

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Sections 6010(a) and 6010(c) (7 Del.C. §§6010(a) & 6010(c))

GENERAL NOTICE

Secretary's Order No.: 2020-A-0027

RE: Approving Final Revision to Delaware's State Implementation Plan ("SIP"):
Delaware 2017 Base Year State Implementation Plan (SIP) Emissions Inventory under the 2015 Ozone National Ambient Air Quality Standard (NAAQS)

Date of Issuance: October 09, 2020

Effective Date of the Amendment: November 11, 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 Delaware's State Implementation Plan ("SIP") addressing the Delaware 2017 Base Year SIP Emissions Inventory under the 2015 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 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 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.

On October 1, 2015, EPA promulgated a revised NAAQS for ground-level ozone at a level of 0.070 parts per million. Ground-level ozone, formed in the atmosphere by photochemical reactions among volatile organic compounds (VOC), oxides of nitrogen (NO_x), 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.

On June 14, 2018 EPA published a final rule for the designations of areas as nonattainment for the 2015 ozone NAAQS. Effective on August 3, 2018, the EPA designated Delaware's New Castle County as marginal nonattainment as part of the Philadelphia-Wilmington-Atlantic City nonattainment area, and Delaware's Kent and Sussex Counties were designated as attainment areas, for the 2015 ozone NAAQS. The CAA requires nonattainment counties within a state to submit SIP revisions to demonstrate how they are complying with the mandatory plan submission requirements for nonattainment areas.

On December 6, 2018, EPA issued the final rule of implementation plan requirements for the 2015 ozone NAAQS. The final rule is an update to the implementing regulations previously promulgated for the 2008 ozone NAAQS. More specifically, the final rule addresses a range of nonattainment area and SIP requirements for the 2015 ozone NAAQS, including attainment demonstrations, reasonable further progress and associated milestone demonstrations, reasonably available control technology, reasonably available control measures, major nonattainment new source review, emissions inventories, the timing of required SIP submissions and compliance with emission control measures in the SIP.

According to Section 182(a)(1) of the CAA and EPA's implementation rule for the 2015 ozone NAAQS (83 FR 62998), Delaware is required to submit the Base Year Emissions Inventory SIP revision to EPA by August 3, 2020. In late April 2020, EPA released the emissions data necessary for Delaware to complete the 2017 Base Year Emissions Inventory. It should be noted that Delaware was unable to complete the 2017 Base Year Emissions Inventory until this data was released by EPA.

Pursuant to Sections 182(a)(1) and 172(c)(3) of CAA, the Department developed emission inventories for New Castle County to meet the criterion of CAA every three years since 1990. The Department's latest comprehensive, accurate

inventory of actual emissions from all sources of VOC, NOx, and CO in the State, covered calendar year 2017.

The Division of Air Quality prepared the 2017 Periodic Emission Inventory for criteria pollutants to include emissions of VOC, NOx, and CO summarized in the SIP. The reports include source coverage categories of stationary point sources, stationary nonpoint sources, and nonroad and onroad mobile sources. To meet the requirements of the Section 182(a)(1) of the CAA and EPA's implementation rule for the 2015 ozone NAAQS, the Department utilized EPA MOVES models, formulas, and data from the aforementioned sources, to establish the 2017 Base Year Emissions Inventory.

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 August 26, 2020 public hearing to be held in this matter, in the August 1, 2020 *Delaware Register of Regulations*. The Record remained open for comment subsequent to the aforementioned public hearing through September 10, 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, Theresa Newman, prepared a Hearing Officer's Report dated September 29, 2020 ("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 Delaware's calendar year 2017 emissions inventory as its base year emissions inventory under the 2015 ozone NAAQS, to meet the requirements of the 2015 ozone NAAQS, 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 addresses the Delaware 2017 Base Year SIP Emissions Inventory under the 2015 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 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 September 10, 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 the proposed SIP revisions will enable the Department to establish Delaware's 2017 base year emissions inventory to meet the requirements according to Section 182(a)(1) of the Clean Air Act and the US Environmental Protection Agency's implementation rule for the 2015 ozone NAAQS;
6. The Department's proposed SIP revision, as published in the August 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

***Please Note: Due to the size of the SIP, it is not being published here. A PDF version is available at the following location:**

DNREC 2017 Base Year SIP Emissions Inventory - Final.pdf

[http://regulations.delaware.gov/register/november2020/general/DNREC 2017 Base Year SIP Emissions Inventory - Final.pdf](http://regulations.delaware.gov/register/november2020/general/DNREC%202017%20Base%20Year%20SIP%20Emissions%20Inventory%20-%20Final.pdf)

24 DE Reg. 496 (11/01/20) (Gen. Notice)