



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.: 2020-A-0023

**RE: Approving Final Revision to Delaware's State Implementation Plan ("SIP"):
*Certification that Delaware's Nonattainment New Source Review ("NNSR")
Program, under 7 DE Admin. Code 1125, meets all requirements of
the 2015 National Ambient Air Quality Standard
("NAAQS") for Ground-Level Ozone***

Date of Issuance: July 14, 2020

Effective Date of the Amendment: July 14, 2020

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 the Delaware State Implementation Plan ("SIP"), specifically, to provide the U.S. Environmental Protection Agency ("EPA") with its Certification that Delaware's Nonattainment New Source Review ("NNSR"), as set forth under 7 DE Admin. Code 1125, meets the requirements under the 2015 National Ambient Air Quality Standard ("NAAQS") for Ground-Level Ozone. Delaware is required by Section 110 of the federal Clean Air Act ("CAA") to submit to EPA a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS.

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 1972. Delaware periodically submits revisions to the SIP as required by the CAA to address air quality non-attainment 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.

On October 1, 2015, the EPA promulgated a revised NAAQS for ground-level ozone at a level of 0.070 parts per million. 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.

New Castle County, Delaware, was designated as marginal nonattainment as part of the Philadelphia-Wilmington-Atlantic City nonattainment area for the 2015 Ozone NAAQS, effective August 3, 2018. Delaware's Kent and Sussex Counties were designated as attainment areas for the same 2015 Ozone NAAQS. Depending on the classification of nonattainment counties within a state, states are required to submit SIP revisions to demonstrate how they are complying with the mandatory plan submission requirements for nonattainment areas under the CAA.

With each new NAAQS, the EPA summarizes the plan requirements to implement the provisions of the CAA which are applicable to attainment and nonattainment areas, or Implementation Plan Requirements ("IPR"), as these are more commonly known. The EPA finalized the IPR for the 2015 Ozone NAAQS on December 6, 2018. As a marginal nonattainment area, Delaware's New Castle County is subject to specific requirements in this final rule. However, as Delaware is part of the Ozone Transport Region (a group of states identified under the CAA for the purposes of addressing interstate transport), all counties in Delaware are subject to certain IPRs.

To provide clarity for the benefit of the hearing record (“Record”) generated in this matter, it should be noted that the Department is currently proposing three specific SIP revisions to address EPA’s requirements for Delaware’s SIP document. Accordingly, a virtual public hearing was held by the Department on Wednesday, March 25, 2020, at 6:00 p.m. via the State of Delaware Cisco WebEx Meeting Platform to receive comment on all three proposed revisions to Delaware’s SIP document, as follows: (1) Certification of Delaware’s Emission Statement Program, specifically, under 7 DE Admin. Code 1117; (2) Certification of Delaware’s NNSR Program, specifically, under 7 DE Admin. Code 1125; and (3) Certification of Delaware’s Requirements for Reasonably Available Control Technology (“RACT”), as codified in the Department’s DAQ Regulations set forth in Title 7 of the *Delaware Administrative Code*. While all three of these proposed SIP revisions were presented at the aforementioned hearing, EPA has requested that a separate Secretary’s Order be issued for each proposed SIP revision, so that EPA may reference individual, independent SIP documents for each certification matter referenced above. Thus, this Order only addresses the proposed SIP revision for the Certification of Delaware’s NNSR Program, as set forth under 7 DE Admin. Code 1125. The remaining proposed SIP revisions, as referenced above, will be addressed in separate Orders specifically dedicated to those proposed revisions.

As noted above, the proposed SIP revision which is the subject of this Order concerns the Certification of Delaware’s NNSR Program. The NNSR is a preconstruction review permit program that applies to new major stationary sources or major modifications at existing sources located in a nonattainment area. This NNSR requirement is statewide, due to Delaware being geographically located in the Ozone Transport Region. As an option allowed by the EPA, where an air agency (such as DNREC) determines that an existing regulation is adequate to meet applicable nonattainment area planning requirements, that air agency’s SIP revision may provide a written statement certifying that determination in lieu of promulgating new, revised regulations (December 6, 2018, 83 FR 63001). Since DNREC is choosing to provide written certification in lieu of submitting new or revised regulations, the certification must be provided to EPA as a SIP revision to its SIP document, in accordance with CAA Section 110 and 40 CFR 51.102,103 and Part 51, Appendix V.

The State of Delaware's finalized SIP document serves as the formal certification that DNREC is relying upon its existing regulations to meet the EPA requirements referenced above. The proposed SIP revision serves as the mechanism by which the Department will incorporate that formal certification into its SIP document, thereby providing EPA with its Certification that Delaware's NNSR Program, under 7 DE Admin. Code 1125, meets the requirements under the 2015 Ozone NAAQS.

The Department has the statutory basis and legal authority to act with regard to the proposed SIP revision concerning the incorporation of the Certification of Delaware's NNSR Program under 7 DE Admin. Code 1125, into its SIP document, pursuant to 7 *Del.C.* Chapter 60. The Department published the General Notice of this proposed SIP revision, and of the March 25, 2020 public hearing to be held in this matter, in the March 1, 2020 *Delaware Register of Regulations*. The Record remained open for comment subsequent to the aforementioned public hearing through April 9, 2020. 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, Lisa A. Vest, prepared a Hearing Officer's Report dated June 22, 2020 ("Report"). The Report documents the proper completion of the required SIP revision process (as it relates to all three proposed SIP revisions noted above), establishes the Record, and recommends the approval of the aforementioned proposed SIP revision into Delaware's SIP document, thus enabling Delaware to provide EPA its Certification of Delaware's NNSR Program, specifically, under 7 DE Admin. Code 1125, 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 document concerning the Certification of Delaware's NNSR Program under 7 DE Admin. Code 1125 is well-supported. 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 April 9, 2020), 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 this proposed SIP revision will enable the Department to provide EPA with its Certification that Delaware's NNSR Program, as set forth under 7 DE Admin. Code 1125, meets all requirements under the 2015 Ozone NAAQS;

6. The Department's proposed SIP revision, as published in the March 1, 2020 *Delaware Register of Regulations*, and as set forth in Appendix "A" 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