~from March 1 through August 31,~~ except as authorized by the Director in writing, or as set forth below.

(Break in Continuity Within Section)

- 8.3.4.6** Areas subject to the provisions of 8.3.4.1 above shall include Division offices, visitor centers, nature centers, educational facilities, facilities or locations used for authorized special events or festivals, and maintenance shops, and shall be identified by appropriate signage.
- 8.3.4.7** The Director may grant written approval on a daily basis for the possession of firearms within areas designated in 8.3.4.6 above, upon written application showing good cause related to self-defense or the defense of family, and due regard for the safety of others within areas designated in 8.3.4.6 above.
- 8.3.4.8** Active duty and qualified retired law enforcement officers may possess firearms within areas administered by the Division, including areas designated in 8.3.4.6 above, provided that proper and current credentials shall be produced upon request.
- 8.3.4.9** Delaware residents holding an active current permit to carry a concealed deadly weapon may carry a firearm within areas administered by the Division, including areas designated in 8.3.4.6 above, provided that the permit shall be produced upon request. Residents of other states holding an equivalent permit or license to carry a concealed firearm may be permitted to carry a concealed firearm at the discretion of the Director.
- 8.3.4.10** Firearms may be carried within areas administered by the Division, outside of areas designated in 8.3.4.6 above, by any person not prohibited by 11 Del.C. §1448.

PROPOSED REGULATIONS

- 8.3.4.11 Law enforcement officers may limit the discharge of firearms and the use of other weapons within areas administered by the Division, in order to protect public safety and preserve the peace.
- 8.3.4.12 Any person possessing a firearm shall display identification upon request, sufficient to enable a law enforcement officer to undertake a background check.

***Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

3900 Wildlife

DIVISION OF PARKS AND RECREATION

Statutory Authority: 7 Delaware Code, Section 4701(a)(4) and 29 Delaware Code, Section 8003(7) (7 Del.C. §4701(a)(4) and 29 Del.C. §8003(7))
7 DE Admin. Code 9201

REGISTER NOTICE

SAN # 2018-02

9201 Regulations Governing State Parks

1. TITLE OF THE REGULATIONS:

7 DE Admin. Code 9201 Regulations Governing State Parks

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

7 DE Admin. Code 9201 Regulations Governing State Parks are being proposed for amendment to comply with the decision of the Delaware Supreme Court in *Bridgeville R&P Club v. DNREC* (Dec. 7, 2017) that invalidated portions of the existing regulations governing firearms. The emergency regulations promulgated on December 26, 2017 will be superseded by these regulations.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

These regulations are issued by the Secretary pursuant to the power conveyed by the General Assembly for DNREC to "[m]ake and enforce regulations relating to the protection, care and use of the areas it administers", 7 Del.C. §4701(a)(4), and to "[e]stablish and promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State". 29 Del.C. §8003(7).

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed amendments to **7 DE Admin. Code 9201 Regulations Governing State Parks** will open February 1, 2018 and public comments will be accepted in accordance with 29 Del.C. §10118. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on March 12, 2018 beginning at 6:00 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

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***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/february2018/proposed/21 DE Reg 616RFA 02-01-18.pdf>

**9201 Regulations Governing State Parks
(Break in Continuity of Sections)**

21.0 Hunting, Fishing and Wildlife Management - Environmental D Violation

21.1 It shall be unlawful to display, possess or discharge firearms of any description, air rifles, B.B. guns, sling shots, or archery equipment ~~upon lands or waters~~ within designated areas administered by the Division, except with prior written approval of the Director, or as set forth below.

21.1.1 Designated areas shall include park offices, visitor centers, nature centers, bathhouses, restaurants and snack bars, stadiums and facilities while used for sporting events, concerts, and festivals, museums, zoos, stables, educational facilities, dormitories, playgrounds, camping areas, swimming pools, guarded beaches, and water parks, and shall be identified by appropriate signage.

21.1.2 The Director may grant written approval on a daily basis for the possession of firearms within designated areas, upon written application showing good cause related to self-defense or the defense of family, and due regard for the safety of others within the designated areas.

21.1.3 Active duty and qualified retired law enforcement officers may possess firearms within areas administered by the Division, including designated areas, provided that proper and current credentials shall be produced upon request.

21.1.4 Delaware residents holding an active current permit to carry a concealed deadly weapon may carry a firearm within areas administered by the Division, including designated areas, provided that the permit shall be produced upon request. Residents of other states holding an equivalent permit or license to carry a concealed firearm may be permitted to carry a concealed firearm at the discretion of the Director.

21.1.5 Firearms may be carried within areas administered by the Division, outside of designated areas, by any person not prohibited by 11 Del.C. §1448.

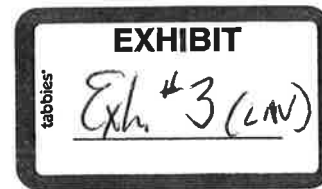
21.1.6 Law enforcement officers may limit the discharge of firearms and the use of other weapons within areas administered by the Division, in order to protect public safety and preserve the peace.

21.1.7 Any person possessing a firearm shall display identification upon request, sufficient to enable a law enforcement officer to undertake a background check.

***Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

9201 Regulations Governing State Parks

APPENDIX “B”



MEMORANDUM

To: Lisa A. Vest, Hearing Officer

From: Ralph K. Durstein III, Deputy Attorney General

Re: Legal Response Memorandum
Firearms Regulations Amendments

Date: April 7, 2018



I have been asked to prepare a legal response to comments received on the proposed amendments to the Departmental Regulations governing firearms. Some of the comments assert legal arguments in the aftermath of the Delaware Supreme Court's decision in *Bridgeville R&P Club, Ltd. v. DNREC*, 176 A.3d 632 (Del.2017). These Constitutional issues are dealt with in Section A below. Other comments raise questions regarding the wording, interpretation, and application of the Regulations. Since these are quasi-legal matters, I attempt to address them in Section B of this memo. Many other comments simply express policy differences, and advocate either no restrictions on firearms or more comprehensive restrictions, thus collectively reflecting the philosophical conflict between individual rights and public safety, as well as the broad divide within the country as to how best to address gun violence. These last arguments are more properly addressed to the good judgment of the Cabinet Secretaries, as they are not governed by the State Constitution, and thus are not the province of lawyers. However, to the extent the comments incorporate legal arguments, I will attempt to address them in Section C.

A. Constitutional Issues

1. Interpreting the *Bridgeville* decision.

Many of the Constitutional arguments made against the proposed Regulations in comments either ignore the *Bridgeville* decision or misinterpret it. Errors in interpretation can be forgiven, in light of the length and breadth of the majority opinion and the dissent, and the striking differences among the Justices reflected therein. Others would seek to reargue the scope of the Court-imposed limits on regulatory authority, in favor of either more robust restrictions, or none at all. I doubt that a Court so sharply divided would be likely to revisit the issues or to end up in a different place, whether extending or limiting the scope of the prior decision.

In the Departmental response (attached hereto) to the January 17, 2018 letter from Justin M. Forcier, regarding the interim Regulations, Secretary Garvin dealt with many of these issues. The Forcier letter was resubmitted as a comment on the proposed regulations, and the response set forth in the February 22, 2018 response still applies, and is incorporated herein by reference.

To those who advocate broader regulations protecting visitors from firearms, the answer, as set forth in Secretary Garvin's response, is that the Court's holding effectively rules that out. The Court drew lines beyond which the agencies cannot regulate firearms, and the agencies have respected those limits. Likewise, the Court specifically held that concealed carry permit holders and law enforcement officers have unlimited rights to carry firearms within these

public spaces. The proposed Regulations apply only within the limited areas recognized by the Court as within the residual authority of the agencies to limit firearms in the interest of public safety.

To those who argue against the proposed Regulations on Constitutional grounds, the Opinion of the Court offers no support. As noted in Secretary Garvin's attached letter, the Court specifically described the types of areas within which firearms could be restricted, and cited the factors that support such an exercise of the police power. In adhering to that guidance, the agencies have sought to limit firearms only in controlled areas, and only for those without concealed-carry permits or law enforcement credentials.

Screening visitors for guns at stadiums and during sporting events, concerts, and festivals is consistent with established practice in similar public and private venues. Zoos, stables, museums, student dormitories, and educational facilities have been recognized as sensitive areas where teachers, children and their families gather. The inclusion of visitor centers, bathhouses, and snack bars maintained by the State within Parks is not "facially overbroad", given the controlled access to these areas. There is no history of violent crime in these places, and the State is able to maintain law enforcement coverage of the 1% of the total land area devoted to designated areas. Those who contend that the agencies misread the Court's ruling have in fact themselves exaggerated its reach. One can disagree on public policy grounds about the residual limits on firearms in designated areas set forth in the Regulations, but those challenging

the agencies' authority to restrict firearms in sensitive areas should not look to the Court's Opinion for support. They will find none.

2. Search and Seizure.

Contrary to the allegations of some comments, the proposed Regulations do not purport to extend the authority of police offices to stop, detain, or arrest suspects. Those law enforcement actions are governed by 11 *Del.C.* §1902 to §1904, by Article I, Section 6 of the Delaware Constitution, and by the Fourth Amendment to the United States Constitution. A DNREC or DDA law enforcement officer must have reasonable grounds to stop or detain a suspect. The individual must then produce identification, and the officer may ask as to the person's "business abroad" and destination. The officer may also search for and seize any dangerous weapon during the questioning process. Those Constitutional and statutory procedural constraints on police officers are unaffected by the Regulations. The Regulations can only be enforced within those limits. A visitor displaying a firearm within a designated safe area can expect to be questioned by a law enforcement officer. But, once that individual displays a valid concealed-carry permit or law enforcement credentials, any detention must cease. If the person lacks such documentation, and has knowingly disregarded posted warnings prohibiting firearms, the individual would be subject to arrest, or could simply be escorted off the premises, and advised to secure the firearm and to return without it.

The agencies may also choose to undertake a screening process at the entrance to a designated area, where all visitors entering would be screened for firearms. This would be an effective measure to bar firearms from concerts, sporting events, and festivals, in conjunction with collecting tickets or admission fees, for example. This would be similar to the authority exercised at some schools, courthouses, State offices, police stations, and other facilities, where a metal detector may be used. It would be a simple matter for a holder of a concealed-carry permit or law enforcement credentials to produce that documentation and gain entrance with a firearm. Others with firearms would be directed away from the designated area, or advised to secure their weapon and to return without it.

3. Reciprocity

Some have questioned the provision, added after the interim regulations were implemented, allowing for recognition of out-of-state concealed carry permits, based on reciprocity with states having laws equivalent to Delaware's law. This approach is consistent with the mandate of 11 *Del.C.* §1441(j) that another state afford a reasonably similar degree of protection to that provided by Delaware, before an out-of-state permit is accepted. This determination will be guided by the annual certification by the Department of Justice as to reciprocity on a state-by-state basis. While the discretion on the part of State officials has been criticized as overly restrictive, the intent is to allow for recognition of permits from states whose concealed-carry laws may be pending approval by the

DOJ process. Visitors from out of state who wish to carry firearms in Delaware would be well-advised to ascertain in advance whether their concealed carry permits are valid under Delaware law through reciprocity.

This issue is not one that was before the Court in *Bridgeville*. The concealed-carry plaintiff in that case was a Delaware resident. The Court did not rule on reciprocity. Ordinarily, such issues are a matter of Full Faith and Credit under the United States Constitution. That Clause would only mandate that Delaware honor concealed-carry permits issued under state laws equivalent to 11 *Del.C.* §1441 that are truly reciprocal. There is no Constitutional mandate to honor other state laws that afford lesser protection to the public. Since state laws vary widely as to the criteria and training for such permits, and may be amended at any time, reciprocity at best is a moving target. The Regulations more than comply with the Constitutional mandate, by allowing for flexibility.

4. Self-defense and defense of family.

Arguments that firearms are needed for defense anticipate the use of deadly force. The Delaware law with regard to the use of deadly force in self-defense is set forth at 11 *Del.C.* §464(c). Such force is justified only where necessary to avoid a risk of death, serious physical injury, kidnapping or sexual intercourse compelled by force or threat. Use of deadly force is not justifiable outside the home where a person can safely retreat. 11 *Del.C.* §464(e)(2). Similar criteria apply to the use of deadly force to defend other persons from harm. 11 *Del.C.* §465. Use of deadly force for the protection of property is justified only in

limited circumstances. 11 *Del.C.* §466(c). The Delaware Criminal Code thus limits the circumstances where a park visitor could discharge a firearm for defensive purposes.

The proposed Regulations limit the possession and use of firearms in defined common areas, such as visitor centers, lodges, educational facilities and dormitories, family campgrounds, bathhouses, playgrounds, recreational facilities, and guarded beaches. Only those with concealed-carry permits or law enforcement credentials may carry firearms into these and other “designated areas”. The limits on the use of firearms in crowded areas on State land are consistent with the statutory limits on the use of deadly force, which, among other goals, protect innocent third parties from the risk of harm from gunfire. *See* 11 *Del.C.* §470. Many of the comments advocating the use of firearms in self-defense and defense of others ignore the constraints imposed by the Criminal Code on the exercise of deadly force. The designated areas where large numbers of visitors may gather would be ill-suited to the discharge of firearms, because of the increased risk of harm to innocent bystanders.

The reference in Article I, Section 20 to the use of firearms for the defense of self and family does not abrogate the “justification” provisions of the Criminal Code with respect to deadly force. The Constitutional right should not be confused with the statutory imperative that limits the permissible use of firearms for purposes of defense. In particular, the safety of innocent third persons exposed to gunfire must be considered.

B. Interpretation/Construction/Implementation

Any law or regulation is subject to interpretation, construction, and application in the real world. The goal is to limit the ambiguity and thus the unpredictability of the law. Some of the comments are rather self-serving attempts to criticize the language by applying a strained interpretation or by feigning confusion where the intent is clear. Other contributors, including the Delaware Association of Second Amendment Lawyers, the National Rifle Association of America, and the Giffords Law Center, have made a good-faith effort to supply alternate draft regulations that reflect their policy goals. Others have suggested revisions of regulations not affected by the *Bridgeville* decision. The goal of the agencies has been to deal only with the regulatory gaps left by the Court's holding, and only to the extent permitting by the majority opinion. Given the urgency presented by the Administrative Procedures Act and the seasonal nature of visits to public lands, the agencies have eschewed a wholesale rewrite, and have revised only those sections of the Regulations at issue in the appeal. The goal is not perfection, but rather clarity and reasonable guidance to the public, while respecting the constraints on regulatory authority mandated by the Court and the Constitution.

1. Compliance issues.

The Regulations are a straightforward attempt to limit firearms within the narrow geographical areas where such restrictions are permissible. Contrary to the predictions of confusion and error, the areas where firearms are prohibited

will be marked with posted warning signs and established perimeters. Where necessary, checkpoints may be established, as with special events and school activities, and metal detectors may be used to screen visitors for weapons. Law enforcement officers will be available to enforce the Regulations. It is unlikely that any visitor would “accidentally” bring a firearm into a designated facility, or onto a posted gun-free zone. The agencies have already developed maps for purposes of the three workshops on the Regulations, and similar maps will be posted at entrances to Parks and Forests and natural areas. The maps make it very clear where firearms are prohibited. Visitors will need to assume personal responsibility to learn where firearms are not permitted, and to abide by the Regulations.

2. Left unsaid.

No regulation can anticipate every possible situation. Nor is the goal or intent of firearms restrictions or prohibitions to enumerate all the places where firearms may be carried without restriction. The Regulations do affirmatively (and clearly) state that “[f]irearms may be carried within areas administered by the Division, outside of designated areas, by any person not prohibited by 11 *Del.C.* §1448.” Simply put, firearms are only limited within designated, signed areas, comprising no more than 1% of public lands, and thus the remaining 99% of the total regulated area is open carry for all visitors not prohibited by the Criminal Code from possessing weapons. Similarly, it is no great stretch of intuition to discern that a firearm may be left secured in a vehicle in a parking lot

(which is not a “designated area” where firearms are prohibited), rather than brought into a visitor center or bathhouse or onto a guarded beach. DNREC and DDA will post warning signs at the perimeters of and entrances to the designated areas where firearms are not welcome. The agencies will not post signs indicating a lack of prohibition within the remaining 99%. It will be the responsibility of the visitor to figure that out.

3. Campsites.

Some confusion has been generated regarding camping within State Parks and Forests. The Regulations bar firearms from “camping areas”, consistent with the judicial acceptance of group common facilities as “sensitive areas” where families gather and guns present an unwarranted hazard. Unlike some other states and the federal government, Delaware allows camping only in designated campgrounds. Visitors are not free to pitch a tent along a trail, and thus campers subject to the proposed Regulations will not be isolated in wild unprotected areas. Delaware public campgrounds are confined spaces, typically with some common facilities, and camping is typically by permit. The usual justification cited for the use of deadly force while wilderness camping is the risk of wild animal attacks, or assaults by persons unknown in isolated areas on a lone camper. These risks are simply not present in Delaware. Not only do campers enjoy safety in numbers, but campgrounds are monitored. Gunfire in such a public space would present unacceptable risks, due to the presence of children

and families at close quarters. Holdings with regard to backpackers in the wilderness have no application here.

A valid question was raised at the workshops as to the designation of group camping areas as gun-free zones, where no off-site parking is available. At facilities where a camper may park in a lot and walk to a tent site or cabin or dormitory or yurt, the firearm should be left secured in the vehicle. However, where the only parking is adjacent to the site, the firearm may be brought into the camping area, so long as it is left within the vehicle and not brought into a tent, cabin, yurt, or common area of the campground. Where the camper brings an RV onto the pad site, the firearm must be left secured within the RV. This practice is consistent with the goal of preventing death or injury by avoiding bringing firearms into common areas where other campers may gather.

4. Permission to carry within designated areas.

The Regulations allow for the discretionary approval for visitors without a permit or law enforcement credentials to carry firearms within designated areas, upon a showing of good cause. This provision is intended to extend, not limit, the ability of visitors to carry guns. It thus does not raise a Constitutional issue. Rather, it has been criticized as an overly-broad exception to the general ban on firearms. The existing provision has been refined to allow only daily permits, upon application, which allows for a background check on applicants. In addition, the applicant must make a showing as to the need for armed defense

within the designated area. The provision is not ambiguous, and provides sufficient guidance to limit discretion.

C. Policy Choices

Most of the comments on the proposed Regulations relate to the public policy choices made by the agencies in eliminating most of the restrictions on firearms in Parks, Forests, and natural areas. The tenor of the comments reflects the sharp divide between those asserting a right to use deadly force in self-defense, and those seeing firearms as contrary to public safety and the peaceful use of these facilities and areas. The actual number of gun-owners in Delaware is small, and the advocates of unlimited firearms represent a small percentage of the total comments. The far greater majority of comments criticize the agencies for failing to adequately protect visitors from gun violence. For example, the Giffords Law Center contends that the widespread proliferation of guns in public places will increase the risk of exposure to gun violence, citing research suggesting that lax concealed-carry regulations increase the risk of unintentional shootings; that increased access to firearms harms children; that children are safer when they play and learn in gun-free zones; and that lax carry laws increase violent crime. These comments fail to take into account the considerable limitations placed on regulatory authority by the Delaware Supreme Court. Indeed, as noted above, the agencies were left with little discretion as to the scope of prohibitions on firearms. The proposed Regulations cover conduct only

within a confined area, and only for certain visitors, so as not to contravene the Court's interpretation of Article I, Section 20 of the Delaware Constitution.

Many of the comments from both sides of the issue reflect a misunderstanding of the applicable Constitutional provisions, the impact of other laws, and the intended scope of the Regulations. There is also a lack of understanding of the procedural constraints placed on DNREC and DDA law enforcement by the State and Federal Constitutions and applicable laws governing screening, detention, arrest, search, and seizure. I have made an effort to clarify how the control of firearms on public lands is limited by these protections, and how DNREC and DDA officers must work within these constraints in a professional manner.

Many of the comments raise questions as to the language of the Regulations, and how they will be applied and construed. Contrary to the assertions of many, the Regulations will not be applied in a vacuum, but are subject to other applicable regulations, statutes, and Constitutional provisions. No enactment can hope to cover or anticipate all possible applications and eventualities. Any regulation is subject to common sense implementation, and to adjustment to meet new and unforeseen circumstances. Law enforcement officers will always have a degree of discretion in the field, subject of course to the review and guidance of the public officials who are their superiors. To the extent that some comments seek to anticipate and define every conceivable situation, such detail is an elusive, impractical, and unnecessary goal. To the

extent that field experience suggests that changes be made, that is something that the agencies can take up, ideally after the experience gained from a Summer and Fall season with new Regulations.

Finally, a number of comments sought revisions of regulations not impacted by the *Bridgeville* decision. The intent of both agencies has been to withdraw the prior regulations explicitly invalidated by the Court, and to replace them with new regulations within the limited scope afforded by the Opinion. There has not been an effort to revise or review other DNREC and DDA regulations that were not affected by the decision. That is not to say that such a review cannot be undertaken. In this instance the agencies were forced to react to an unanticipated change in the interpretation of the law, and chose to focus on only those areas directly impacted, so as to limit the issues for review under the Administrative Procedures Act.

1. Constraints on agency regulations.

Many comments criticize the agencies for abdicating their responsibility to protect the public from the risk presented by the unlimited open carry of firearms within some 99% of the total area of the regulated land. The proposed Regulations represent a complete change from the regulations in effect for over fifty years, which effectively banned firearms over 100% of the public land involved. These commentators raise valid public safety concerns about the possession, use, and possible discharge of firearms in public places. They point to the absence of any history of violent crime within the regulated preserves, and

question the need for firearms for self-defense or the defense of family in secure areas. Limiting firearms regulation to less than 1% of the total land area presents a distinct risk of harm to unarmed visitors. The agencies are urged to exercise a greater degree of responsibility over firearms outside of the designated safe and gun-free areas.

The advocates for greater agency control over firearms ignore the constraints placed on DNREC and DDA by the Court in the *Bridgeville* decision. Their arguments are not really with the Secretaries, but with the Court, or ultimately for the General Assembly, which could amend Article I, Section 20 of the Delaware Constitution to permit broader regulation of firearms on public land. Absent a judicial or legislative (Constitutional) change, the executive branch must abide by the considerable constraints imposed by the Court. Within the narrow playing field of permissible regulation remaining, DNREC and DDA had limited options. So, while many advocates complain about policy decisions that fail to protect the public, in reality those decisions were dictated by the Court, and the agencies simply lacked the discretion to retain the former broad protections and prohibitions. The proposed Regulations were drafted to reflect the “new reality” in the aftermath of the Court’s ruling, and were a product of the limited options left to the agencies by the Court.

Could, as some comments argue, the agencies have pushed the boundaries of regulation beyond the limited “designated areas” defined in the proposed Regulations? It is possible that some additional facilities could have

been incorporated within the gun-free zones by drawing the boundaries more generously. The Court Opinion affords ample guidance as to the limits of permissible regulation, but does not draw precise lines. That task is left to the agencies. The legal advice to the agencies in the aftermath of the *Bridgeville* decision was to confine any future interim or proposed regulations to the kinds of facilities and areas identified by the Court as within the scope of permissible government action. The intent of the proposed Regulations is to remain safely within the constraints imposed by the Court, both as to who may carry, and where they may carry. Any change that would extend the geographical scope of firearms regulation beyond the narrow confines of the proposed Regulations would risk a court challenge. The Court has drawn a line in the sand, and the agencies have exercised extreme care not to cross it.

2. Residual authority to regulate.

Many comments have mistakenly interpreted the *Bridgeville* decision as barring *any* limits on firearms within State Parks or Forests or natural areas. As set forth in the attached letter from Secretary Garvin, that is *not* what the Court said. Rather, the majority opinion recognized the limits on the Constitutional protection, and described the types of facilities and areas within which firearms could be restricted. The agencies have studiously respected those limits, and have not sought in the proposed Regulations to exceed or test them. The intent has been to regulate only within the sensitive areas where the risk of harm is

greatest, the regulatory authority is acknowledged by the Court, and where the agencies have the ability to monitor and police firearms possession.

Thus the comments relying solely on legal Constitutional grounds to challenge the proposed Regulations are contrary to the precise holding of the Court. These individuals are advocating an extension of the majority opinion, a change that would shackle the agencies and prevent any limits on firearms in the interest of public safety. The arguments they make were made by the plaintiff/appellants in the *Bridgeville* appeal, and they were not accepted by the Court. While these individuals are free to mount a legal challenge to the proposed Regulations, as some threaten, it is unlikely, after a sharp division and some 140 pages of analysis, that the Court would change its mind.

However, the lack of merit in the legal argument in support of these comments does not mean that they should be disregarded. The Court merely held that the agencies *could* exercise their residual regulatory power to limit firearms in designated areas. Whether the agencies *should* exercise that residual power to protect the public in designated areas is a legitimate question as to agency policy as reflected in the proposed Regulations. The burden on those attacking the proposed Regulations is to persuade the Secretaries that even distinctly limited firearms restrictions are bad public policy, despite being permissible under the majority interpretation of the Constitution. That is a public policy question, not a legal one.

3. Constraints on law enforcement.

The provisions of the Regulations requiring that permit holders and law enforcement officers carry their credentials, as proof of their right to carry, has been attacked as an improper exercise of law enforcement authority. In truth, the Regulations apply to the visitor, and do not purport to affect or extend the police power. During routine screening of visitors upon entry into a designated area, or where a firearm is observed or suspected, the individual would be responsible for producing his or her credentials, in order to confirm the ability to carry. Producing a valid concealed carry permit or law enforcement credentials would end the inquiry. The intent of the Regulation is to place the burden on the permit holder or the visiting law enforcement officer to carry sufficient identification to facilitate such checks. The DNREC or DDA officer should not be forced to confirm through records that the individual has – but failed to carry – proper credentials.

As with any criminal law, enforcement of the firearms regulations would be fully subject to statutory and Constitutional constraints on police officers. For example, visitors with credentials retain their Fourth Amendment right to be free from unreasonable searches and seizures. DNREC and DDA police officers would always need reasonable grounds to detain a suspect, and probable cause to arrest someone for a violation. In Delaware, law enforcement officers are subject to the detention provisions of 11 *Del.C.* §1902, which permits an officer to detain a suspect where the officer has reasonable grounds to believe that the

person has committed, is committing, or will commit a crime. Under §1903, an officer may search a suspect who has been properly stopped or detained for a dangerous weapon, and may secure that weapon during the questioning.

For example, a DNREC or DDA officer who observed a visitor entering a marked designated area with a firearm would have reasonable grounds to stop that person, and request identification. If that person could produce either proper law enforcement credentials or a valid concealed carry permit, they would be allowed to retain the firearm and proceed. If, however, the visitor lacked either a permit or law enforcement credentials, the individual would be advised that they could not enter the designated safe area with a firearm. If on the other hand the person claimed to have a concealed carry permit or law enforcement credentials but could not produce them, it would be up to the DNREC or DDA officer to conduct a background check, if possible, in an attempt to verify the claim through available records. Only if the claim could be verified, would the person be allowed to enter a designated area with a firearm.

4. Interpretation, application, construction.

I have yet to see a draft regulation that is immune to claims of ambiguity, or subject to nuances of interpretation, or novel applications that require that it be construed based on unforeseen facts. The goal of drafting is to limit the risk of misinterpretation, to provide sufficient guidance, and to allow for the common-sense exercise of discretion. These draft Regulations achieve that goal, and thus

pass the test of fairly describing the conduct that is limited or prohibited. They wisely provide for warnings through signs and maps, to clarify zones and limits.

It is also true that a given approach or description of proscribed conduct can take many forms, each of which would be an acceptable means of regulation. Some versions would be adequate, some good, some better, some the best. The law requires only adequacy; but agencies of course shoot for the best possible wording to limit doubt or uncertainty and prevent confusion. The language of the proposed Regulations may not be the best possible way to transmit firearms restrictions; but none of the suggestions for alternate wording would be an improvement. Indeed, some of the suggested amendments would actually gut or greatly augment the Regulations, and thus advocate a different approach, rather than revising the existing nomenclature.

5. Limited scope of proposed regulations.

In promulgating the interim Regulations, and proposing the draft Regulations now under consideration, the agencies have had the limited intent of plugging the gap left by the Court's ruling in the *Bridgeville* case. The scope of this endeavor has been limited to replacing the voided firearms restrictions with lesser restrictions within the residual regulatory authority recognized by the Court. There has been no intent or effort to undertake a comprehensive review of other DNREC or DDA Regulations, unaffected by the decision, dealing with Parks or Forests or natural areas. Under the extreme time pressure in the

aftermath of the Court's ruling, any other issues were left for a future revision, which may in fact be initiated by a member of the public. 29 Del.C. §10114.

Thus, comments as to hunting regulations, including definitions of "firearms" and related concerns, are simply beyond the scope of the current effort. Likewise, the authority of Division Directors to grant relief from firearms restrictions on a temporary basis is not new, and was not removed by the Court. The discretion of the agencies to make such exceptions has been amended to reflect the standards enunciated by the Court. Regulations governing the discharge of firearms were not invalidated by the Court, and have not been amended in the proposed Regulations. Any change to eliminate or extend such provisions (both have been advocated) is for another day.

D. Conclusion

The proposed Regulations adhere to the Constitutional constraints enunciated by the Court, and complement, rather than contradict, other existing laws. The language of the Regulations is explicit in its prohibitions, and requires proper notice through warning signage and the demarcation of designated areas. A visitor of reasonable intelligence should be able to understand where firearms may be carried only by certain qualified persons. DNREC and DDA law enforcement officers will have clear guidance and authority to enforce the Regulations within statutory and Constitutional constraints. There has been no showing of Constitutional violation or legal infirmity.

The pending Regulations contain several important revisions, as compared to the interim Regulations. Those changes were a product of feedback received by the agencies, and reflect the importance of public participation and comment. The workshops and public hearing yielded suggestions for areas, such as reciprocity, credentials, and camping, where clarification was needed. As noted above, the comments will impact the way in which the Regulations will be applied. Finally, the significant fallback in the regulation of firearms should be regarded as a work in progress, and the agencies would be well-advised to monitor the new approach, and to consider further changes as warranted.