DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Air Quality

STATE PLAN FOR THE REGULATION OF AIR EMISSIONS FROM MUNICIPAL SOLID WASTE LANDFILLS

May 11, 2017

DELAWARE STATE PLAN TO REGULATE AIR EMISSIONS FROM MUNICIPAL SOLID WASTE LANDFILLS

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Delaware State Plan to Regulate Air Emissions from Municipal Solid Waste Landfills

I. Introduction

On March 12, 1996, the Environmental Protection Agency (EPA) promulgated emission guidelines (EG) for the control of landfill gas (LFG) emissions from existing municipal solid waste (MSW) landfills. The EG are found in Subpart Cc of 40 CFR Part 60. Effective August 29, 2016 the EPA finalized a new subpart that updates the EG and Compliance Times for existing Municipal Solid Waste Landfills to reflect changes to the population of landfills and the results of an EPA analysis of the timing and methods for reducing emissions. The revised EG is found in Subpart Cf of 40 CFR Part 60.

Landfill gas contains methane, carbon dioxide, and more than 100 different nonmethane organic compounds (NMOCs) including volatile organic compounds (VOCs), hazardous air pollutants (HAPs), and odorous compounds. Landfills are a significant source of methane, which is a potent greenhouse gas pollutant. The EPA has determined that affects from these compounds include ground-level ozone formation, cancer and noncancer health effects, odor nuisance, methane migration and fire hazard potential, and global warming.

The State of Delaware has developed this State Plan for imposing collection and control requirements on existing landfills, as required by the emission guidelines, Section 111(d) of the Clean Air Act, and 40 CFR Part 60 Subpart B, Adoption and Submittal of State Plans for Designated Facilities.

II. Legal Authorities and Enforceable Mechanism

Effective August 29, 2016, the EPA promulgated a new source performance standard (NSPS) for the control of emissions from new (i.e. newly constructed, reconstructed or modified) MSW landfills. The NSPS is found at 40 CFR Part 60 Subpart XXX (Subpart XXX). The EPA also promulgated emission guidelines for the development of State Plans to control the emissions from existing MSW landfills. The emission guideline is found at 40 CFR Part 60 Subpart Cf (Subpart Cf). 7 **Del.C**. Ch. 60 (Environmental Control) gives the Secretary of the Department of Natural Resources and Environmental Control (DNREC) the legal authority to adopt, implement, and enforce regulations that control the emissions of air contaminants into the atmosphere. Delaware's plan is to adopt into 7 **DE Admin. Code** 1120, "New Source Performance Standards", a new regulation, as Section 30, that incorporates Subpart XXX by reference. When adopting Subpart XXX, the MSW landfills being subject to Section 30 of 7 **DE Admin. Code** 1120 (Section 30) will be expanded to additionally include all MSW landfills that have accepted municipal solid waste after November 8, 1987 or MSW landfills that have additional capacity available to accept municipal solid waste. Thus, Delaware's 3 existing MSW landfills are also subject to Section 30; thereby enabling Delaware to meet the applicability requirements of Subpart Cf. Once promulgated, the regulation and this State Plan will be submitted to the EPA for approval pursuant to 40 CFR 60.27. Delaware has the requisite legal authorities to develop, implement and enforce this State Plan, specifically:

1. Section 6010 "Rules and regulations; plans" of 7 **Del.C**. Ch. 60 gives the Secretary the authority to adopt regulations that control the emissions of air contaminants, which includes the designated pollutants in Subpart Cf, into the atmosphere.

2. Section 6005 "Enforcement; civil and administrative penalties; expenses" of 7 **Del.C**. Ch. 60 gives the Secretary the authority to enforce any rule, regulation, or permit condition.

3. Section 6010 of 7 **Del.C**. Ch. 60, 7 **DE Admin. Code** 1102 "Permits," 7 **DE Admin. Code** 1117 "Source Monitoring, Recordkeeping and Reporting," 7 **DE Admin. Code** 1130 "Title V State Operating Permit Program," and Section 30, gives the Secretary the authority to obtain information necessary to determine compliance.

4. Section 6010 and section 6024 "Right of Entry" of 7 **Del.C**. Ch. 60, 7 **DE Admin. Code** 1102, 7 **DE Admin. Code** 1117, 7 **DE Admin. Code** 1130, and Section 30, gives the Secretary the

authority to require record keeping, make inspections, and conduct tests.

5. Section 6010 of 7 **Del.C**. Ch. 60, 7 **DE Admin. Code** 1102, 7 **DE Admin. Code** 1117, 7 **DE Admin. Code** 1130, and Section 30, gives the Secretary the authority to require the use of monitors and require emission reports of municipal solid waste landfill owners or operators.

6. Section 6014 "Regulatory and compliance information, facility performance and public information" of 7 **Del.C**. Ch. 60, 7 **DE Admin. Code** 1102, and 7 **DE Admin. Code** 1130 gives the Secretary the authority to make emission data available to the public.

The requisite legal authorities, which are available at the time of the submission of the State Plan, are provided in APPENDIX A of this State Plan.

The complete text of Subpart XXX, as adopted in Section 30, is provided in APPENDIX B of this State Plan. Other referenced documents are available from the Department upon request.

III. Adoption of 40 CFR Part 60 Subpart XXX by Reference

The State of Delaware is adopting Subpart XXX by reference with several changes that also make existing municipal solid waste landfills subject to Section 30. The adoption of this regulation will be incorporated into the State of Delaware "**Regulations Governing the Control of Air Pollution**" in Section 30. This regulation will read as follows:

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Air Quality

1120 New Source Performance Standards

30.0 Standards of Performance for Municipal Solid Waste Landfills After July 11, 2017

The provisions of Subpart XXX of Part 60, Title 40 of the Code of Federal Regulations - "Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification After July 17, 2014", as set forth in Vol. 81, No. 167, pp. 59368-59384, of the Federal Register, dated August 29, 2016, attached hereto, are hereby incorporated herein and adopted by reference, subject to the following changes:

30.1 Wherever the word "Administrator" appears it shall be replaced by the word "Department", with the exception of paragraphs 60.760(b) and 60.764(a)(5).

30.2 The ASTM Standard Test Method D6522-11 is incorporated herein and adopted by reference. The following definitions, subsections and test methods that are referenced in the text of the preceding adoption are also incorporated herein and adopted by reference as they appear in Title 40 of the Code of Federal Regulations, dated July 1, 2016:

30.2.1 The definition of "land application unit", "surface impoundment", "injection well", "waste pile" and "other types of RCRA Subtitle D wastes" as each of those terms is defined in 40 CFR 257.2.

30.2.2 The definition of "sludge" and "solid waste" as each of those terms is defined in 40 CFR 258.2.

30.2.3 The definition of "performance test" in 60.764(a)(3)(i), as the term is defined in 40 CFR 60.8.

30.2.4 The requirements of 40 CFR 51.166 and 52.21, as referenced in 60.764(c).

30.2.5 The requirements of 40 CFR 60.4, as referenced in 60.767(i)(2).

30.2.6 The requirements of 40 CFR 60.7(a)(1), as referenced in 60.767(a)(1).

30.2.7 The requirements of 40 CFR 60.7(a)(4), as referenced in 60.761 and 60.767(e).

30.2.8 The requirements of 40 CFR 60.8, as referenced in 60.764(b)(3)(i), 60.764(e)(1), 60.767(g), 60.767(h), and 60.767(i)(1).

30.2.9 The requirements of 40 CFR 60.17, as referenced in 60.766(a)(2)(ii) and 60.766(a)(2)(iii)(B).

30.2.10 The requirements of 40 CFR 60.18, as referenced in 60.762(b)(2)(iii)(A) and 60.768(b)(4).

30.2.11 The requirements of 40 CFR 60.18(f)(3) and 60.18(f)(4), as referenced in 60.764(e).

30.2.12 The requirements of 40 CFR 258, as referenced in 60.767(k).

30.2.13 The requirements of 40 CFR 258.40, as referenced in 60.762(b)(2)(ii)(D)(2).

30.2.14 The requirements of 40 CFR 258.60, as referenced in 60.767(e).

30.2.15 Methods 2, 2E, 3, 3A, 3C, 18, 21, 25, 25A and 25C in appendix A of 40 CFR Part 60.

30.3 The title of Subpart XXX shall be replaced with the following language: "30.0 Standards of Performance for Municipal Solid Waste Landfills After July 11, 2017."

30.4 Section 60.760(a) shall be replaced with the following language: "The provisions of this subpart apply to each municipal solid waste landfill, open or closed, that commenced construction, reconstruction, or modification after July 17, 2014 or that has accepted waste after November 8, 1987 or that has additional capacity available to accept waste."

30.5 Section 60.762(a) shall be replaced with the following language: "Each owner or operator of an MSW landfill having a design capacity less than 2.5 million megagrams by mass or 2.5 million cubic meters by volume must submit an initial design capacity report to the Department as provided in §60.767(a). The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exemption values. Any density conversions must be documented and submitted with the report. For purposes of 7 **DE Admin. Code** 1130, Title V State Operating Permit Program, a landfill with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters does not require an operating permit under 7 **DE Admin. Code** 1130, provided it is not a major source as defined in 7 **DE Admin. Code** 1130. Submittal of the initial design capacity report fulfills the requirements of this subpart except as provided for in paragraphs (a)(1) and (2) of this section."

30.6 Delete ", local, or tribal" in Sections 60.761, 60.767(a)(2)(i) and 60.767(a)(2)(ii).

30.7 Paragraph 60.762(b) shall be replaced with the following language: "Each owner or operator of an MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters, must either comply with paragraph (b)(2) of this section or calculate an NMOC emission rate for the landfill using the procedures specified in §60.764. The NMOC emission rate must be recalculated annually, except as provided in §60.767(b)(1)(ii). The owner or operator of an MSW landfill subject to this subpart with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters is subject to 7 **DE Admin. Code** 1130. When a landfill is closed, and either never needed control or meets the conditions for control system removal specified in §60.762(b)(2)(v), a 7 **DE Admin. Code** 1130 operating permit is no longer required."

30.8 Section 60.762(b)(2)(ii) shall be replaced with the following language: "*Collection system.* Install and start up a collection and control system that captures the gas generated within the landfill as required by paragraphs (b)(2)(ii)(C) or (D) and (b)(2)(iii) of this section in accordance with paragraph (b)(2)(ii)(A) or (B) of this section, whichever is applicable."

30.9 Section 60.762(b)(2)(ii)(A) shall be replaced with the following language: "*For MSW landfills that commenced construction, reconstruction, or modification on or after July 17, 2014.* The collection and control system must be started up in accordance with paragraph (b)(2)(ii)(A)(*1*) or (*2*) of this section, whichever is applicable."

30.10 Add new section 60.762(b)(2)(ii)(A)*(1)* with the following language: "Within 30 months of the first annual report in which the NMOC emission rate equals or exceeds 34 megagrams per year, unless Tier 2 or Tier 3 sampling demonstrates that the NMOC emission rate is less than 34 megagrams per year, as specified in §60.767(c)(4) or".

30.11 Add new section 60.762(b)(2)(ii)(A)*(2)* with the following language: "Within 30 months of the most recent NMOC emission rate report in which the NMOC emission rate equals or exceeds 34 megagrams per year based on Tier 2, if the Tier 4 surface emissions monitoring shows a surface methane emission concentration of 500 parts per million methane or greater as specified in §60.767(c)(4)(iii)."

30.12 Section 60.762(b)(2)(ii)(B) shall be replaced with the following language: "*For all other subject MSW landfills.* As expeditiously as practicable but not later than January 8, 2018."

30.13 Section 60.762(c) shall be replaced with the following language: "For purposes of obtaining an operating permit under title V of the Clean Air Act, the owner or operator of an MSW landfill subject to

this subpart with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters is not subject to the requirement to obtain an operating permit for the landfill under 7 **DE Admin. Code** 1130, unless the landfill is otherwise subject to either part 70 or 71. For purposes of submitting a timely application for an operating permit under part 70 or 71, the owner or operator of an MSW landfill subject to this subpart with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters, and not otherwise subject to 7 **DE Admin. Code** 1130, becomes subject to the requirements of paragraph 5.1.1 of 7 **DE Admin. Code** 1130, regardless of when the design capacity report is actually submitted, no later than:".

30.14 Sections 60.762(c)(1), 60.767(a)(1)(i) and 60.767(b)(1)(i)(A) shall be replaced with the following language: "Ninety days after the date of commenced construction, modification, or reconstruction for MSW landfills that commenced construction, modification, or reconstruction on or after July 17, 2014 or".

30.15 Section 60.762(c)(2) and Section 60.767(b)(1)(i)(B) shall be replaced with the following language: "January 8, 2018 for all other subject MSW landfills."

30.16 Section 60.763(g) shall be replaced with the following language: "If monitoring demonstrates that the operational requirement in paragraphs (b), (c), or (d) of this section are not met, corrective action must be taken as specified in §60.765(a)(3) and (5) or §60.765(c). If corrective actions are taken, as specified in §60.765, the monitored exceedance is not a violation of the operational requirements in this section."

30.17 Section 60.767(a)(1)(ii) shall be replaced with the following language: "The date specified in a State construction or operating permit, if applicable, or January 8, 2018, whichever is earlier, for all other subject MSW landfills."

30.18 The final sentence in section 60.767(a)(2)(ii) shall be replaced with the following language: "The Department may request other reasonable information as may be necessary to verify the maximum design capacity of the landfill."

30.19 Section 60.767(i)(1)(ii) shall be replaced with the following language: "For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT Web site at the time of the test, you must submit the results of the performance test to the Department."

30.20 Section 60.767(k)(7) shall be replaced with the following language: "The initial report must contain items in paragraph (k)(1) through (6) of this section per year for the initial annual reporting period as well as for each of the previous 10 years, to the extent historical data are available in on-site records, and the report must be submitted no later than thirteen (13) months after the date of commenced construction, modification, or reconstruction for landfills that commenced construction, modification, or reconstruction on or after July 17, 2014 containing data for the first 12 months after August 29, 2016."

30.21 Delete and reserve sections 60.767(k)(7)(i) and 60.767(k)(7)(ii).

30.22 Section 60.768(c)(3) shall be replaced with the following language: "Each owner or operator subject to the provisions of this subpart who uses a boiler or process heater with a design heat input capacity of 44 megawatts or greater to comply with §60.762(b)(2)(iii) must keep an up-to-date, readily accessible record of all periods of operation of the boiler or process heater. (Examples of such records could include records of steam use, fuel use, or monitoring data collected pursuant to other state or federal regulatory requirements.)"

The complete text of Subpart XXX, as adopted in Section 30, is provided in APPENDIX B of this State Plan. All municipal solid waste landfills in Delaware are subject to Section 30.

IV. Source and Emission Inventories

Delaware has three municipal solid waste landfills that are subject to the requirements of this State Plan. All of these MSW landfills are currently accepting waste, have a design capacity greater than 2.5 million megagrams, and an uncontrolled NMOC emission rate of greater than 34 megagrams per year using Tier 1 procedures. These facilities along with the emission inventories are provided in the table below.

Municipal Solid Waste Landfills Subject To Emission Guidelines in Subpart Cf					
Facility Name	**County**	**Design Capacity (Million Mg)**	**2016 Estimated NMOC Emissions (Uncontrolled)**	**Tier**	**Year Opened**
Cherry Island (NSWMC-2)	New Castle	21.203	53.45 Mg/year	1	10/85
Central Solid Waste Management Center (CSWMC)	Kent	8.313	38.38 Mg/year	1	10/80
Southern Solid Waste Management Center (SSWMC)	Sussex	7.628	29.78 Mg/year	1	10/84

Note that pursuant to Section 28 of 7 **DE Admin. Code** 1120 each of these three existing municipal solid waste landfills is currently subject to the requirements of 40 CFR Part 60 Subpart WWW.

V. Emission Standards

The emission standards for municipal solid waste landfills are those stated in Section 60.762 of Section 30. These standards include design capacity cutoff for applicability, NMOC emission limits, collection system requirements, types of control device requirements, and length of time of required control for municipal solid waste landfills. The test methods and procedures for determining compliance with the emission standards are those stated in Section 60.764 of Section 30.

The emission standards apply to any municipal solid waste landfill, open or closed, that commenced construction, reconstruction, or modification after July 17, 2014 or that has accepted waste after November 8, 1987 or that has additional capacity available to accept waste.

VI. Process for Review of Design Plans

For a landfill subject to the emission standards, the owner or operator must submit to the Department a Collection and Control Design Plan. This design plan must meet the requirements stated in Section 30.

As provided for in Section 30, the Department will review each submitted design plan and will, in writing, either approve it, disapprove it, or request that additional information be submitted.

VII. Compliance Schedules

The table below specifies the compliance schedule for existing municipal solid waste landfills in the State of Delaware.

Compliance Schedule for Existing Municipal Solid Waste Landfills	
State Plan Submittal to EPA	May 30, 2017
EPA approval of State Plan	Within 4 months of submittal to EPA
Final emission guideline compliance date	For NSWMC-2, CSWMC, and SSWMC, to be completed as expeditiously as possible but no later than 180 days from the effective date of Section 30

VIII. Public Participation

A public hearing was held on April 24, 2017 at 6:00 pm in the Department of Natural Resources and Environmental Control's office located at 100 W. Water Street, Suite 6A, Dover, DE. Affidavits from the Delaware State News and the Sunday News Journal, and copies of the notices as they appeared in those publications on March 12, 2017 advertising the public hearing are provided in APPENDIX C of this State Plan. A list of the public hearing attendees and other public noticing is also provided in APPENDIX C.

IX. Source Surveillance, Compliance Assurance, and Enforcement

The affected facilities will be subject to the operational standards, test methods and procedures, compliance provisions, monitoring of operations, reporting requirements, and recordkeeping requirements specified in Section 30.

The Department will submit annual reports to the EPA which detail the progress in the enforcement of the State Plan. The first progress report will be submitted to the EPA one year following the approval of the State Plan. The annual report will contain the following information:

1. Enforcement actions initiated against a designated facility during the reporting period,

2. Identification of the achievement of any increments of progress required by the State Plan during the reporting period,

3. Identification of designated facilities that have ceased operation during the reporting period,

4. Submission of additional emission data to update previous progress reports, and

5. Emission inventory data for any municipal solid waste landfill that has accepted waste after November 8, 1987, or that has additional design capacity available to accept waste and that was not in operation at the time of State Plan development but began operation during the reporting period.

Technical reports on all performance testing conducted on the designated facilities, complete with concurrently recorded control device operating data will be retained by the Department and a copy will be sent to the Environmental Protection Agency, Region III.

APPENDIX A

Legal Authorities

1 7 DE Code Chapter 60 - Subchapter I. General Provisions
2 7 DE Code Chapter 60 - Subchapter II. Powers and Duties of Secretary and Department
3 7 DE Admin Code 1102 - Permits
4 7 DE Admin Code 1117 - Source Monitoring, Record Keeping And Reporting
5 7 DE Admin Code 1130 - Title V State Operating Permit Program

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TITLE 7

Conservation

Natural Resources

CHAPTER 60. ENVIRONMENTAL CONTROL

Subchapter I. General Provisions

§ 6001 Findings, policy and purpose.

(a) *Findings.* — The General Assembly hereby makes the following findings concerning the development, utilization and control of the land, water, underwater and air resources of the State:

(1) The development, utilization and control of the land, water, underwater and air resources of the State are vital to the people in order to assure adequate supplies for domestic, industrial, power, agricultural, recreational and other beneficial uses;

(2) The development and utilization of the land, water, underwater and air resources must be regulated to ensure that the land, water, underwater and air resources of the State are employed for beneficial uses and not wasted;

(3) The regulation of the development and utilization of the land, water, underwater and air resources of the State is essential to protect beneficial uses and to assure adequate resources for the future;

(4) The land, water, underwater and air resources of the State must be protected and conserved to assure continued availability for public recreational purposes and for the conservation of wildlife and aquatic life;

(5) The land, water, underwater and air resources of the State must be protected from pollution in the interest of the health and safety of the public;

(6) The land, water, underwater and air resources of the State can best be utilized, conserved and protected if utilization thereof is restricted to beneficial uses and controlled by a state agency responsible for proper development and utilization of the land, water, underwater and air resources of the State;

(7) Planning for the development and utilization of the land, water, underwater and air resources is essential in view of population growth and the expanding economic activity within the State.

(b) *Policy.* — In view of the rapid growth of population, agriculture, industry and other economic activities, the land, water and air resources of the State must be protected, conserved and controlled to assure their reasonable and beneficial use in the interest of the people of the State. Therefore, it is the policy of this State that:

(1) The development, utilization and control of all the land, water, underwater and air resources shall be directed to make the maximum contribution to the public benefit; and

(2) The State, in the exercise of its sovereign power, acting through the Department should control the development and use of the land, water, underwater and air resources of the State so as to effectuate full utilization, conservation and protection of the water and air resources of the State.

(c) *Purpose.* — It is the purpose of this chapter to effectuate state policy by providing for:

(1) A program for the management of the land, water, underwater and air resources of the State so directed as to make the maximum contribution to the interests of the people of this State;

(2) A program for the control of pollution of the land, water, underwater and air resources of the State to protect the public health, safety and welfare;

(3) A program for the protection and conservation of the land, water, underwater and air resources of the State, for public recreational purposes, and for the conservation of wildlife and aquatic life;

(4) A program for conducting and fostering research and development in order to encourage maximum utilization of the land, water, underwater and air resources of the State;

(5) A program for cooperating with federal, interstate, state, local governmental agencies and utilities in the development and utilization of land, water, underwater and air resources;

(6) A program for improved solid waste storage, collection, transportation, processing and disposal by providing that such activities may henceforth be conducted only in an environmentally

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acceptable manner pursuant to a permit obtained from the Department.
7 Del. C. 1953, § 6001; 59 Del. Laws, c. 212, § 1.;

TITLE 7

Conservation

Natural Resources

CHAPTER 60. ENVIRONMENTAL CONTROL

Subchapter II. Powers and Duties of Secretary and Department

§ 6002 Definitions.

The following words and phrases shall have the meaning ascribed to them in this chapter unless the context clearly indicates otherwise:

(1) "Activity" means construction, or operation, or use of any facility, property, or device.

(2) "Air contaminant" means particulate matter, dust, fumes, gas, mist, smoke or vapor or any combination thereof, exclusive of uncombined water.

(3) "Air pollution" means the presence in the outdoor atmosphere of 1 or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life or to property, or which unreasonably interferes with the enjoyment of life and property within the jurisdiction of this State, excluding all aspects of employer-employee relationships as to health and safety hazards.

(4) "At cost" means the expense to the government to conduct tests and analyses. No added service fee, or other fees and charges, may be included in this cost.

(5) "Board" means the Environmental Appeals Board.

(6) "Boat docking facility" shall mean a place where vessels may be secured to a fixed or floating structure or to the shoreline or shoreline structure.

(7) "Borrow pit" means any excavation into the subsurface for the purpose of extraction of earth products with the exception of excavation for utility or road construction, agricultural or highway drainage, or dredging operations under the jurisdiction of the U.S. Army Corps of Engineers.

(8) "Categorical pretreatment standard" means a pretreatment standard which applies to industrial users in a specific industrial subcategory.

(9) "Commercial landfill" means a waste disposal facility available for use by the general public and which accepts waste for disposal for profit.

(10) "Debris disposal area" means an excavation, pit or depression into which land clearing debris, along with small amounts of construction or demolition waste incidental to construction, has been placed and which is not a permitted or approved waste management facility.

(11) "Dedicated pumpout facility" means a semi-permanent connection made to a vessel for the purpose of removing sewage from the vessel on a continuous basis or automatic intermittent basis to an approved disposal facility.

(12) "Delineation" shall mean the process of defining and/or mapping a boundary that approximates the areas that contribute water to a particular water source used as a public water supply.

(13) "Department" means the Department of Natural Resources and Environmental Control.

(14) "Direct vessel sewage pumpout connection" shall mean a semipermanent connection made to a vessel for the purpose of removing vessel sewage from the vessel holding tank or head on a continuous or automatic intermittent basis to an approved sewage disposal facility.

(15) "Discharge or indirect discharge" means the discharge or the introduction of pollutants from any nondomestic source into a POTW.

(16) "Domestic wastewater" means the liquid and water-borne human and/or household type waste derived from residential, industrial, institutional or commercial sources.

(17) "Dump station" means a type of pumpout facility that receives vessel sewage from portable marine sanitation devices and delivers that sewage to an approved sewage disposal facility.

(18) "Earth products" means any solid material, aggregate or substance of commercial value, whether consolidated or loose, found in natural deposits on or in the earth, including, but not limited to clay, silt, diatomaceous earth, sand, gravel, stone, metallic ores, shale and soil.

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(19) "Environmental release" means any spillage, leakage, emission, discharge or delivery into the air or waters or on or into the lands of this State of any sewage of 10,000 gallons or more oil, industrial waste, liquid waste, hydrocarbon chemical, hazardous substance, hazardous waste, restricted chemical material, vessel discharge, air contaminant, pollutant, regulated biological substance or other wastes reportable pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. § 9601 et seq.], as amended, or regulations enacted pursuant to § 6028 of this title.

(20) "Excellent ground-water recharge potential area" shall mean any area where soils and sedimentary deposits of the most coarse grained nature have the best ability to transmit water vertically through the unsaturated zone to the water table as mapped by the methods described in the Delaware Geological Survey Open File Report No. 34, "Methodology For Mapping Ground-Water Recharge Areas in Delaware's Coastal Plain" (August 1991), and as depicted on a series of maps prepared by the Delaware Geological Survey. An excellent ground-water recharge potential area shall constitute a critical area as defined under Chapter 92 of Title 29.

(21) "Garbage" shall mean any putrescible solid and semisolid animal and/or vegetable wastes resulting from the production, handling, preparation, cooking, serving or consumption of food or food materials.

(22) "Graywater" means galley, bath and shower water.

(23) "Ground water" means any water naturally found under the surface of the earth.

(24) "Hydrocarbon chemical" means any compound composed of carbon and hydrogen.

(25) "Incinerator," "incinerator structure or facility," and "waste incinerator" include any structure or facility operated for the combustion (oxidation) of solid waste, even if the by-products of the operation include useful products such as steam and electricity. "Incinerator" shall not include:

a. Crematoriums;

b. The disposal of the bodies of animals through incineration;

c. The burning of poultry waste or poultry manure at the same site where the waste or manure was generated, which shall include the burning of poultry waste or poultry manure generated upon an adjacent farm;

d. The disposal of all materials used in the discovery, development, and manufacture of veterinary products, medicines and vaccines; or

e. The disposition of mortalities from poultry operations in facilities approved by the Delaware Department of Natural Resources and Environmental Control which comply with United States Department of Agricultural Natural Resources Conservation Service Interim Conservation Practice Standard Incinerator 769 or any successor standard.

(26) "Industrial user" means a source of indirect discharge. The term "industrial user" shall include, but not be limited to, the original source of the indirect discharge as well as the owners or operators of any intervening connections, other than those owned or operated by the receiving POTW, which convey the indirect discharge to the POTW.

(27) "Industrial waste" means any water-borne liquid, gaseous, solid or other waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development of any agricultural or natural resource.

(28) "Liquid waste" means any industrial waste or sewage or other wastes or any combination thereof which may potentially alter the chemical, physical or biological integrity of water from its natural state.

(29) "Liquid waste hauler" means any person who engages in the removal of liquid wastes from septic tanks, cesspools, seepage pits, holding tanks or other such devices and conveys such liquid waste to a location removed from the point of acceptance.

(30) "Liquid waste treatment plant operator" means any person who has direct responsibility for the operation of a liquid waste treatment plant.

(31) "Live-aboard vessel" shall mean:

a. A vessel used principally as a residence;

b. A vessel used as a place of business, professional or other commercial enterprise and, if used as a means of transportation, said transportation use is a secondary or subsidiary use; this definition shall not include commercial fishing boats which do not fall under paragraph (31)a. of this section; or

c. Any other floating structure used for the purposes stated under paragraph (31)a. or b. of this section.

(32) "Marinas" are those facilities adjacent to the water which provide for mooring, berthing, or storage of boats, and which include any or all of the related ancillary structures and functions of marinas, such as docks, piers, boat storage areas, boat ramps, anchorages, breakwaters, channels, moorings, basins, boat repair services, boat sales, sales of supplies which are normally associated with boating such as fuel, bait and tackle, boat rentals and parking areas for users of the marina.

(33) "Marine Sanitation Device (MSD)" includes any equipment on board a vessel which is designed to receive, retain, treat or discharge sewage, and any process to treat such sewage. Marine sanitation devices are classified as:

a. "Type I marine sanitation device" means a device that produces an effluent having a fecal coliform bacteria count not greater than 1,000 per 100 milliliters and no visible floating solids.

b. "Type II marine sanitation device" means a device that produces an effluent having a fecal coliform bacteria count of not greater than 200 per 100 milliliters and suspended solids not greater than 150 milligrams per liter.

c. "Type III marine sanitation device" means a device that is certified to a no-discharge standard. Type III devices include recirculating and incinerating MSDs and holding tanks.

(34) "Oil" means oil of any kind and in any form, including but not limited to, petroleum products, sludge, oil refuse, oil mixed with other wastes and all other liquid hydrocarbons regardless of specific gravity.

(35) "Open dump" means any facility or site where solid waste is disposed which is not a sanitary landfill and which is not a facility for disposal for hazardous waste.

(36) "Other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime cinders, ashes, offal, oil, tar, dye-stuffs, acids, chemicals and all discarded substances other than sewage or industrial wastes.

(37) "Persons" means any individual, trust, firm, joint stock company, federal agency, partnership, corporation (including a government corporation), association, state, municipality, commission, political subdivision of a state or any interstate body.

(38) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, hydrocarbons, oil, and product chemicals, and industrial, municipal and agricultural waste discharged into water.

(39) "POTW pretreatment program" means a program administered by a POTW for the purpose of enforcing pretreatment standards in accordance with the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. and regulations promulgated thereunder.

(40) "Pretreatment standard" means any pollutant discharge limit promulgated by the Administrator of the United States Environmental Protection Agency in accordance with § 307(b) and (c) of the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1317(b) and (c), or by the Secretary, which applies to industrial users.

(41) "Public drinking water system" shall mean a community, noncommunity or non-transient non-community water system which provides piped water to the public for human consumption. The system must have at least 15 service connections or regularly serve at least 25 individuals daily for at least 60 days.

(42) "Publicly owned treatment works" or "POTW" means either:

a. A treatment works which is owned by a city, town, county, district or other public body created by or pursuant to the laws of the State; or

b. Any such public body which has jurisdiction over the discharges to such treatment works.

(43) "Pumpout facility" means a mechanical device which is temporarily connected to a vessel for the purpose of removing sewage from a vessel to an approved sewage disposal facility.

(44) "Refuse" means any putrescible or nonputrescible solid waste, except human excreta, but including garbage, rubbish, ashes, street cleanings, dead animals, offal and solid agricultural, commercial, industrial, hazardous and institutional wastes and construction wastes resulting from the operation of a contractor.

(45) "Restricted chemical material" means:

a. Any halogenated hydrocarbon chemical (aliphatic or aromatic) including but not limited to trichloroethane, tetrachloroethylene, methylene chloride, halogenated benzenes and carbon tetrachloride; or

b. Any aromatic hydrocarbon chemical including, but not limited to, benzene, toluene and naphthalene; or

c. Any halogenated phenol derivative in which a hydroxide group and 2 or more halogen atoms are substituted onto aromatic carbons of a benzene ring including, but not limited to, trichlorophenol and pentachlorophenol; or

d. Similar materials including but not limited to acrolein, acrylonitrile or benzidene.

(46) "Rubbish" means any nonputrescible solid waste, excluding ashes, such as cardboard, paper, plastic, metal or glass food containers, rags, waste metal, yard clippings, small pieces of wood, excelsior, rubber, leather, crockery and other waste materials.

(47) "Sanitary landfill" means a facility for the disposal of solid waste which meets the criteria promulgated under § 6010(g)(1) of this title.

(48) "Secretary" means the Secretary of the Department of Natural Resources and Environmental Control or the Secretary's duly authorized designee.

(49) "Sewage" means water-carried human or animal wastes from septic tanks, water closets, residences, buildings, industrial establishments, or other places, together with such ground water infiltration, subsurface water, admixtures of industrial wastes or other wastes as may be present.

(50) "Sewage system" means any part of a wastewater disposal system including, but not limited to, all toilets, urinals, piping, drains, sewers, septic tanks, distribution boxes, absorption fields, seepage pits, cesspools and dry wells.

(51) "Sewage system cleanser" means: (i) Any solid or liquid material intended or used primarily for the purpose of cleaning, treating or unclogging any part of a sewage system, or (ii) any solid or liquid material intended or used primarily for the purpose of continuously or automatically deodorizing or disinfecting any part of a sewage system including, but not limited to, solid cakes or devices placed in plumbing fixtures. Excluded from this definition are products intended or used primarily in the manual surface cleaning, scouring, treating, deodorizing or disinfecting, of common plumbing fixtures.

(52) "Slip" means a place where a boat may be secured to a fixed or floating structure, including, but not limited to a dock, pier, mooring or anchorage. Slips may be wet (in the water) or dry (in a rack or other device on land).

(53) "Solid waste" means any garbage, refuse, refuse-derived fuel, demolition and construction waste wood, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under this chapter, as amended, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954 [42 U.S.C. § 2011 et seq.], as amended. By-products of a uniform and known composition produced as a result of a production process are not solid wastes when incinerated onsite. All incinerators under state permit as of March 1, 2000, and renewal permit applications for these incinerators shall not come under the provisions of this section and § 6003 of this title.

(54) "Source water" shall mean any aquifer or surface water body from which water is taken either periodically or continuously by a public drinking water system for drinking or food-processing purposes.

(55) "Source water assessment" shall mean the identification and evaluation of the sources of water within the State that are used by public drinking water systems in an effort to determine the susceptibility of those sources to contamination.

(56) "Source water assessment area" shall mean the delineated area which contributes water to a public water supply system. This is called a wellhead protection area for a well and a watershed or basin for a surface water intake. A source water assessment area shall constitute a critical area as defined under Chapter 92 of Title 29.

(57) "Source water assessment plan" shall mean the October 1999 U.S. EPA-approved plan for evaluating the sources of public drinking water in Delaware for their vulnerability and susceptibility to contamination.

(58) "Source Water Protection Citizens Technical Advisory Committee" shall mean a group to advise the Secretary of the Department of Natural Resources and Environmental Control, including, but not limited to, representatives of the following organizations or municipalities: DNREC, Department of Health and Social Services, Department of Agriculture, the Delaware Nature Society, the Delaware Public Health Association, the American Association of Retired Persons, the United States Geological Survey, the Christina River Conservancy, the Water Resources Agency of the University of Delaware, the Council of Farm Organizations, the Delaware Rural Water Association, the League of Women Voters, the Friends of Herring Creek, the Civic League of New Castle County, the Delaware Geological Survey, the Committee of 100, the City of Dover, the City of Lewes, the New Castle County Department of Land Use, Kent County Levy Court, Sussex County Council, the League of Local Governments, the Sussex County Association of Towns, the Homebuilders Association of Delaware, the Commercial Industrial Realty Council, and the Delaware Association of Professional Engineers; and public water suppliers.

(59) "Surface water" means water occurring generally on the surface of the earth.

(60) "Treatment works" means any device and system used in the storage, treatment, recycling and reclamation of municipal sewage, or industrial wastes of a liquid nature, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power and other equipment, and their appurtenances, extensions, improvements, remodeling, additions and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities and improvements to exclude or minimize inflow and infiltration.

(61) "Variance" means a permitted deviation from an established rule or regulation, or plan, or standard or procedure.

(62) "Vessel" shall mean and include every description of watercraft, boat, houseboat or other form of artificial contrivance used, or capable of being used, whether or not capable of self-propulsion, for navigation on the waters of the State.

(63) "Vessel discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

(64) "Vessel sewage" shall mean human body wastes and wastes from toilets and other receptacles intended to receive or retain human body wastes.

(65) "Vessel sewage pumpout station" shall mean a mechanical device which is temporarily connected to a vessel for the purpose of removing vessel sewage from its holding tank or head to an approved sewage disposal facility.

(66) "Water facility" means any well, dam, reservoir, surface water intake or waterway obstruction.

(67) "Water pollution" means the human-made or human-induced alteration of the chemical, physical, biological or radiological integrity of water.

(68) "Water supply system" means all plants, systems, facilities or properties used or useful, or having the present capacity for future use, in connection with the supply or distribution of water, and any integral part thereof, including water distribution systems, mains, laterals, pumping stations, stand pipes, filtration plants, purification plants, hydrants, meters, valves and equipment, appurtenances and all properties, rights, easements and franchises relating thereto and deemed necessary or convenient by the authority for the operation thereof. Except as otherwise provided in this chapter, the term "water supply system" shall not mean a dam, reservoir, surface water intake, water obstruction or well.

(69) "Water utility" shall mean any person or entity operating within this State any water service, system, plant or equipment for public use.

(70) "Water well contractor" means any person engaged in the business of contracting for the construction of water wells and/or installation of pumping equipment in or for wells.

(71) "Well" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted or otherwise constructed when the intended use of such excavation is for the location, testing, acquisition or artificial recharge of underground water, and where the depth is greater than the diameter or width.

(72) "Wellhead protection area" shall mean the surface and subsurface area surrounding a water well or wellfield supplying a public water system through which contaminants are likely to reach such a well or wellfield. A Wellhead Protection Area shall constitute a critical area as defined under Chapter 92 of Title 29.

(73) "Wellhead protection plan" shall mean the March 1990 U.S. EPA-approved plan for protecting the quality of drinking water derived from public water supply wells in Delaware.

7 Del. C. 1953, § 6002; 59 Del. Laws, c. 212, § 1; 61 Del. Laws, c. 315, § 1; 62 Del. Laws, c. 412, §§ 1, 2; 62 Del. Laws, c. 414, § 3; 63 Del. Laws, c. 248, § 1; 64 Del. Laws, c. 146, § 4; 64 Del. Laws, c. 370, § 1; 64 Del. Laws, c. 479, §§ 4, 5; 65 Del. Laws, c. 144, § 1; 66 Del. Laws, c. 275, § 1; 67 Del. Laws, c. 353, § 2; 68 Del. Laws, c. 124, § 3; 68 Del. Laws, c. 137, §§ 1, 2; 68 Del. Laws, c. 403, §§ 1, 2; 69 Del. Laws, c. 302, § 6; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 418, § 1; 72 Del. Laws, c. 289, §§ 1, 6, 7; 73 Del. Laws, c. 67, § 1; 73 Del. Laws, c. 117, § 1.;

§ 6003 Permit — Required.

(a) No person shall, without first having obtained a permit from the Secretary, undertake any activity:

(1) In a way which may cause or contribute to the discharge of an air contaminant; or

(2) In a way which may cause or contribute to discharge of a pollutant into any surface or ground water; or

(3) In a way which may cause or contribute to withdrawal of ground water or surface water or both; or

(4) In a way which may cause or contribute to the collection, transportation, storage, processing or disposal of solid wastes, regardless of the geographic origin or source of such solid wastes; or

(5) To construct, maintain or operate a pipeline system including any appurtenances such as a storage tank or pump station; or

(6) To construct any water facility; or

(7) To plan or construct any highway corridor which may cause or contribute to the discharge of an air contaminant or discharge of pollutants into any surface or ground water.

(b) No person shall, without first having obtained a permit from the Secretary, construct, install, replace, modify or use any equipment or device or other article:

(1) Which may cause or contribute to the discharge of an air contaminant; or

(2) Which may cause or contribute to the discharge of a pollutant into any surface or ground water; or

(3) Which is intended to prevent or control the emission of air contaminants into the atmosphere or pollutants into surface or ground waters; or

(4) Which is intended to withdraw ground water or surface water for treatment and supply; or

(5) For disposal of solid waste.

(c) The Secretary shall grant or deny a permit required by subsection (a) or (b) of this section in accordance with duly promulgated regulations and:

(1) No permit may be granted unless the county or municipality having jurisdiction has first approved the activity by zoning procedures provided by law; and

(2) No permit may be granted to any incinerator unless:

a. The property on which the incinerator is or would be located is within an area which is zoned for heavy industrial activity and shall be subject to such process rules, regulations or ordinances as the county, municipality or other government entity shall require by law, such as a conditional use, so that conditions may be applied regarding the health, safety and welfare of the citizens within the jurisdiction; and

b. Every point on the property boundary line of the property on which the incinerator is or would be located is:

1. At least 3 miles from every point on the property boundary line of any residence;

2. At least 3 miles from every point on the property boundary line of any residential community; and

3. At least 3 miles from every point on the property boundary line of any church, school, park, or hospital.

(d) A county which requests authority to administer a system for granting or denying a septic tank permit, and which satisfies the Secretary that it has the capability, including but not limited to regulations and

enforcement authority, may be authorized by the Secretary, for a term stated, to administer such a system for him or her within that county. In the event of such authorization, an applicant for a septic tank permit in that county shall not be bound by subsections (a) and (b) of this section.

(e) The Secretary may, after public hearings, publish a list of activities which do not require a permit.

(f) The Secretary may establish fees for permits issued pursuant to this section with the concurrence and approval of the General Assembly. The Secretary shall annually prepare a schedule of fees for permits issued pursuant to this section and submit the same as part of the Department's annual operating budget proposal.

(g) No county, municipality or other governmental entity shall issue any building, placement, storage or occupancy permit or license until the property owner has obtained from the Department any necessary permits for underground discharge of wastewater and withdrawal of groundwater.

(h) The Secretary may reduce the amount of any fee charged for any permit or license issued pursuant to the provisions of this title for particular types of permits or classes or categories of permittees.

(i) No county, municipality or other governmental entity shall issue any building, placement, storage or occupancy permit or license to any person intending to operate an incinerator unless:

(1) The property on which the incinerator is or would be located is within an area which is zoned for heavy industrial activity and shall be subject to such process rules, regulations or ordinances as the county, municipality or other government entity shall require by law, such as a conditional use, so that conditions may be applied regarding the health, safety and welfare of the citizens within the jurisdiction; and

(2) Every point on the property boundary line of the property on which the incinerator is or would be located is:

a. At least 3 miles from every point on the property boundary line of any residence;

b. At least 3 miles from every point on the property boundary line of any residential community; and

c. At least 3 miles from every point on the property boundary line of any church, school, park or hospital.

7 Del. C. 1953, § 6003; 59 Del. Laws, c. 212, § 1; 65 Del. Laws, c. 344, § 1; 68 Del. Laws, c. 86, § 3; 68 Del. Laws, c. 89; 68 Del. Laws, c. 348, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 289, §§ 2-5.;

§ 6004 Permit — Application; hearing.

(a) Any person desiring to obtain a permit required by § 6003 of this title or a variance or an application to establish a redemption center or a certificate of public convenience and necessity required by subchapter V of this chapter shall submit an application therefor in such form and accompanied by such plans, specifications and other information as required by applicable statute or regulation.

(b) Except as otherwise provided in subsection (c) of this section, upon receipt of an application in proper form, the Secretary shall advertise in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State:

(1) The fact that the application has been received;

(2) A brief description of the nature of the application; and

(3) The place at which a copy of the application may be inspected.

The Secretary shall hold a public hearing on an application, if he or she receives a meritorious request for a hearing within a reasonable time as stated in the advertisement. A public hearing may be held on any application if the Secretary deems it to be in the best interest of the State to do so. Such notice shall also be sent by mail to any person who has requested such notification from the Department by providing the name and mailing address. The reasonable time stated shall be 15 days, unless federal law requires a longer time, in which case the longer time shall be stated. A public hearing request shall be deemed meritorious if it exhibits a familiarity with the application and a reasoned statement of the permit's probable impact. The applicant shall be responsible for the cost of any such advertisements and notices made by the Department as required by this section, not to exceed $500.

(c) The advertisement and notice requirements set forth in subsection (b) of this section may not apply to a permit application received by the Department whenever the subject matter of said application relates to the following:

(1) Air quality control permit applications for open burning, or for the construction or operation of

emission control equipment on an existing gasoline dispensing facility, a delivery vessel or a dry cleaning facility;

(2) Water quality control permit applications for a sewage system for 3 or fewer families, a municipal or publicly owned or operated sewage collection system that does not have a pump or lift station, or, a commercial septic system that is used to treat and dispose of 500 gallons or less per day of domestic wastewater only;

(3) Water well construction permit applications for any well from which the Department determines that the withdrawal under normal operations will not exceed 1,000,000 gallons per day.

The Secretary may act without public notice on any permit application that is specified in this subsection.

(d) Advertisements required under subsection (b) of this section may be placed by persons desiring to obtain a permit under § 6003 of this title, provided the advertisement meets the requirements contained in subsection (b) of this section and any additional requirements as may be specified by the Department.

7 Del. C. 1953, § 6004; 59 Del. Laws, c. 212, § 1; 59 Del. Laws, c. 537, § 1; 61 Del. Laws, c. 503, § 3; 64 Del. Laws, c. 146, §§ 1-3; 64 Del. Laws, c. 472, § 1; 68 Del. Laws, c. 124, § 4; 70 Del. Laws, c. 53, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 117, § 2; 78 Del. Laws, c. 185, § 1.;

§ 6005 Enforcement; civil and administrative penalties; expenses.

(a) The Secretary shall enforce this chapter.

(b) Whoever violates this chapter or any rule or regulation duly promulgated thereunder, or any condition of a permit issued pursuant to § 6003 of this title, or any order of the Secretary, shall be punishable as follows:

(1) If the violation has been completed, by a civil penalty imposed by Superior Court of not less than $1,000 nor more than $10,000 for each completed violation. Each day of continued violation shall be considered as a separate violation. The Superior Court shall have jurisdiction of a violation in which a civil penalty is sought. If the violation has been completed and there is a substantial likelihood that it will reoccur, the Secretary may also seek a permanent or preliminary injunction or temporary restraining order in the Court of Chancery.

(2) If the violation is continuing, the Secretary may seek a monetary penalty as provided in paragraph (b)(1) of this section. If the violation is continuing or is threatening to begin, the Secretary may also seek a temporary restraining order or permanent injunction in the Court of Chancery. In his or her discretion, the Secretary may endeavor by conciliation to obtain compliance with all requirements of this chapter. Conciliation shall be giving written notice to the responsible party:

a. Specifying the complaint;

b. Proposing a reasonable time for its correction;

c. Advising that a hearing on the complaint may be had if requested by a date stated in the notice; and

d. Notifying that a proposed correction date will be ordered unless a hearing is requested.

If no hearing is requested on or before the date stated in the notice, the Secretary may order that the correction be fully implemented by the proposed date or may, on his or her own initiative, convene a hearing, in which the Secretary shall publicly hear and consider any relevant submission from the responsible party as provided in § 6006 of this title.

(3) In his or her discretion, the Secretary may impose an administrative penalty of not more than $10,000 for each day of violation. Prior to assessment of an administrative penalty, written notice of the Secretary's proposal to impose such penalty shall be given to the violator, and the violator shall have 30 days from receipt of said notice to request a public hearing. Any public hearing, if requested, right of appeal and judicial appeal shall be conducted pursuant to §§ 6006-6009 of this title. Assessment of an administrative penalty shall be determined by the nature, circumstances, extent and gravity of the violation, or violations, ability of violator to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation and such other matters as justice may require. Simultaneous violations of more than 1 pollutant or air contaminant parameter or of any other limitation or standard imposed under this chapter shall be treated as a single violation for each day. In the event of nonpayment of the administrative penalty after all legal appeals have been exhausted, a civil action may be brought by the Secretary in Superior Court for collection of the administrative penalty, including interest, attorneys' fees and costs, and the validity, amount and

appropriateness of such administrative penalty shall not be subject to review.

(c)(1) Whenever the Secretary determines that any person has violated this chapter, or a rule, or regulation, or condition of a permit issued pursuant to § 6003 of this title, or an order of the Secretary, said person shall be liable for all expenses incurred by the Department:

a. In abating the violation; or

b. Controlling a pollution incident related to the violation; or

c. Cleanup and restoration of the environment; or

d. The costs incurred by the Department in recovering such expenses.

Such expenses shall include, but not be limited to, the costs of investigation, legal fees and assistance, public hearings, materials, equipment, human resources, contractual assistance and appropriate salary and overtime pay for all state employees involved in the effort notwithstanding merit system laws, regulations or rules to the contrary. The Secretary shall submit a detailed billing of expenses to the liable person.

(2) In the event the liable person desires to challenge the detailed billing submitted by the Secretary, such person shall, within 20 days of receipt of the detailed billing request an administrative hearing before the Secretary. Testimony at the administrative hearing shall be under oath and shall be restricted to issues relating to:

a. The finding of violation; and

b. The billing of expenses submitted by the Secretary.

A verbatim transcript of testimony at the hearing shall be prepared and shall, along with the exhibits and other documents introduced by the Secretary or other party, constitute the record. The Secretary shall make findings of fact based on the record, and enter an order which shall contain reasons supporting the decision. An appeal of the decision of the Secretary may be perfected to Superior Court within 30 days of the decision of the Secretary. In lieu of holding an administrative hearing on the detailed billing, or in the event a liable person fails or refuses to pay any of the expenses listed in the detailed billing, the Secretary may seek to compel payment through the initiation of a civil action in any court of competent jurisdiction within the State of Delaware. This subsection shall not be affected by the appeal provisions of § 6008 of this title.

(d) Any expenses or 75 percent of civil or administrative penalties collected by the Department under this section are hereby appropriated to the Department to carry out the purposes of this chapter; however any expenditure or transfer must be approved by the Director of the Office of Management and Budget and the Controller General. The Department shall submit quarterly reports on the progress of the expenditures and/or projects. All expenditures must be recommended by the Department and approved by the Secretary. All penalty funds will be deposited in the Penalty Fund Account. All of the penalty fund expenditures made by the Department of Natural Resources and Environmental Control shall be reported annually to the Joint Finance Committee in the Department's annual budget presentation. Included in this presentation shall be an explanation of the process used to select the recipients of penalty fund money.

(e) Penalties or fines created by this section may be tripled with respect to any person or entity that was designated a chronic violator pursuant to § 7904 of this title at the time that the act leading to the penalty or fine occurred.

7 Del. C. 1953, § 6005; 59 Del. Laws, c. 212, § 1; 59 Del. Laws, c. 537, §§ 2, 3; 66 Del. Laws, c. 163, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 318, § 2; 74 Del. Laws, c. 37, § 1; 74 Del. Laws, c. 203, § 1; 75 Del. Laws, c. 88, § 21(4); 75 Del. Laws, c. 357, § 1; 78 Del. Laws, c. 177, § 18.;

§ 6006 Public hearings.

Any public hearing held by the Secretary concerning any regulation or plan, permit application, alleged violation or variance request shall be conducted as follows:

(1) For any hearing on an application for a permit or an alleged violation or variance request, notification shall be served upon the applicant or alleged violator as summonses are served or by registered or certified mail not less than 20 days before the time of said hearing. Not less than 20 days' notice shall also be published in a newspaper of general circulation in the county in which the activity is proposed or the alleged violation has occurred and in a daily newspaper of general circulation throughout the State.

(2) For a hearing on a regulation or plan proposed for adoption, notification shall be published in a newspaper of general circulation in each county and in a newspaper of general circulation in the State. Such notification shall include:

a. A brief description of the regulation or plan;

b. Time and place of hearing; and

c. Time and place where copies of the proposed regulation may be obtained and a copy of the plan is available for public scrutiny.

Such notice shall also be sent to any persons who have requested such notification from the Department by providing the name and mailing address.

(3) The permit applicant or the alleged violator or party requesting a variance may appear personally or by counsel at the hearing and produce any competent evidence in his or her behalf. The Secretary or his or her duly authorized designee may administer oaths, examine witnesses and issue, in the name of the department, notices of hearings or subpoenas requiring the testimony of witnesses and production of books, records or other documents relevant to any matter involved in such hearing; and subpoenas shall also be issued at the request of the applicant or alleged violator or party requesting a variance. In case of contumacy or refusal to obey a notice of hearing or subpoena under this section, the Superior Court in the county in which the hearing is held shall have jurisdiction upon application of the Secretary, to issue an order requiring such person to appear and testify or produce evidence as the case may require.

(4) A record from which a verbatim transcript can be prepared shall be made of all hearings and shall, also with the exhibits and other documents introduced by the Secretary or other party, constitute the record. The expense of preparing any transcript shall be borne by the person requesting it. The Secretary shall make findings of fact based on the record. The Secretary shall then enter an order that will best further the purpose of this chapter, and the order shall include reasons. The Secretary shall promptly give written notice to the persons affected by such order.

(5) The Secretary may establish a fee schedule for applications and hearings, and may collect from the applicant or from a violator finally adjudged guilty, the necessary expenses of the Department for conducting the hearing, or a reasonable fee for processing an application, or both. Any fees collected under this chapter are hereby appropriated to the Department to carry out the purposes of this chapter. The Secretary shall report through the annual budget process the receipt, proposed use and disbursement of these funds.

7 Del. C. 1953, § 6006; 59 Del. Laws, c. 212, § 1; 63 Del. Laws, c. 322, § 105(a); 64 Del. Laws, c. 62, § 1; 68 Del. Laws, c. 148, § 1; 70 Del. Laws, c. 186, § 1.;

§ 6007 Establishment of Environmental Appeals Board.

(a) There is hereby created an Environmental Appeals Board which shall consist of 7 Delaware residents, appointed by the Governor with the advice and consent of the Senate. The Chairperson shall be appointed by the Governor and serve at the Governor's pleasure. Each county shall be represented by 2 members. Registered members of either major political party shall not exceed the other major political party by more than 1. The term of each member appointed shall be 3 years. Vacancies in Board membership shall be filled by the Governor for the remainder of the unexpired term.

(b) The Board is a quasi-judicial review board which is constituted in order to hear appeals of decisions of the Secretary. The Board or its designee may issue subpoenas by certified mail for witnesses or evidence, administer oaths to witnesses and conduct prehearing conferences for the simplification of issues by consent, for the disposal of procedural requests or disputes and to regulate and expedite the course of the hearing.

(c) A simple majority of the Board shall constitute a quorum. A simple majority of those members of the Board present shall be required to override the decision of the Secretary. The Board shall schedule, but not necessarily conduct, a hearing within 30 days following the receipt of the appeal. In any event, the Board shall conduct, but not necessarily complete, the hearing within 180 days following the receipt of the appeal unless the parties agree otherwise. The Board may verbally announce the decision at the conclusion of the hearing. A written decision shall be mailed to the parties by certified mail within 90 days after the completion of the hearing. If the Board fails to conduct the hearing or to issue the written opinion as required, the decision of the Secretary shall be a final decision for the purposes of appeal.

(d) Any member of the Board with a personal or private financial interest in the outcome of an appeal before the Board shall disqualify himself or herself from any consideration of that matter and shall inform the Chairperson who shall note such interest on the record of the hearing.

(e) Each Board member shall be compensated for such reasonable expenses as travel and meals for each meeting and hearing attended.

(f) The Environmental Appeals Board shall adopt such rules and regulations as are necessary to provide procedures to implement the terms of §§ 6007-6009 of this title, which shall apply to appeals to the Environmental Appeals Board. Prior to adopting any such rules and regulations, the Board shall designate a day, time and place for a public hearing on such proposed rules or for any amendments to existing or proposed rules and regulations. The Board shall give 20 days' notice of such hearing by publication in a newspaper of general circulation in the State and shall make copies of such proposed regulations available to the public upon request. The public hearing on such regulations shall be consistent with the provisions of Chapter 101 of Title 29.

(g) In any appeal to the Board there shall be required a reasonable fee, as established by the General Assembly, to cover such costs as are incurred during the appeal. The fees charged by the Environmental Appeals Board shall be deposited in a special account in the name of the Environmental Appeals Board and shall be used solely for the costs and expenses of that Board in holding its hearings and proceedings.

7 Del. C. 1953, § 6007; 59 Del. Laws, c. 212, § 1; 60 Del. Laws, c. 201, § 1; 68 Del. Laws, c. 86, § 4; 68 Del. Laws, c. 148, § 1; 70 Del. Laws, c. 186, § 1.;

§ 6008 Appeals to Board.

(a) Any person whose interest is substantially affected by any action of the Secretary may appeal to the Environmental Appeals Board within 20 days after receipt of the Secretary's decision or publication of the decision. The Board shall conduct a public hearing for all appeals in accordance with Chapter 101 of Title 29. Deliberations of the Board may be conducted in executive session. Each member who votes shall indicate the nature of his or her vote in the written decision.

(b) Whenever a final decision of the Secretary concerning any case decision, including but not limited to any permit or enforcement action is appealed, the Board shall hold a public hearing in accordance with Chapter 101 of Title 29. The record before the Board shall include the entire record before the Secretary. All parties to the appeal may appear personally or by counsel at the hearing and may produce any competent evidence in their behalf. The Board may exclude any evidence which is plainly irrelevant, immaterial, insubstantial, cumulative or unduly repetitive, and may limit unduly repetitive proof, rebuttal and cross-examination. The burden of proof is upon the appellant to show that the Secretary's decision is not supported by the evidence on the record before the Board. The Board may affirm, reverse or remand with instructions any appeal of a case decision of the Secretary.

(c) Appeals of regulations shall be on the record before the Secretary. The Board may hear new evidence if it is relevant to or clarifies those issues in the record before the Secretary. The Board may exclude any new evidence which is plainly irrelevant, immaterial, insubstantial, cumulative or unduly repetitive. Regulations will be presumed valid, and the burden will be upon the appellant to show that the regulations are arbitrary and capricious, or adopted without a reasonable basis in the record. The Board shall take due account of the Secretary's experience and specialized competence and of the purposes of this chapter in making its determination. The board may affirm, reverse or remand any appeal of regulations promulgated by the Secretary.

(d) The decision of the Board shall be signed by all members who were present at the hearing.

(e) There shall be no appeal of a decision by the Secretary to deny a permit on any matter involving state-owned land including subaqueous lands, except an appeal shall lie on the sole ground that the decision was discriminatory in that the applicant, whose circumstances are like and similar to those of other applicants, was not afforded like and similar treatment.

(f) No appeal shall operate to stay automatically any action of the Secretary, but upon application, and for good cause, the Secretary or the Court of Chancery may stay the action pending disposition of the appeal.

(g) At any time after the appeal to the Board, the parties may, by stipulation, proceed directly to Superior Court, in which case the Court may affirm, reverse or remand the Secretary's decision based on the

record before the Secretary and the Board and whatever other evidence the parties may submit by stipulation. The standard of review for such an appeal shall be governed by subsections (b) and (c) of this section.

(h) In those circumstances in which the Board concludes that an immediate and expedited review of a decision of the Secretary is appropriate or necessary, the Board may hold a public hearing on the appeal at the earliest possible time and issue a decision on such appeal. In such a case, the notice requirements of this section and Chapter 101 of Title 29 do not apply, and the Board shall give advance notice of the hearing only to the extent reasonably possible.

7 Del. C. 1953, § 6008; 59 Del. Laws, c. 212, § 1; 59 Del. Laws, c. 537, § 4; 67 Del. Laws, c. 377, § 1; 68 Del. Laws, c. 148, § 1; 70 Del. Laws, c. 186, § 1.;

§ 6009 Appeal from the Board's decision.

(a) Any person or persons, jointly or severally, or any taxpayer, or any officer, department, board or bureau of the State, aggrieved by any decision of the Board, may appeal to the Superior Court in and for the county in which the activity in question is wholly or principally located by filing a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Any such appeal shall be perfected within 30 days of the receipt of the written opinion of the Board.

(b) The Court may affirm, reverse or modify the Board's decision. The Board's findings of fact shall not be set aside unless the Court determines that the records contain no substantial evidence that would reasonably support the findings. If the Court finds that additional evidence should be taken, the Court may remand the case to the Board for completion of the record.

(c) No appeal shall operate to stay automatically any action of the Secretary, but upon application, and for good cause, the Board or the Court of Chancery may stay the action pending disposition of the appeal.

7 Del. C. 1953, § 6009; 59 Del. Laws, c. 212, § 1; 59 Del. Laws, c. 537, §§ 5, 6; 68 Del. Laws, c. 148, § 1.;

§ 6010 Rules and regulations; plans.

(a) The Secretary may adopt, amend, modify or repeal rules or regulations, or plans, after public hearing, to effectuate the policy and purposes of this chapter. No such rule or regulation shall extend, modify or conflict with any law of this State or the reasonable implications thereof.

(b) The Secretary shall formulate, amend, adopt and implement, after a public hearing, a statewide comprehensive water plan for the immediate and long-range development and use of the water resources of the State.

(c) The Secretary may formulate, amend, adopt and implement, after public hearing, a statewide air resources management plan to achieve the purpose of this chapter and comply with applicable federal laws and regulations. Any implementation plan in effect at the time of enactment of this chapter shall continue to be in effect unless amended or repealed by the Secretary.

(d) The Secretary may formulate, amend, adopt and implement, after public hearing, a statewide water pollution management plan to achieve the purposes of this chapter and comply with applicable federal laws and regulations. Any implementation plan in effect at the time of the enactment of this chapter shall continue to be in effect unless amended or repealed by the Secretary.

(e) The Secretary shall formulate, amend, develop and implement, after public hearing, a State solid waste plan in accordance with the requirements of subtitle D of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580) as amended [42 U.S.C. § 6941 et seq.], and any regulations thereunder, hereafter referred to as RCRA: Provided, however, that such plan shall be formulated in coordination with the Delaware Solid Waste Authority and shall include provisions of the statewide solid waste management plan adopted by the Delaware Solid Waste Authority pursuant to § 6403(j) of this title which reflect the applicable functions and activities of the Delaware Solid Waste Authority under Chapter 64 of this title.

(f) The Secretary:

(1) Shall approve the allocation and use of water in the State on the basis of equitable apportionment;

(2) Shall approve all new plans and designs of all impounding water facilities by any state, county, municipal, public or private water user within the State pursuant to subchapter V of this chapter; and

(3) May require reports from all Delaware water users as to a description of their water facilities, and past and present records of water use.

(g)(1) The Secretary, after notice and public hearing, shall promulgate regulations containing criteria for determining which facilities shall be classified as sanitary landfills and which shall be classified as open dumps within the meaning of this chapter. At a minimum such criteria shall provide that a facility may be classified as a sanitary landfill and not an open dump only if there is no reasonable probability of adverse effects on health or the environment from disposal of solid waste at such facility. Such regulations may provide for the classification of the types of sanitary landfills.

(2) On the date as determined under paragraph (g)(3) of this section below, the open dumping of solid waste or hazardous waste and the establishment of new open dumps is prohibited and all solid waste, including solid waste originating in other states but not including hazardous waste, shall be utilized for resource recovery or disposed of in sanitary landfills, within the meaning of this chapter, or otherwise disposed of in an environmentally sound manner, except in the case of any practice or disposal of solid waste under a timetable or schedule for compliance established under paragraph (g)(5) of this section below.

(3) Except as provided in paragraphs (g)(4) and (5) of this section below, the prohibition contained in paragraph (g)(2) of this section above shall take effect on the date of promulgation of regulations containing criteria under paragraph (g)(1) of this section or on the date of approval of the state solid waste plan under § 4007 of RCRA [42 U.S.C. § 6947], whichever is later.

(4) To assist in the formulation of the state solid waste plan, the Secretary, utilizing the criteria adopted pursuant to paragraph (g)(1) of this section above, shall develop and publish an inventory of all disposal facilities or sites in Delaware which are open dumps within the meaning of this chapter. With respect to any active disposal facilities or sites the Secretary shall coordinate the development of the inventory with the Delaware Solid Waste Authority. Prior to publication of the inventory the Secretary shall provide written notice of the proposed open dump designation to the owner and operator of the disposal facility or site which notice shall contain a detailed statement of deficiencies under the criteria adopted pursuant to paragraph (g)(1) of this section above. Upon receipt of notification the owner or operator shall, within 30 days, be entitled to request a public hearing before the Secretary pursuant to § 6006 of this title to challenge the designation; otherwise, the designation shall become a final decision of the Secretary. With 60 days of publication of the open dump inventory, the owner or operator of a disposal facility or site may apply to the Secretary for a timetable or schedule for compliance or closure under paragraph (g)(5) of this section below. During the pendency of any such application and prior to final action and disposition thereon the prohibition set forth in paragraph (g)(3) of this section above shall not apply with respect to that site. Upon application by the owner or operator, a site or facility may be removed from the open dump inventory after a determination by the Secretary that the basis upon which the site was designated as an open dump no longer exists. Any such application to remove a site or facility from the inventory shall be advertised in accordance with § 6004(b) of this title.

(5) All existing disposal facilities or sites for solid waste which are open dumps listed in the inventory under paragraph (g)(4) of this section shall comply with such measures as may be required by the Secretary, consistent with the requirements of RCRA [42 U.S.C. § 6901 et seq.], for closure or upgrading. The Secretary shall establish a timetable or schedule for compliance for such practice or disposal of solid waste which specifies a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with the prohibition on open dumping of solid waste within a reasonable time (not to exceed 5 years) from the date of publication of criteria under paragraph (g)(1) of this section.

(h)(1) Subject to subsection (f) of this section, the Secretary shall establish procedures for the issuance of water allocation permits which shall be granted concurrently with any license or permit to construct, extend or operate an irrigation well or surface water intake on any farm or farmland in the State. A water allocation permit issued pursuant to this subsection shall reserve the right of the person to whom the permit is issued to utilize up to 20 acre-inches per year, but not more than 10 acre-inches per month.

(2) For the purposes of this subsection:

a. An "acre-inch" of water is the amount of water required to cover 1 acre of land to a depth of 1 inch and is equal in volume to 27,154 gallons of water.

b. An "irrigation well" is an agricultural well which is used exclusively for the watering of lands or crops other than household lawns and gardens.

(i) The Secretary shall waive the requirements of § 6004(b) of this title for irrigation wells if:

(1) The permit application is submitted between and April 1 and October 1, inclusive;

(2) The permit application is to replace an existing irrigation well;

(3) The existing well has a valid allocation permit; and

(4) The replacement well will not exceed allocation permitted amounts.

(j) An emergency circumstance is deemed to exist if a well will replace an existing well and if the Department of Agriculture and/or the Department of Natural Resources and Environmental Control determines that the lack of water or delay in obtaining water poses an immediate and significant danger to the health or welfare of persons or their property, or if 1 or both of the Departments have determined that other exceptional circumstances exist. Verbal approval must be given for the installation of a well if an emergency circumstance exists, provided that:

(1) Within 72 hours after the verbal issuance of a permit number under emergency circumstances, the applicant submits to the Department a well permit application and well completion report, which must include the permit number.

(2) All wells constructed under emergency circumstances must be constructed in conformance with all applicable regulations and officially established policies.

(k) If an emergency circumstance exists when State offices are closed, a well may be constructed, providing that it replaces an existing well and that the Department is notified verbally on the first working day following such action. A well permit application, including the well permit number, the appropriate application fee, and a well completion report must be submitted within 72 hours after notification.

(l) The following persons shall serve on an advisory committee that oversees the agriculture irrigation well procedures:

(1) The Secretary of Agriculture, or the Secretary's designee;

(2) The Secretary of the Department of Natural Resources and Environmental Control, or the Secretary's designee;

(3) One person to represent the Delaware Farm Bureau;

(4) One person to represent the Fruit and Vegetable Growers Association of Delaware;

(5) One person who is an irrigation dealer;

(6) One person who is a commercial irrigation well driller;

(7) One person from the University of Delaware Water Resources Agency; and

(8) One person from the Delaware Geological Survey.

The Secretary of Agriculture and the Secretary of the Department of Natural Resources and Environmental Control shall determine that the committee members meet the above descriptions. The Secretary of Agriculture, or the Secretary's designee, shall serve as the chairperson of the advisory oversight committee.

7 Del. C. 1953, § 6010; 59 Del. Laws, c. 212, § 1; 60 Del. Laws, c. 288, § 2; 63 Del. Laws, c. 248, §§ 2-4; 67 Del. Laws, c. 344, § 4; 68 Del. Laws, c. 124, § 5; 73 Del. Laws, c. 191, § 1; 78 Del. Laws, c. 185, § 2.;

§ 6011 Variance.

(a) The Secretary may, upon application of a person (except an application concerning (1) a source of water or a sewerage facility for 3 or fewer families or (2) open burning, on which the Secretary may act without public notification), grant a variance to that person from any rule or regulation promulgated pursuant to this chapter after following the notice and hearing procedure set forth in § 6004 of this title.

(b) The variance may be granted if the Secretary finds that:

(1) Good faith efforts have been made to comply with this chapter;

(2) The person applying is unable to comply with this chapter because the necessary technology or other alternative methods of control are not available or have not been available for a sufficient period of time or the financial cost of compliance by using available technology is disproportionately high with respect to the benefits which continued operation would bestow on the lives, health, safety and welfare of the occupants of this State and the effects of the variance would not substantially and adversely affect the policy and purposes of this chapter;

(3) Any available alternative operating procedure or interim control measures are being or will be used to reduce the impact of such source on the lives, health, safety and/or welfare of the occupants of this State; and

(4) The continued operation of such source is necessary to national security or to the lives, health, safety or welfare of the occupants of this State.

(c) The Secretary shall publish his or her decision, except a decision involving (1) a source of water or a sewerage facility for 3 or fewer families or (2) open burning, and the nature of the variance, if granted, and the conditions under which it was granted. The variance may be made effective immediately upon publication.

(d) Any party may appeal a decision of the Secretary on a variance request to the Environmental Appeals Board under § 6008 of this title within 15 days after the Secretary publishes his or her decision.

(e) No variance can be in effect longer than 1 year but may be renewed after another hearing pursuant to this section.

(f) The granting of a variance shall not in any way limit any right to proceed against the holder for any violation of the variance. This chapter, or any rule, or regulation, which is not incorporated in the variance provisions, shall remain in full effect.

(g) Notwithstanding other provisions of this section, the Secretary is not authorized to approve requests for fundamentally different factor variances from categorical pretreatment standards promulgated by the Administrator of the United States Environmental Protection Agency pursuant to § 307(b) or (c) of the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1317(b) or (c). The Secretary is authorized to accept and review such variance requests, and, upon review, deny such request or recommend that the Administrator of the United States Environmental Protection Agency approve such a variance request.

7 Del. C. 1953, § 6011; 59 Del. Laws, c. 212, § 1; 59 Del. Laws, c. 537, §§ 8, 9; 62 Del. Laws, c. 414, § 1; 70 Del. Laws, c. 186, § 1.;

§ 6012 Temporary emergency variances.

(a) Notwithstanding § 6011 of this title, other than subsection (g) of that section, the Secretary may grant a variance to any rules or regulations promulgated pursuant to this chapter, for a period not to exceed 60 days. The request for a temporary emergency variance shall be submitted in writing, setting forth the reasons for the request.

(b) A temporary emergency variance may be granted only after a finding of fact by the Secretary that:

(1) Severe hardship would be caused by the time period involved in obtaining variances pursuant to § 6011 of this title;

(2) The emergency was of such an unforeseeable nature so as to preclude, because of time limitations, an application under § 6011 of this title;

(3) The conditions set forth in § 6011(b)(1)-(4) of this title are satisfied.

(c) Temporary emergency variances granted pursuant to this section may not be extended more than once.

(d) The granting of any temporary emergency variance shall be published within 5 days of the granting of said variance.

7 Del. C. 1953, § 6012; 59 Del. Laws, c. 212, § 1; 59 Del. Laws, c. 537, § 10; 62 Del. Laws, c. 414, § 2.;

§ 6013 Criminal penalties.

(a) Any person who wilfully or negligently:

(1) Violates § 6003 of this title, or violates any condition or limitation included in a permit issued pursuant to § 6003 of this title, or any variance condition or limitation, or any rule or regulation, or any order of the Secretary; or

(2) Violates any requirements of a statute or regulation respecting monitoring, recording and reporting of a pollutant or air contaminant discharge; or

(3) Violates a pretreatment standard or toxic effluent standard with respect to introductions of pollutants into publicly owned treatment works

shall be punished by a fine of not less than $2,500 nor more than $25,000 for each day of such violation.

(b) Any person who intentionally, knowingly, or recklessly:

(1) Makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under this chapter, or under any permit, rule, regulation or order issued under this chapter; or

(2) Who falsifies, tampers with or renders inaccurate any monitoring device or method required to be maintained under this chapter,

shall upon conviction be punished by a fine of not less than $500 nor more than $10,000 or by imprisonment for not more than 6 months, or both.

(c) Any person who intentionally or knowingly:

(1) Violates § 6003 of this title, or violates any condition or limitation included in a permit issued pursuant to § 6003 of this title, or any variance condition or limitation, or any rule or regulation, or any order of the Secretary; or

(2) Violates any requirements of a statute or regulation respecting monitoring, recording and reporting of a pollutant or air contaminant discharge; or

(3) Violates a pretreatment standard or toxic effluent standard with respect to introductions of pollutants into publicly owned treatment works,

and who causes serious physical injury to another person or serious harm to the environment as one result of such conduct, shall be guilty of a class D felony and shall, upon conviction, be sentenced in compliance with the sentencing guidelines established for class D felonies in § 4205 of Title 11.

(d) Any person:

(1) Who intentionally or knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under this chapter, or under any permit, rule, regulation or order issued under this chapter; or

(2) Who falsifies, tampers with or intentionally or knowingly causes to be rendered inaccurate any monitoring device or method required to be maintained under this chapter,

and who causes serious physical injury to another person or serious harm to the environment as 1 result of such conduct, shall be guilty of a class D felony and shall, upon conviction, be sentenced in compliance with the sentencing guidelines established for class D felonies in § 4205 of Title 11.

(e) Any officer of any corporation, manager of any limited liability company, or general partner of any limited partnership conducting business in the State who intentionally or knowingly authorizes or directs said business entity or its employees or agents to:

(1) Falsify or conceal any material fact required to be disclosed to the Department;

(2) Destroy, conceal or alter any records that the corporation is required by this title, the Department's regulations, or an order of the Department to maintain; or

(3) Commit any act in violation of this title or rules promulgated by the Department;

shall upon conviction be punished by a fine of not less than $500 nor more than $10,000 or by imprisonment for not more than 6 months, or both. If an act described in this subsection causes serious physical injury to another person or serious harm to the environment as one result of such an act, the officer, manager or general partner committing the act shall be guilty of a class D felony and shall, upon conviction be sentenced in compliance with the sentencing guidelines established for class D felonies in § 4205 of Title 11. Nothing in this subsection shall be read to establish any additional elements for conviction of the criminal offenses described in subsections (a) through (d) of this section.

(f) Each day of violation with respect to acts or omissions described in this section shall be considered as a separate violation.

(g) The Superior Court shall have exclusive jurisdiction over prosecutions brought pursuant to subsections (a)-(e) of this section. Prosecutions pursuant to subsection (h) of this section may be brought in the jurisdiction of the Courts of the Justices of the Peace.

(h) Whoever violates this chapter, or any rule or regulation promulgated thereunder, or any rule or regulation in effect as of July 26, 1974, or any permit condition, or any order of the Secretary, shall:

(1) For the first conviction, be fined not less than $100 nor more than $500 for each day of violation;

(2) For a subsequent conviction for the same offense within a 10-year period, be fined not less than $500 nor more than $1,500 for each day of violation; and

(3) In addition to the penalties provided in paragraphs (h)(1) and (h)(2) of this section, if the offense involves the failure to acquire a permit as required under this chapter, the offender shall be assessed the cost of the permit, plus a 25 percent surcharge, in addition to the fine.

(i) Any person prosecuted pursuant to subsection (h) of this section shall not be prosecuted for the same offense under subsections (a)-(e) of this section.

(j) The terms "intentionally," "knowingly," "recklessly," "negligently," and "serious physical injury," as used in this section, shall have the meanings assigned to them by Chapter 2 of Title 11.

(k) The term "serious harm to the environment" shall mean damage to the air, water or soil which has or will, beyond a reasonable doubt, cause serious physical injury to any persons working at the facility in question or persons within the State.

(l) It is an affirmative defense to a prosecution that the specific conduct charged was freely and knowingly consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:

(1) An occupation, a business or a profession; or

(2) Medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

The defendant may establish an affirmative defense under this subsection by a preponderance of the evidence. The provisions of this subsection are subject to the restrictions enumerated at § 453 of Title 11.

(m) All general defenses affirmative defenses, and bars to prosecution that may apply with respect to other criminal offenses may apply under this section.

7 Del. C. 1953, § 6013; 59 Del. Laws, c. 212, § 1; 59 Del. Laws, c. 537, §§ 11-13; 69 Del. Laws, c. 366, § 1; 71 Del. Laws, c. 140, § 1; 74 Del. Laws, c. 170, §§ 2, 3; 75 Del. Laws, c. 275, §§ 1-5; 76 Del. Laws, c. 403, §§ 2, 3.;

§ 6014 Regulatory and compliance information, facility performance and public information.

(a) The Department shall develop an Environmental Information System that will include general information about facilities and sites under the Department's regulatory jurisdiction as defined by Chapters 40, 60, 62, 63, 66, 70, 72, 74, 77, 78, and 91 of this title and Chapter 63 of Title 16. The Environmental Information System shall include information on all such facilities and sites related to permitting requirements, emissions and discharge monitoring and reporting data, compliance inspections, violations and enforcement actions. The System shall provide the public with information that indicates when a facility has been inspected, what violations are detected, when the facility comes into compliance, and any enforcement action that results from violations at the facility.

(b) The Secretary shall create or contract with a third party to create a central unified notification system to notify the public in a timely manner of environmental releases. That system shall be designed in a such a manner as to ensure the notification, within 12 hours after the Department is informed of an environmental release, of:

(1) The State Representative and State Senator in whose district the release occurred;

(2) Any community or civic group the majority of whose membership lives within 5 miles of the reporting facility that has identified itself to the Department as an entity wishing to receive notice pursuant to this subsection; and

(3) Any individual who lives within 5 miles of the reporting facility and who has identified himself or herself to the Department as a person wishing to receive notice pursuant to this subsection.

(c) The facility from which an environmental release has occurred shall pay to the Department the cost of the Department's notification under subsection (b) of this section. Such cost shall include a prorated share of the annual fixed costs incurred by the Department for the maintenance of the notification system created pursuant to subsection (b) of this section, and a prorated share of the initial development costs of the notification system to be equally distributed over the first 5 years of the system's existence, both to be determined in the sole discretion of the Department. The facility shall make payment under this subsection within 30 days of receiving written notice of the amount of payment due. Failure to make

payment pursuant to this subsection in a timely fashion shall constitute a violation punishable under § 6005 of this title. For purposes of this section facility shall mean any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), wastewater treatment plant, pit, pond, lagoon, impoundment, landfill, storage container, or any site or area where an environmental release has occurred.

(d) Any records, reports or information obtained pursuant to this chapter and any permits, permit applications and related documentation shall be available to the public for inspection and copying; provided, that upon a showing satisfactory to the Secretary by any person that such records, reports, permits, permit applications, documentation or information, or any part thereof (other than effluent data) would, if made public, divulge methods or processes entitled to protection as trade secrets of such person, the Secretary shall consider, treat and protect such record, report or information, or part thereof, as confidential; provided further, however:

(1) That any such record, report or information accorded confidential treatment may be disclosed or transmitted to other officers, employees or authorized representatives of this State or of the United States concerned with carrying out this chapter or when relevant in any proceeding to effectuate the purpose of this chapter; and

(2) That any report environmental release, air contaminant or water pollutant emissions may be made available to the public as reported and as correlated with any applicable emission standards or limitations.

7 Del. C. 1953, § 6014; 59 Del. Laws, c. 212, § 1; 59 Del. Laws, c. 537, § 14; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 117, § 4.;

§ 6015 Interference with Department personnel.

No person shall obstruct, hinder, delay or interfere with, by force or otherwise, the performance by Department personnel of any duty under this chapter, or any rule or regulation or order or permit or decision promulgated or issued thereunder.

7 Del. C. 1953, § 6015; 59 Del. Laws, c. 212, § 1.;

§ 6016 Departmental investigations; witnesses; oaths; attendance.

In furtherance of the policy and purposes of this chapter, the Secretary may make or cause to be made any investigation or study which is, in his or her opinion, necessary for the purpose of enforcing this chapter. For such purposes the investigative officer designated by the Secretary may subpoena witnesses and the production of documents and compel their testimony. Testimony received at a Departmental investigation shall be under oath and open to the public. Findings of these investigations or studies shall be made public.

7 Del. C. 1953, § 6016; 59 Del. Laws, c. 212, § 1; 70 Del. Laws, c. 186, § 1.;

§ 6017 Sealing noncomplying equipment.

(a) The Department may seal, after consultation with the Attorney General, any source required to have a permit which is installed, altered, used or operated without such a permit or which is in violation of a cease and desist order.

(b) If the equipment is sealed, no person shall tamper with or remove the seal from any equipment so sealed. Violation of this provision shall make the violator upon conviction liable to punishment as provided in § 6005 of this title.

(c) A seal may be removed from equipment only upon receipt of written authorization from the Department. The Department shall order removal of the seal after the reason(s) which caused the sealing has been corrected.

7 Del. C. 1953, § 6017; 59 Del. Laws, c. 212, § 1.;

§ 6018 Cease and desist order.

The Secretary shall have the power to issue an order to any person violating any rule, regulation or order or permit condition or provision of this chapter to cease and desist from such violation; provided, that any cease and desist order issued pursuant to this section shall expire (1) after 30 days of its issuance, or (2) upon withdrawal of said order by the Secretary, or (3) when the order is suspended by an injunction, whichever occurs first.

7 Del. C. 1953, § 6018; 59 Del. Laws, c. 212, § 1.;

§ 6019 Voluntary compliance.

Nothing in this chapter shall prevent the Department from making efforts to obtain voluntary compliance by way of warning, notice or other educational means; this section does not, however, require that such voluntary methods be used before proceeding by way of compulsory enforcement.

7 Del. C. 1953, § 6019; 59 Del. Laws, c. 212, § 1.;

§ 6020 Liberal construction.

This chapter, being necessary for the welfare of the State and its inhabitants, shall be liberally construed in order to preserve the land, air and water resources of the State.

7 Del. C. 1953, § 6020; 59 Del. Laws, c. 212, § 1.;

§ 6021 Federal aid; other funds.

The Department may cooperate with and receive moneys from the federal government, any state or local government or any industry or other source. Such moneys received are appropriated and made available for the study and preservation of land, water and air resources.

7 Del. C. 1953, § 6021; 59 Del. Laws, c. 212, § 1.;

§ 6022 Temporary limits and procedures for hazardous operations.

Where no rule or regulation has been promulgated which sets specific limits for the use, emission or discharge, or operating procedure for hazardous operations, the Secretary may set temporary limits or operating procedure; provided, that the temporary limits or orders shall not be effective for more than 6 months unless adopted into permanent rules and regulations within that period. The affected parties shall be given a hearing before the Department within 30 days, if requested, on any action taken under this section.

7 Del. C. 1953, § 6022; 59 Del. Laws, c. 212, § 1.;

§ 6023 Licensing of water well contractors, pump installer contractors, drillers, drivers, pump installers, septic tank installers, liquid waste treatment plant operators and liquid waste haulers.

(a) No person shall:

(1) Engage in the drilling, boring, coring, driving, digging, construction, installation, removal or repair of a water well or water test well; or

(2) Install, maintain or repair pumping equipment in or from a well without a license issued by the Department, except (i) as, or under the supervision of, a licensed plumber, or (ii) an agricultural well on land owned or leased by the person installing, maintaining or repairing the pumping equipment. For the purpose of this paragraph "agricultural well" shall mean a well used for irrigation of crops, for the watering of livestock or poultry, for aquaculture uses, or for other on-farm purposes where the water is not to be used for human consumption or to service a residential dwelling.

(b) No person shall engaged in the construction, repair, installation or replacement of a septic tank system or any part thereof except as or under the supervision of a licensed septic tank installer.

(c) No person shall operate any liquid waste treatment system without a duly licensed liquid waste treatment plant operator.

(d) No person shall haul, convey or transport any liquid waste in any container without a license issued by the Department.

(e) Any person requiring a license for any activity specified in subsections (a)-(d) of this section shall file an application with the Secretary in such form and accompanied by such information as the Secretary may require by regulation.

(f) The Secretary shall have the exclusive power to grant or deny any license required under subsections (a), (b), (c) and (d) of this section. The Secretary shall adopt regulations setting forth requirements, including an acceptable performance or an examination for obtaining and retaining any such license.

7 Del. C. 1953, § 6023; 59 Del. Laws, c. 212, § 1; 59 Del. Laws, c. 537, § 15; 60 Del. Laws, c. 288, § 3; 64 Del. Laws, c. 472, § 2; 71 Del. Laws, c. 187, § 1.;

§ 6024 Right of entry.

The Secretary, or the Secretary's duly authorized designee, in regulating water pollution, air pollution, solid waste disposal or any other matter over which he or she has jurisdiction pursuant to this chapter,

may enter, at reasonable times, upon any private or public property for the purpose of determining whether a violation exists of a statute or regulation enforceable by him or her, upon given verbal notice, and after presenting official identification to the owner, occupant, custodian or agent of said property.

7 Del. C. 1953, § 6024; 59 Del. Laws, c. 212, § 1; 70 Del. Laws, c. 186, § 1.;

§ 6025 Solid waste.

(a) The Secretary shall have exclusive authority to effectuate the purposes of this chapter concerning solid waste, set forth in § 6001(c)(6) of this title notwithstanding any authority heretofore conferred upon or exercised by any other state agency, but any regulations heretofore duly adopted by any other state agency shall remain in effect and be enforceable by the Secretary unless repealed, amended or modified by the Secretary. Chapter 64 of this title shall not be interpreted to be in conflict with either the purposes of this chapter concerning solid waste as set forth in § 6001(c)(6) of this title, or any regulation promulgated thereunder.

(b) No person shall cause or contribute to the disposal or discharge of solid waste anywhere in the State including any surface or ground water, except:

(1) Through municipal or private solid waste collection systems which have received a permit from the Department; or

(2) In solid waste disposal facilities which have received a permit from the Department; or

(3) In containers specially provided for solid waste collection by any state or municipal agency or private or public group, organization, agency or company which has received a permit from the Department.

(c) Any person charged with violation of subsection (b) of this section, upon conviction, shall be fined not less than $500 nor more than $1500 for each violation and there shall be no suspension of the fine. Each day of continued violation or part thereof shall be considered as a separate offense. The court shall, in addition to levying the fine, order the person convicted to remove or cause to be removed any improperly disposed solid waste. In addition to the fine, the sentencing judge may order community service directed to the removal of solid waste illegally disposed of in the State, and may order restitution for costs incurred in remediation of the solid waste illegally disposed of in the State. The Courts of the Justices of the Peace shall have jurisdiction of offenses under this section.

(d) In the event a motor vehicle is used during or in aid of the disposal or discharge of solid waste in violation of subsection (b) of this section, and the identity of the offender is not otherwise apparent, there shall be a rebuttable presumption that the registered owner of the motor vehicle caused or contributed to such disposal or discharge. The rebuttable presumption set forth in this section shall not apply to operators of buses carrying 9 or more persons.

(e) Any person, who causes or contributes to the disposal or discharge of solid waste anywhere in the State including any surface or ground water, except:

(1) Through municipal or private solid waste collection systems which have received a permit from the Department; or

(2) In solid waste disposal facilities which have received a permit from the Department; or

(3) In containers specially provided for solid waste collection by any state or municipal agency or private or public group, organization, agency or company which has received a permit from the Department,

shall be civilly liable to the owner or person in possession of the real property upon which the solid waste is disposed or discharged, for any property damage sustained, for costs incurred by the owner or person in possession for clean up and proper disposal of the solid waste, and for reasonable attorneys' fees. This cause of action is in addition to any other causes of action, rights and/or remedies the owner or person in possession may have.

7 Del. C. 1953, § 6025; 59 Del. Laws, c. 212, § 1; 59 Del. Laws, c. 537, §§ 16, 17; 60 Del. Laws, c. 288, § 4; 76 Del. Laws, c. 403, §§ 4-7.;

§ 6026 License fees.

(a)(1) The Secretary may establish fees, subject to approval by the General Assembly, for granting any license to any percolation tester, system designer, site evaluator, system inspector, well water contractor, pump installer contractor, well driver, well driller, pump installer, septic tank system installer, liquid waste hauler and liquid waste treatment plant operator.

(2) Notwithstanding any other provisions of law to the contrary, the General Assembly hereby authorizes and approves the following schedule of license fees to be imposed by the Department effective July 1, 2003: Percolation Tester, $40 annual fee; System Designer, $40 annual fee; Site Evaluator, $40 annual fee; System Inspector, $40 annual fee; Septic Tank System Installer, $40 annual fee; and Liquid Waste Hauler; $40 annual fee.

(3) Any fees collected under this subsection are hereby appropriated to the Department to carry out the purposes of this chapter.

(b) The Secretary may establish fees for conveyance of oil and hazardous substance through pipeline after holding public hearings on such a fee schedule.

(c) Any fee collected under this subsection is hereby appropriated to the Department to carry out the purposes of this chapter.

7 Del. C. 1953, § 6026; 59 Del. Laws, c. 212, § 1; 60 Del. Laws, c. 288, § 5; 64 Del. Laws, c. 472, § 3; 74 Del. Laws, c. 139, § 1.;

§ 6027 Change of authority.

The word "Secretary" shall be substituted wherever the words "Water and Air Resources Commission" or "Commission" appear in the Delaware Code and any authority vested in the "Water and Air Resources Commission" or "Commission" is hereby delegated to the Secretary without qualification.

7 Del. C. 1953, § 6027; 59 Del. Laws, c. 212, § 1.;

§ 6028 Report of discharge of pollutant or air contaminant.

(a) Any person who causes or contributes to an environmental release or to the discharge of an air contaminant into the air, or a pollutant, including petroleum substances, into surface water, groundwater or on land, or disposal of solid waste in excess of any reportable quantity specified under either regulations implementing § 102 of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended [42 U.S.C. § 9602], § 311 of the Clean Water Act of 1980, as amended [33 U.S.C. § 1321], or Department regulations, whichever restriction is most stringent, shall report such an incident to the Department as soon as the person has knowledge of said environmental release or discharge and activating their emergency site plan if appropriate unless circumstances exist which make such notification impossible. Such initial notification shall be made in person or by telephone to a number specifically assigned by the Department for this purpose and shall include, to the maximum extent practicable, the following information:

(1) The facility name and location of release;

(2) The chemical name or identity of any substance involved in the release;

(3) An indication of whether the substance is an extremely hazardous substance;

(4) An estimate of the quantity of any such substance that was released into the environment;

(5) The time and duration of the release;

(6) The medium or media into which the release occurred;

(7) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals;

(8) Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordination pursuant to the emergency plan);

(9) The names and telephone number of the person or persons to be contacted for further information; and

(10) Such other information as the Department may require.

This information shall be made available to the public by posting on the Department's internet web site no later than 1 business day after the release is reported. Discharges in compliance with a validly issued state permit or in compliance with other state and federal regulations are exempt from the reporting requirement.

(b) The Department shall adopt regulations revising the list, referred to in subsection (a) of this section, of pollutants environmental releases or air contaminants and their reportable quantities which are to be reported to the Department.

(c) The reporting requirements under this section are in addition to and not in lieu of, any other discharge reporting requirements found in any other state, federal, county or local government permits, regulations or ordinances.

(d) At the Department's discretion, the Department may require said person to file a written report with the Department describing in detail the facts and circumstances of the discharge and measures proposed to prevent such discharge from occurring in the future.

(e) Discharges of an air contaminant or pollutant (including petroleum substances) that are wholly contained within a building are exempt from the reporting requirements.

(f) Any person who violates this section or any rule or regulation duly promulgated hereunder shall be punishable in accordance with the enforcement provisions of this chapter.

7 Del. C. 1953, § 6028; 59 Del. Laws, c. 212, § 1; 59 Del. Laws, c. 537, § 18; 65 Del. Laws, c. 507, § 1; 66 Del. Laws, c. 221, § 1; 67 Del. Laws, c. 288, § 1; 73 Del. Laws, c. 117, § 3.;

§ 6029 Limitations on scope of chapter.

This chapter shall not apply to or change the existing law in respect to:

(1) The landowner's right to place a dam across a gully on his or her property or across a stream that originates on that landowner's property where provision is made for continued established average minimum flow occurring for 7 consecutive days within the lowest flow year of record; or

(2) The right to build and maintain a dam or construct a pond and divert water from any stream on any stream having a minimum flow of not more than 1/2 million gallons of water per day, and utilize up to 360 acre inches of the impounded water per year so long as such action does not affect the established average minimum flow in the stream below the dam at any time; or

(3) Ponds not larger than 60,000 square feet constructed for purposes of conservation, recreation, propagation and protection of fish and wildlife, watering of stock or fire protection; or

(4) Linear water and wastewater utility projects that have a maximum width of disturbance of 30 feet or less and with a maximum total disturbance of 1 acre or less are: (i) subject to Erosion and Sediment Control regulations adopted by the Department, and (ii) exempt from Stormwater Management regulation adopted by the Department. For the purposes of this section "erosion and sediment control" means the control of solid material, both mineral and organic, during a land disturbing activity, to prevent its transport out of the disturbed area by means of wind, water, gravity, or ice. For the purposes of this section "stormwater management" means:

a. For water quantity control, a system of vegetative, structural, and other measurers that controls the volume and rate of Stormwater runoff which may be caused by land disturbing activities upon the land; and

b. For water quality control, a system of vegetative, structural, and other measures that controls adverse effects on water quality that may be caused by land disturbing activities upon the land.

7 Del. C. 1953, § 6029; 59 Del. Laws, c. 212, § 1; 70 Del. Laws, c. 186, § 1; 80 Del. Laws, c. 392, § 2.;

§ 6030 Approval of water use.

No increase in the amount of water used shall be made by a user without prior approval of the Department.

7 Del. C. 1953, § 6030; 59 Del. Laws, c. 212, § 1.;

§ 6031 Obligation of recipients of water allocations.

(a) The Secretary shall, when the use of water pursuant to an allocation granted under § 6010(f) of this title causes the depletion or exhaustion of an existing use of water, require as a condition of such allocation that the recipient of such allocation take 1 or more of the following actions:

(1) To provide free of charge to the affected person a complete water supply connection to a water supply distribution system and to provide water to the affected person for a term of 3 years in an amount not to exceed 100,000 gallons per year. Water used by the affected person which exceeds 100,000 gallons per year shall be paid for by the affected person on a quarterly basis at the rates established by the Public Service Commission as applicable to the supply of public water in the area in question; and/or

(2) To provide free of charge to the affected person an alternative source of water supply at least equal in quality and quantity to that existing at the time of the granting of the allocation.

(b) The Secretary shall, when an allocation granted pursuant to § 6010(f) of this title causes the depletion or exhaustion of an existing use of water, require as a condition of such allocation that the person receiving such allocation provide free of charge to the affected person an interim water supply which is adequate to meet such person's need. The Secretary shall determine the level of interim water supply sufficient to meet the needs of the affected person and shall further determine the dates on which the interim water supply will commence and terminate.

(c) The Secretary shall, upon receipt of a verified petition setting forth factual allegations that an allocation granted pursuant to § 6010(f) of this title caused the depletion or exhaustion of petitioner's existing use of water, schedule and conduct a hearing to consider the petition. Prior to a hearing under this subsection the Secretary shall give at least 20 days' notification of the date of the hearing to the petitioner and the person granted the allocation. The petitioner or the person granted the allocation may appear personally or by counsel at the hearing and produce any competent evidence. The Secretary or the Secretary's designee may administer oaths, examine witnesses and issue in the name of the Department subpoenae when requested by a petitioner or a person granted an allocation. A verbatim transcript of testimony at the hearing shall be prepared and shall, along with the exhibits and other documents introduced into evidence, constitute the record. The Secretary or the Secretary's designee shall make findings of fact based on the record and issue an order to effectuate such findings and further the purposes of this subsection. Any person whose interest is substantially affected by any order of the Secretary may appeal to the Environmental Appeals Board as provided in § 6008 of this title.

61 Del. Laws, c. 123, § 1; 70 Del. Laws, c. 186, § 1.;

§ 6032 Licensing of site evaluators, percolation testers and on-site system designers and contractors.

(a) No person shall conduct percolation tests or soil evaluations or design, inspect or install on-site wastewater treatment and disposal systems without first having obtained a license from the Secretary. As a prerequisite of licensing, the Secretary may require the person to demonstrate familiarity with test procedures and applicable regulations, and to sign a statement under penalty of perjury that he or she will abide by all statutes and regulations governing the design, inspection and installation of on-site wastewater treatment and disposal systems. In addition, the Secretary may require each licensee or class of licensees to show proof of surety to cover liability for such risks and in such amounts as the Secretary may establish by regulation after public notice in accordance with § 6006 of this title.

(b) Any license by the Secretary shall be for a fixed term not to exceed 3 years and shall be renewable upon application.

(c) The Secretary shall adopt such other regulations after public notice and hearing in accordance with § 6006 of this title as necessary to accomplish the purposes of this title.

(d) The license requirements shall not apply in a county which has been delegated authority to issue septic tank permits pursuant to § 6003(d) of this title.

61 Del. Laws, c. 264, § 1; 65 Del. Laws, c. 361, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 139, § 2.;

§ 6033 Pretreatment program.

(a) The Secretary shall develop, implement and enforce, and may amend, modify and repeal, a state pretreatment program in compliance with the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. and regulations promulgated thereunder. In addition to any other authority which the Secretary may exercise for this purpose under this chapter or other chapters of this Code, the Secretary may:

(1) Require any POTW to develop, submit for approval to the Secretary, administer and enforce a POTW pretreatment program;

(2) Review, approve and deny requests for approval of POTW pretreatment programs submitted by a POTW to the Secretary;

(3) Require any POTW, whether or not such POTW is required to develop and enforce a POTW pretreatment program, to develop, submit for approval to the Secretary and enforce specific limits on or prohibitions against discharges of pollutants by industrial users of such POTW to prevent interference with such POTW;

(4) Incorporate conditions into new or existing permits issued to POTWs, such as, but not limited to, compliance schedules, modification clauses, the elements of an approved pretreatment program and

specific limits on or prohibitions against discharges by industrial users into such POTW;

(5) Review, approve and deny requests from POTWs required to develop POTW programs to modify categorical pretreatment standards to reflect removals achieved by such POTW;

(6) Require any POTW or industrial user to submit reports, monitor activities and maintain records to assure compliance with this section and regulations hereunder;

(7) Require compliance by industrial users with pretreatment standards, and discharge limits and prohibitions;

(8) Adopt, amend, modify or repeal rules or regulations to effectuate this section and comply with federal laws and regulations respecting pretreatment. Such rules and regulations shall be adopted, after public hearing, in accordance with § 6010 of this title; provided, however, that the Secretary may incorporate into state regulations without a public hearing a categorical pretreatment standard which has previously been promulgated by regulation by the Administrator of the United States Environmental Protection Agency. Prior to incorporating any such categorical pretreatment standard without a public hearing, the Secretary shall comply with §§ 10115, 10116 and 10118 of Title 29.

(b) The Secretary may seek any relief authorized by this chapter against any industrial user even if a POTW has acted or will act to seek such relief.

62 Del. Laws, c. 414, § 4.;

§ 6034 Sewage system cleansers and additives.

(a) No person shall distribute, sell, offer or expose for sale in this State any sewage system cleanser or additive containing any restricted chemical materials in excess of 1 part per hundred by weight. The penalty for an initial violation of this subsection shall be a formal written warning by the Secretary for the first offense; and for any subsequent violation a fine of $500 shall be imposed.

(b) No person shall use, introduce or apply, or cause any other person to use, introduce or apply in any sewage system, surface waters or groundwaters in this State any sewage system cleanser or additive containing any restricted chemical material or any combination thereof, in excess of 1 part per hundred. The penalty for violating this subsection shall be a fine of $100 for the first offense and $1,000 for each subsequent offense.

(c) No person shall serve water, or a product containing water, to the public from a well ordered closed due to the presence of restricted chemical materials. The penalty for each such violation shall be a fine of not less than $1,000 nor more than $10,000. Any subsequent violation of this subsection by a violator shall result in the closing of the facility until a new and safe source of water is found and is operative in the facility.

(d) The Courts of the Justices of the Peace shall have jurisdiction over offenses under this section.

(e) The Secretary, with assistance from the Division of Public Health, shall:

(1) Conduct a public education program by utilizing mass-media instruments within 90 days of July 17, 1984;

(2) Thereafter, conduct random spot checks in appropriate business concerns to insure that no restricted chemical materials are on sale; and

(3) Take appropriate enforcement action for violations of the sale or use of restricted chemical materials as provided in subsections (a) and (b) of this section.

64 Del. Laws, c. 370, § 2.;

§ 6035 Vessel sewage discharge.

(a) Marina owners/operators for marinas that are located in whole or in part on tidal waters of the State, and that provide dockage for vessels with a portable toilet or toilets or Type III marine sanitation device or devices (MSD), shall provide convenient access, as determined by the Department, to an approved, fully operable and well maintained pumpout facility or facilities and/or dump station or stations for the removal of sewage from said vessels to a Department approved sewage disposal system.

(b)(1) Owners/operators may agree to pool resources for a single pumpout dump station with Departmental approval based on criteria of number and class of vessels, marina locations, cost per pumpout use, and ultimate method of sewage treatment and disposal (i.e. septic system or waste water treatment facility).

(2) The owner/operator of any boat docking facility that is located in whole or in part on tidal waters of the State, and that provides dockage for a live-aboard vessel or vessels with a Type III marine sanitation device or devices, shall install and maintain at all times, in a fully operable condition, an approved dedicated pumpout facility at each live-aboard vessel slip for the purpose of removing sewage from the live-abroad vessel on a continuous or automatic, intermittent basis to a Department approved sewage disposal system.

(3) Any discharge, by any means, of untreated or inadequately treated vessel sewage into or upon the waters of any marina, boat docking facility or tidal water of the State is prohibited.

(4) All vessels while on waters of the State shall comply with 33 U.S.C. § 1322, as amended February 4, 1987.

(5) The Secretary shall have authority to adopt reasonable rules and regulations to implement this section.

66 Del. Laws, c. 275, § 2; 68 Del. Laws, c. 137, § 3; 68 Del. Laws, c. 403, §§ 3-6.;

§ 6036 Projects of state significance.

The Department shall adopt objective standards and criteria to identify "projects of state significance" which standards and criteria shall be used by the Department in evaluating projects in the State requiring the review or approval of the Department. The process to be followed by the Department in the adoption of said objective standards and criteria shall include the following:

(1) In making the determination of whether any proposed project is a project of state significance, the Department shall consider, without limitation, the following factors:

a. Environmental impact, including, without limitation, probable air, land and water pollution likely to be generated by the proposed use under normal operating conditions and as the result of mechanical malfunction and human error; likely destruction of wetlands and flora and fauna; impact and effect of site preparation and facility operations on land erosion, drainage of the area in question, especially as it relates to flood control, and the quality and quantity of surface and ground water resources, such as the use of water for processing, cooling, effluent removal and other purposes; and the likelihood of generation of glare, heat, noise, vibration, radiation, electromagnetic interference and obnoxious odors.

b. Economic effect, including, without limitation, the number of jobs created and the income which will be generated by the wages and salaries of these jobs in relation to the amount of land required, and the amount of tax revenues potentially accruing to state and local government.

c. Effect on neighboring land uses including, without limitation, effect on public access to all state surface waters, effect on recreational areas and effect on adjacent residential and agricultural areas.

(2) The Secretary shall further elaborate on the definition of "heavy industry" in accordance with § 7005(c) of this title. The Secretary shall delineate "heavy industry of state significance" as part of this process, which shall be a subcategory of projects of state significance. Heavy industry uses of any kind, including heavy industry of state significance, not in operation on June 28, 1971, shall be prohibited in the coastal zone and no permits may be issued therefor.

(3) All agencies of state government shall assist the Department in developing objective standards and criteria to identify projects of state significance and shall provide such information as the Department requests. The Department shall develop regulations specifying the objective standards and criteria which are to be used to identify projects of state significance and shall make such regulations available for public review no later than 9 months after the effective date of this legislation. The Department shall hold a public hearing on said regulations and shall announce such hearing by publication in a newspaper of general circulation in each county of the State. The Department shall adopt regulations specifying the objective standards and criteria for identifying projects of state significance, with exception of heavy industry of state significance, no later than 13 months after the effective date of this legislation. The Department shall submit to the State Coastal Zone Industrial Control Board standards and criteria for identifying heavy industry of state significance for adoption no later than 11 months after the effective date of this legislation. The State Coastal Zone Industrial Control Board shall adopt said standards and criteria no later than 13 months after the effective date of this legislation.

67 Del. Laws, c. 253, § 2.;

§ 6037 Obligation of persons who contaminate drinking water supplies.

(a)(1) The Secretary shall develop and publish the necessary forms to be used by any person who believes his or her drinking water supply has been contaminated to petition for an alternative water supply, said petition will include, at a minimum, the following:

a. Well information including a valid DNREC well permit number, or other certified documentation as to how and when the well or other water intake was constructed; and

b. The contaminant and its concentration in the form of a signed analytical report from a certified drinking water laboratory which identifies the sample, the contaminant, its concentration and the analytical method detection limit; and

c. The date the sample was collected, the name of the person collecting the sample, a description of the sample container, and the preservation techniques used, if any.

(2) The form shall be notarized and certified as being true and factual by the petitioner. Failure to provide all relevant information, or providing false information, will be grounds to reject a petition.

(b) Upon the Secretary's receipt of a certified petition that sets forth allegations that a discharge of a substance into a drinking water supply has affected a petitioner's use of an existing drinking supply well or other drinking water intake through any activity, the Secretary shall notify all potentially responsible parties who shall be given 30 days in which to either respond to the petition, propose remedial action or request a hearing on the merits of the petition.

(c) After evaluating all available information in his or her possession, the Secretary will issue an order either verifying or rejecting the contentions contained in the petition. The Secretary's decision to verify the petition and grant relief must be based on findings of fact contained in the certified petition and other scientifically conclusive evidence in his or her possession, which at a minimum establishes that:

(1) A state or federal drinking water standard has been exceeded; and

(2) A source, due to its nature, proximity, and hydrogeologic connection to the affected water supply is the likely cause of the contamination provided that the activity does not contain a valid state or federal permit with which the permittee has fully complied and provided that the permit did not anticipate the contamination of the drinking water supply.

(d) Upon verification of a petition as set forth in subsection (c) of this section, the Secretary shall require that if any activity results in the contamination of an existing drinking water supply by contaminants other than bacteria, viruses, nitrate or pesticides, which have been applied according to the manufacturer's instructions, then the person(s) who is responsible for the contamination shall complete 1 of the following activities which is deemed to be the most cost effective:

(1) Provide at no cost to each person who has had his or her existing drinking water supply contaminated, the installation of an alternative water supply of at least equal quantity and quality to said person's water supply that existed on the date the water supply was contaminated; or

(2) Provide at no cost to each person who has had his or her existing drinking water supply contaminated, a complete water supply connection to a water supply distribution system, and provide water to said person for a term of up to 3 years in an amount not to exceed 100,000 gallons per year. Said 3-year term shall commence on the first day water is supplied to said person by the person who contaminated the drinking water supply. Water used by said person that exceeds 100,000 gallons per year shall be paid by said person at a rate that is established by the appropriate rate setting body taking into consideration the rate charged for the supply of public water in the water supply area before it was contaminated, or the rate charged in a similar area; or

(3) Provide at no cost the treatment system necessary to maintain the water supply as an adequate drinking water supply and provide the costs of operation and maintenance of the system for a period of 3 years.

(e) In addition to the provisions of subsection (d) of this section, the Secretary may require that the person who has caused the contamination of a person's drinking water supply by contaminates other than bacteria, viruses, nitrate or pesticides, shall provide at no cost to each person who has had his or her drinking water supply contaminated an interim water supply that is of a quality and quantity to meet said person's needs as shall be determined by the Secretary on a case-by-case basis. In addition, the Secretary shall determine the dates on which the interim water supply shall commence and be terminated.

(f) Any affected party may appeal a decision by the Secretary concerning a replacement water supply petition to the Environmental Appeals Board in accordance with § 6008 of this title.

(g) Any hearing that may be conducted pursuant to the provisions of this section shall be done according to procedures as set forth in § 6006 of this title.

(h) For the purposes of this section, "contamination" means the human alteration of the chemical, physical, biological or radiological integrity of water which violates federal or state drinking water standards.

67 Del. Laws, c. 406, § 1; 70 Del. Laws, c. 186, § 1.;

§ 6037B Recreational water.

(a) The Secretary shall provide for the sanitary control of natural swimming and bathing places.

(b) The Secretary shall consult with the Director of the Division of Public Health prior to making any recommendations on swimming or bathing conditions that pose a significant risk to the public health.

69 Del. Laws, c. 302, § 8.;

§ 6038 Borrow pits.

(a) The Secretary shall develop, implement and enforce, and may amend, modify and repeal, after notice and public hearing, a program to protect the waters of the State from adverse environmental impacts relating to the operation of borrow pits. In addition to any other authority which the Secretary may exercise for the purpose under this chapter or other chapters of the Delaware Code, the Secretary may:

(1) Require borrow pit owners/operators to obtain operating permits from the Department of Natural Resources and Environmental Control;

(2) Require reclamation of abandoned pits by owners/operators;

(3) Require borrow pit owners/operators to secure the borrow pit premises from illegal dumping, disposal of wastes or vandalism; and

(4) Adopt, amend, modify or repeal rules or regulations to effectuate this section.

(b) Fees may be collected or charged for permits to be issued under this section in an amount determined by the issuing authority, which fee shall not exceed the sum of $80 per disturbed acre, per year, per project.

(c) The Secretary may delegate all or part of the program to any county having rules or regulations governing borrow pits which, upon a finding by the Secretary, are at least equivalent to state requirements.

67 Del. Laws, c. 353, § 1.;

§ 6039 Debris disposal area remediation.

(a) The Secretary may develop, implement and administer a program for the identification, investigation, assessment, mitigation and remediation of debris disposal areas created as part of the construction of residential or subdivision developments. Any person who caused or contributed to the creation or use of a debris disposal area on or after December 8, 1988, shall be subject to enforcement for illegal disposal and may be required by order from the Department to remove and properly dispose of such material. The Department is authorized to develop policies, procedures and guidelines and may establish, amend, modify and repeal, after notice and public hearing, such regulations as may be necessary to effectuate the purposes of this section. The Department may establish an application fee not to exceed $250 for homeowners to participate in the remediation program. The money generated by this application fee shall be placed in the "Debris Disposal Area Remediation Account." This account shall only be used to offset costs of this program. Homeowners who wish to excavate and remove buried debris from their own residential property or homeowners who have already excavated and removed buried debris from their own residential property are eligible for reimbursement of the cost of remediation up to a maximum reimbursement of $10,000, provided that:

(1) The cost was incurred on or after December 8, 1988;

(2) The disposal areas were created as part of the construction of residential or subdivision developments in accordance with this section; and

(3) Satisfactory documentation of the work and expenses incurred are provided.

(b) The Department shall report the findings from the study and the evaluation and make recommendations to the Governor and the General Assembly no later than March 15, 1999.

(c) There shall be established within the Department an account to be known as the "Debris Disposal Area Remediation Account." All funds made available to the Department in accordance with the provisions of subsection (b) of this section shall be placed in the Debris Disposal Area Remediation Account to be used by the Department or its agents to carry out the purposes of this section. The Department may establish presumptive remedies to address the remediation of debris disposal areas. These funds shall be used for the purpose of identifying, investigating, assessing, mitigating or remediating debris disposal areas and associated effects as determined by the Department. Notwithstanding any other provision to the contrary, up to $7,500 per site may also be used to cover any secondary damage that may occur to existing structures or property as the result of the remediation, which, if applicable, shall be in addition to the maximum reimbursement amount established in subsection (a) of this section.

(d) The Department may use funds from the Debris Disposal Area Remediation Account to identify, investigate, assess, mitigate or remediate any debris disposal area constructed, used or filled subsequent to December 8, 1988, if the party responsible for the area does not respond as required to any order issued by the Secretary, and if such site presents an imminent threat to human health, safety or the environment as determined by the Department. In addition to the assessment of any penalty as provided in § 6005(a) and (b) of this title, any person who fails to comply with any order issued by the Secretary to identify, investigate, assess, mitigate or remediate any debris disposal area may be liable for all costs incurred by the Department to do so as provided in § 6005 (c) of this title.

(e) Except to the extent provided herein, no provision contained in this section shall relieve any party from compliance with or liability under any other environmental statute, including, but not limited to, Chapters 60, 62, 63, 66, 74 and 77 of Title 7.

71 Del. Laws, c. 418, § 2; 72 Del. Laws, c. 318, §§ 1, 2; 73 Del. Laws, c. 212, § 1.;

§ 6040 Requirement for scrap tire piles; enforcement.

(a) The following definitions shall apply to this section:

(1) "Operator" means any person or entity who has or had a contractual or other responsibility for security, maintenance, sales or operations of a scrap tire pile or of any real property on which a scrap tire pile is located, at any time after July 20, 1999; provided that this definition does not include a person or entity whose only ownership interest is as a mortgagee.

(2) "Owner" means any person or entity who has or had legal or equitable ownership interest in a scrap tire pile, or in any real property on which a scrap tire pile is located, at any time after July 20, 1999.

(3) "Scrap tire" means:

a. A tire that is no longer prudent or practical for vehicular use; or

b. A tire that has not been used on a vehicle for more than 6 months after the last date it was used on a vehicle.

(4) "Scrap tire pile" means an accumulation of 100 or more scrap tires, whether or not they are lying 1 upon another, that:

a. Has been accumulated or located in the same general vicinity, or accumulated or located on a parcel of real property; and

b. Is not enclosed by a building.

(5) "Tire" means a covering fitting around the rim of a vehicular wheel to absorb shocks, usually of reinforced rubber or a rubberized compound, and pressurized with air or by a pneumatic inner tube, and typically weighing approximately 25 pounds. Included in this meaning is any substantial portion of such covering, and any weight tires including truck tires.

(b) The Secretary shall, after notice and public hearing, promulgate regulations to establish standards for storage of scrap tires. Such standards shall include:

(1) A limit on the number of scrap tires that may be stored at any given location;

(2) A limit on the length of time that scrap tires may be stored at a given location;

(3) Appropriate mosquito control methods to be employed at scrap tire piles; and

(4) Proper methods for managing scrap tire piles.

72 Del. Laws, c. 205, § 1; 75 Del. Laws, c. 346, §§ 1-6.;

§ 6041 Scrap Tire Management Fund.

(a) There shall be established in the State Treasury and in the accounting system of the State a special fund to be known as the Scrap Tire Management Fund ("the Fund").

(b) The following moneys shall be deposited into the Fund:

(1) All fees collected by the State pursuant to § 2910 of Title 30;

(2) The State Treasurer shall credit to the Scrap Tire Management Fund such amount of interest as determined by this paragraph upon such Fund. On the last day of each month, the State Treasurer shall credit the Fund with interest on the average balance in the Fund for the preceding month. The interest to be paid to the Fund shall be that proportionate share, during such preceding month, of interest to the State as the Fund's and the State's average balance is to the total State's average balance; and

(3) Any other money appropriated or transferred to the account by the General Assembly.

(c) Money in the Fund may be used by the Secretary only to carry out the purposes of this section, including but not limited to the following activities.

(1) Conducting a comprehensive inventory of scrap tire piles in the State.

(2) Developing and implementing a scrap tire pile registration program.

(3) Implementing a program to clean up the scrap tire piles in existence in Delaware on June 30, 2006.

(4) Providing for state matching funds for the cleanup of scrap tire piles that have been registered in accordance with the scrap tire pile registration program referenced in paragraph (c)(2) of this section. For each registered scrap tire pile, the Fund shall cover 90% of the cost of cleaning up the pile. The owner and operator shall pay 10% of the cost of cleaning up the pile, unless they satisfactorily demonstrate the inability to pay that cost.

(5) Paying the total cost of cleaning up scrap tire piles located on abandoned properties and on estate properties where the inheritors do not register the scrap tire piles in accordance with the scrap tire pile registration program referenced in paragraph (c)(2) of this section. For such abandoned and estate properties, the Department shall place liens on the properties in order to recoup the entire cleanup cost upon sale of the properties.

(6) Payment to the Division of Revenue for the costs of administering § 2910 of Title 30.

(d) No greater than 15% of the moneys deposited into the Fund shall be used for administering this section without approval of the Joint Finance Committee.

(e) Prior to January 1, 2009, the Department shall prepare and submit to the Governor and the General Assembly a joint report on the progress made toward cleaning up the scrap tire piles in the State. Such report shall include recommendations for extension, modification, or termination of the Scrap Tire Management Fund and § 2910 of Title 30.

74 Del. Laws, c. 203, § 2; 75 Del. Laws, c. 88, § 21(4); 75 Del. Laws, c. 346, § 7.;

§ 6042 Civil and administrative penalties; Community Environmental Project Fund.

(a) There is hereby established a Community Environmental Project Fund, referred to herein as the "Fund." The Fund shall be held as a separate account within the Department and may be invested by the State Treasurer in securities consistent with investment policies established by the Cash Management Policy Board.

(b) The Fund shall consist of 25 percent of all civil or administrative penalties collected by the Department pursuant to § 4015, § 6005, § 6617, § 7011, § 7214, § 7906, § 9109, or § 9111 of this title. Twenty-five percent of such civil and administrative penalties are hereby appropriated to the Fund, subject to the requirements of this section.

(c) Moneys shall be expended from the Fund only for Community Environmental Projects, referred to herein as "Projects." As used herein the term "Community Environmental Project" means a project that is undertaken for the purpose of effecting pollution elimination, minimization, or abatement, or improving conditions within the environment so as to eliminate or minimize risks to human health, or enhancement of natural resources for the purposes of improving indigenous habitats or the recreational opportunities of

the citizens of the Delaware. The Secretary may, by regulation, provide for further definition of such Projects.

(d) The Secretary, after consultation with the Community Involvement Advisory Council, shall give priority to Community Environmental Projects which benefit communities that are most impacted by specific infraction(s) or violation(s). Specifically, the Secretary, at his or her discretion, shall determine whether a proposed Project is located within the watershed or airshed adversely affected by a violation or infraction as part of the evaluation process. The Secretary shall ensure that records identify the location of each civil or administrative penalty. No provision of this section shall be construed to require the Department to expend funds from the Fund in the absence of a suitable Project within the community where the violation or infraction occurred. The Secretary may also determine that the requirements of this subsection cannot practicably be met with respect to expenditures from the Fund associated with a penalty from a facility or location because such amount is insufficient or too large to be an appropriate expenditure. The expenditure of funds required under this subsection may be waived by the Secretary, with the concurrence of the Director of the Office of Management and Budget and Controller General.

(e) In the event that the requirements of this section conflict with applicable federal or State of Delaware requirements pertaining to the establishment and collection of penalties or other assessments by the Department, such requirements shall take precedence over the conflicting requirements of this section.

(f) The Department shall submit quarterly reports on the progress of the expenditures and/or projects conducted with the Community Environmental Project Fund to the Governor and members of the General Assembly. All of the expenditures made by or on behalf of the Fund, together with an explanation the process utilized for selecting and prioritizing Projects, shall be reported annually to the Joint Finance Committee in the Department's budget presentation.

74 Del. Laws, c. 203, § 2; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 21(4); 75 Del. Laws, c. 346, § 7; 78 Del. Laws, c. 193, § 1.;

TITLE 7 NATURAL RESOURCES & ENVIRONMENTAL CONTROL

DELAWARE ADMINISTRATIVE CODE 1

1100 Air Quality Management Section

1102 Permits

06/11/2006

1.0 General Provisions

1.1 This regulation establishes the procedures that satisfy the requirement of 7 **Del.C.** Ch. 60 to report and obtain approval of equipment which has the potential to discharge air contaminants into the atmosphere, and, for construction or modification activities not subject to 7 **DE Admin. Code** 1125, the procedures that satisfy the requirement of 40 CFR Part 51 Subpart I (July 7, 1994 edition) and Section 110(a)(2)(C) of the federal clean air act (CAA) as amended November 15, 1990.

1.2 This regulation establishes procedures that enable a person to, as an option, secure terms and conditions in a permit that effectively limits potential to emit for the purpose of avoiding applicability of a federal standard, regulation or other federal requirement.

1.3 This regulation establishes procedures that enable a person subject to both this regulation and to 7 **DE Admin. Code** 1130 to, as an option, transfer the terms and conditions of a construction permit issued pursuant to this regulation into a 7 **DE Admin. Code** 1130 operating permit via the administrative permit amendment process specified in 7 **DE Admin. Code** 1130.

1.4 Within 60 calendar days of receipt of a written request by the Department, an owner or operator of an existing facility, equipment, or air contaminant control device which emits or causes to be emitted any air contaminant shall submit to the Department any relevant information that the Department may request. Relevant information includes information that, in the Departments opinion, is relevant to any permit application/registration or that is necessary to determine the applicability of or compliance with any State or Federal requirement, any permit term or condition, or any condition of registration. Such information also includes a permit application or a registration form, or a corrected or supplemented application/registration. This provision does not limit the applicability of, nor does it sanction noncompliance with the requirements of 2.1 of this regulation.

1.5 Any approval granted by the Department pursuant to this regulation, and any exemption from the requirements of this regulation provided for in 2.2 of this regulation shall not relieve an owner or operator of the responsibility of complying with applicable local, State, and Federal laws and regulations.

06/11/2006

2.0 Applicability

2.1 Except as exempted in 2.2 of this regulation, no person shall initiate construction, install, alter or initiate operation of any equipment or facility or air contaminant control device which will emit or prevent the emission of an air contaminant prior to receiving approval of his application from the Department or, if eligible, prior to submitting to the Department a completed registration form.

2.1.1 For equipment that meets all applicable emission rate (or rates) or standard (or standards) specified in 11.8.1 and 11.8.2 of this regulation without an air contaminant control device, and that meets the following conditions, the person shall submit to the Department a registration form pursuant to 9.0 of this regulation.

2.1.1.1 For equipment without an air contaminant control device, the equipment has actual emissions to the atmosphere of any air contaminant or contaminants, in the aggregate, during any day that are equal to or greater than 0.2 pound per day and, during each and every day, that are less than 10 pounds per day; and

2.1.1.2 For equipment with an air contaminant control device, the equipment has actual emissions to the inlet of the air contaminant control device of any air contaminant or contaminants, in the aggregate, during any day that are equal to or greater than 0.2 pound per day and, during each and every day, that are less than 10 pounds per day; and

2.1.1.3 7 **DE Admin. Code** 1125 does not apply.

A - 3

2.1.2 For equipment, a facility or an air contaminant control device that is not subject to 2.1.1 of this regulation and that is subject to a source category permit, the person shall submit to the Department an application for a source category permit pursuant to 10.0 of this regulation. A list of established source category permits is available from the Department.

2.1.3 For equipment, a facility or an air contaminant control device that is not subject to 2.1.1 or 2.1.2 of this regulation, the person shall submit to the Department an application for a permit pursuant to 11.0 of this regulation.

2.1.4 Any person who operates equipment, a facility or an air contaminant control device in accordance with a valid permit issued pursuant to 2.1.3 of this regulation, and who later becomes subject to a source category permit:

2.1.4.1 May, at any time, submit to the Department an application for a source category permit pursuant to 10.0 of this regulation; and

2.1.4.2 Shall, within 60 calendar days of receipt of written request from the Department, submit to the Department an application for a source category permit pursuant to 10.0 of this regulation.

2.2 Provided that 7 **DE Admin. Code** 1125 does not apply, a permit for installation, alteration, or operation pursuant to this regulation shall not be required for the following equipment or air contaminant control device. Note however that other State and Federal requirements may apply.

2.2.1 Equipment without an air contaminant control device that has actual emissions to the atmosphere of any air contaminant or contaminants, in the aggregate, during each and every day that are less than 0.2 pound per day, provided that:

2.2.1.1 The actual emissions are quantified and documented; and

2.2.1.2 Records are maintained at the facility and are made available to the Department upon request which document that the equipment qualifies for this exemption.

2.2.2 Equipment with an air contaminant control device that has actual emissions to the inlet of the air contaminant control device of any air contaminant or contaminants, in the aggregate, during each and every day that are less than 0.2 pound per day, provided that:

2.2.2.1 The actual emissions are quantified and documented; and

2.2.2.2 Records are maintained at the facility and are made available to the Department upon request which document that the equipment qualifies for this exemption.

2.2.3 The equipment listed in **Appendix A** of this regulation.

2.2.4 For operation, any equipment or air contaminant control device that is specifically identified in an operation permit issued pursuant to 7 **DE Admin. Code** 1130.

2.2.5 Equipment that is registered pursuant to 9.0 of this regulation.

2.3 Any person who operates fuel burning equipment which uses only natural gas, LP gas, or other desulfurized fuel gas and has a rated heat input of less than 100 million BTUs per hour, or any other equipment, that was exempted from the requirement to have a permit by 3.1 of this regulation (as in effect immediately preceding the then effective date of this regulation of June 1, 1997), or who operates a piece of equipment, a facility, or an air contaminant control device in accordance with a valid permit or letter of exemption that was issued by the Department prior to June 1, 1997, and who, with regard to that specific equipment, facility, or air contaminant control device, is now subject to 2.1 of this regulation:

2.3.1 May, at any time, submit to the Department a registration form or a permit application pursuant to 2.1 of this regulation; and

2.3.2 Shall, within 60 calendar days of receipt of a written request from the Department, submit to the Department a registration form or a permit application pursuant to 2.1 of this regulation; and

2.3.3 Shall not initiate construction, installation, or alteration of the equipment, facility or air contaminant control device prior to complying with 2.1 of this regulation (i.e., prior to receiving approval of his application from the Department or, if eligible, prior to submitting to the Department a completed registration form).

2.4 Any person may petition the Department to establish a source category permit. The petition and, if approved, the establishment of the source category permit shall be pursuant to the procedures in 7 **DE Admin. Code** 1130.

06/01/1997

3.0 Application/Registration Prepared by Interested Party

3.1 Any application/registration form submitted to the Department, or any request for the removal of any permit or registration, shall be made by the owner or lessee of the equipment, facility, or air contaminant control device or by his agent. If the applicant/registrant is a partnership or group other than a corporation, the application/registration shall be made by one individual who is a member of the group. If the applicant/registrant is a corporation, the application/registration shall be made by an appropriate representative of the corporation. The application/registration form shall be filed with the Air Quality Management Section of the Division of Air and Waste Management.

3.2 Each application form shall be signed by the applicant and certified by a professional engineer as to the accuracy of the technical information concerning the equipment, apparatus or design features contained in the application, plus plans and other papers submitted. Any applicant who fails to submit any relevant facts or who submitted incorrect information to the Department shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or correct information. The signature of the applicant shall constitute an agreement that the applicant will assume responsibility for the installation, alteration or use of the equipment or apparatus concerned in accordance with the requirements of this regulation.

3.3 Each registration form shall be signed and certified by the registrant as to the accuracy of the technical information concerning the equipment, apparatus or design features contained in the registration. Any registrant who fails to submit any relevant facts or who submitted incorrect information to the Department shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or correct information. The signature of the registrant shall constitute an agreement that the registrant will assume responsibility for the installation, alteration or use of the equipment or apparatus concerned in accordance with the requirements of this regulation.

06/01/1997

4.0 Cancellation of Construction Permits

The Department may cancel a construction permit if the installation or alteration is not begun or if the work involved in installation or alteration is not completed within the time limits specified in the permit.

06/01/1997

5.0 Action on Applications

5.1 If an application is disapproved, the Department shall set forth its objections in the notice of disapproval.

5.2 Upon granting written approval for operation, the Department shall give notice of such approval to any person who has submitted a written request for such notice.

06/11/2006

6.0 Denial, Suspension or Revocation of Operating Permits

6.1 In the event the Department denies a request for approval of a permit to operate any equipment, facility, or device for which an application was made, the applicant shall not commence operation until such time that approval has been obtained from the Department or a permit to operate has been issued by the Department.

6.2 The Department may suspend or revoke an operating permit for violation of any permit condition or violation of this or any other applicable rule or regulation of the Department or any law administered by the Department and may take such other actions as it deems necessary. Permit term or terms and condition or conditions which were not identified under 11.2.9 of this regulation and which were not subject to public participation under 12.3 of this regulation, or which do not otherwise conform to the requirements of this regulation, shall not limit potential to emit for the purpose of avoiding applicability of federal standards, regulations or other federal requirements.

6.3 Suspension or revocation of an operating permit shall become final immediately upon service of notice on the holder of the permit, unless otherwise stated in the notice of suspension or revocation.

06/01/1997

7.0 Transfer of Permit/Registration Prohibited

7.1 No person shall transfer a permit from one location to another, or from one piece of equipment to another. No person shall transfer a permit from one person to another person unless 30 days written notice is given to the Department, indicating the transfer is agreeable to both persons, and approval of such transfer is obtained in writing from the Department.

7.2 No person shall transfer a registration from one location to another, or from one piece of equipment to another. No person shall transfer a registration from one person to another person unless prior written notice is given to the Department, indicating the transfer is agreeable to both persons.

06/01/1997

8.0 Availability of Permit/Registration

Any permit and any registration form shall be available on the premises where the construction, alteration, installation, or operation activity takes place.

06/0119/97

9.0 Registration Submittal

9.1 Any person identified in 2.1.1 of this regulation shall register the piece of equipment with the Department on forms furnished by the Department.

9.2 A person shall register with the Department by submitting to the Department a completed registration form that is certified by the person identified in 3.1 of this regulation. Registration forms are available from the Department upon request. The registration shall consist of at least the following:

9.2.1 A description of the equipment covered by the registration; and

9.2.2 A description of the nature and quantification of the amount of the emission from the equipment; and

9.2.3 A demonstration that the equipment meets the emission rate (or rates) or standard (or standards) specified in 11.8.1 and 11.8.2 of this regulation without an air contaminant control device.

9.3 Immediately after submitting to the Department the information specified in 9.2 of this regulation the registrant may initiate construction, install, alter or initiate operation of the equipment.

9.3.1 The registrant shall maintain records at the facility which document that the equipment meets the requirements of 2.1.1 of this regulation, and shall make such records available to the Department upon request.

9.3.2 If at any time the registered equipment does not meet the requirements of 2.1.1 of this regulation, operation of said equipment shall be immediately discontinued until all necessary permits have been secured.

9.3.3 If at any time the Department determines that the registered equipment does not meet the requirements of 2.1.1 of this regulation, a violation of this regulation may have occurred and enforcement action may ensue.

9.4 The submittal of a registration form does not relieve the registrant from the requirement to comply with all State and Federal requirements. Such requirements include, but are not limited to, monitoring, record keeping and reporting requirements, any requirement to consider actual emissions or the potential to emit of all equipment when determining the applicability of or compliance with certain State and Federal requirements, and any requirement to revise a 7 **DE Admin. Code** 1130 permit if required to do so by that regulation.

9.5 A person may, in lieu of submitting to the Department a registration form, elect to:

9.5.1 Apply for a permit pursuant to 2.1.2 or 2.1.3 of this regulation, as applicable.

9.5.2 Submit to the Department all of the information required by 9.2.1 and 9.2.2 of this regulation. In such a case the registrant shall not commence construction/operation until written approval is obtained from the Department.

06/01/1997

10.0 Source Category Permit Application

10.1 Any person identified in 2.1.2 of this regulation shall submit to the Department an application requesting a source category permit on forms furnished by the Department.

10.2 The application requesting a source category permit shall include all of the following:

10.2.1 All of the information called for by the source category application form. Source category application forms are available from the Department upon request.

10.2.2 Certification by the person identified in 3.1 of this regulation that the source will comply with all of the terms and conditions of the source category permit.

10.2.3 For facilities subject to 7 **DE Admin. Code** 1130, the person identified in 3.1 of this regulation shall be a responsible official as defined in 7 **DE Admin. Code** 1130, and the application shall contain the following language from the responsible official: "I certify, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."

10.3 For facilities not subject to 7 DE Admin. Code 1130, the Department shall grant approval by issuing to the applicant a source category permit.

10.4 For facilities subject to 7 **DE Admin. Code** 1130, the Department shall grant approval by incorporating the source category permit into the 7 **DE Admin. Code** 1130 permit by reference, and such incorporation shall be via the administrative permit amendment process specified in 7 **DE Admin. Code** 1130.

10.5 A source category permit may be valid for an indefinite period, except as provided for in 7 **DE Admin. Code** 1130 for sources subject to that regulation.

06/11/2006

11.0 Permit Application

11.1 Any person identified in 2.1.3 of this regulation shall submit to the Department an application for a permit on forms furnished by the Department. Permit application forms are available from the Department upon request.

11.2 The application shall consist of a description of at least the following:

11.2.1 The equipment or apparatus covered by the application; and

11.2.2 Any equipment connected or attached to, or servicing or served by the unit of equipment or apparatus covered by the application; and

11.2.3 The plot plan, including the distance and height of building within a reasonable distance from the place where the equipment is or will be installed, if necessarily required by the Department; and

11.2.4 The proposed means for the prevention or control of the emissions or contaminant;

11.2.5 The chemical composition and amount of any trade waste to be produced as a result of the construction, installation, or alteration of any equipment or apparatus covered by this application;

11.2.6 Any additional information, evidence or documentation required by the Department to show what the proposed equipment or apparatus will do.

11.2.7 Methods and expected frequency of occurrence of the start-up and shutdown of the equipment, including projected effects of emissions to the atmosphere and on ambient air quality.

11.2.8 The nature and amount of emission to be emitted by equipment, the facility, or an air contaminant control device or emitted by associated mobile sources.

11.2.9 If the applicant desires any of the term (or terms) or condition (or conditions) of the permit to be an effective limit on the potential to emit for the purpose of avoiding applicability of a federal standard, regulation, or other federal requirement, the applicant shall state that fact in the application. The

ensuing permit shall clearly indicate the specific term or terms and condition or conditions that are intended to limit potential to emit.

11.2.10 If the applicant desires any of the term (or terms) or condition (or conditions) of a construction permit to transfer to a 7 **DE Admin. Code** 1130 permit via the administrative permit amendment process specified in 7 **DE Admin. Code** 1130 the following additional requirements apply:

11.2.10.1 The person identified in 3.1 of this regulation shall be a responsible official as defined in 7 **DE Admin. Code** 1130, and the application shall contain the following language from the responsible official: "I certify, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."

11.2.10.2 The application shall include the following additional information:

11.2.10.2.1 The citation and description of all applicable requirements that will apply to the equipment, facility, or air contaminant control device and that will become applicable to any covered source as a result of the construction, installation, alteration, or operation; and a description of, or reference to, any applicable test method for determining compliance with each applicable requirement. The terms "applicable requirement" and "covered source" retain the meanings accorded to them in 7 **DE Admin. Code** 1130.

11.2.10.2.2 Certification by the responsible official that the source will meet all applicable requirements on a timely basis, and, if a more detailed schedule is expressly required by any applicable requirement, that applicable requirement in accordance with that more detailed schedule.

11.2.10.2.3 If desired, information necessary to define alternative operating scenarios under 6.1.10 of 7 **DE Admin. Code** 1130, or to define permit terms and conditions to implement emission averaging or operational flexibility under 6.1.11 and 6.8 of 7 **DE Admin. Code** 1130.

11.2.10.2.4 If desired, a request that the Department, upon taking final action under 11.5.2 or 11.5.3 of this regulation, allow coverage under the permit shield as described in 6.6 of 7 **DE Admin. Code** 1130.

11.2.10.3 The applicant shall provide additional information necessary to address any requirements that become applicable to the equipment, facility, or air contaminant control device after the date it filed an application under this section but prior to the date advertisement is made pursuant to 12.4.2 of this regulation. This requirement is in addition to the requirement of 2.1 of this regulation in situations where construction, installation, or alteration is necessary to comply with the new applicable requirement.

11.2.10.4 The ensuing construction permit shall clearly indicate the specific term (or terms) or condition (or conditions) to transfer to the 7 **DE Admin. Code** 1130 permit, and each such term or condition shall specify the origin and the authority for that term or condition, and shall identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

11.3 In situations in which construction, installation, or alteration is proposed, and operation of the equipment, facility, or air contaminant control device is to follow, such operation shall not commence until written approval is obtained by the applicant from the Department in accordance with 11.4 and 11.5 of this regulation, as applicable. The Department may condition approval to operate on a demonstration by the applicant of satisfactory performance of the equipment, facility, or air contaminant control device. In the event the applicant fails to demonstrate satisfactory performance, the Department may require the applicant to cease emissions from the source.

11.4 Persons not requesting review under 11.2.10 of this regulation shall, upon completion of the construction, installation or alteration, request that the Department grant approval to operate.

11.4.1 An application does not need to be submitted to the Department. Note however that an application may be required under 7 **DE Admin. Code** 1130 for persons subject to that regulation.

11.4.2 Upon satisfactory demonstration that the equipment, facility or air contaminant control device complies with all of the terms and conditions of the construction permit, the Department shall grant approval to operate by issuing an operation permit.

11.5 Persons requesting review under 11.2.10 of this regulation shall, upon completion of the construction, installation or alteration, request that the Department transfer the terms and conditions of the construction permit into 7 **DE Admin. Code** 1130 operating permit.

11.5.1 The request shall contain the following information, and shall contain the following language from the responsible official: “I certify, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.”

11.5.1.1 A description of the compliance status, a compliance schedule, and a certification of compliance for the equipment, facility, or air contaminant control device with respect to all applicable requirements, in accordance with 5.4.8 and 5.4.9 of 7 **DE Admin. Code** 1130; and

11.5.1.2 A statement of the methods used to determine compliance, including a description of monitoring, record keeping, and reporting requirements and test methods.

11.5.2 Upon satisfactory demonstration that the equipment, facility or air contaminant control device complies with all applicable requirements and all of the terms and conditions of the construction permit, and not prior to the expiration of the EPA review period provided for in 12.5 of this regulation, the Department shall transfer the specified terms and conditions to the 7 **DE Admin. Code** 1130 permit via the administrative permit amendment process specified in 7 **DE Admin. Code** 1130.

11.5.3 If the Department determines that the equipment, facility, or air contaminant control device does not comply with any applicable requirement the Department may take enforcement action, and shall do one of the following:

11.5.3.1 Provide an opportunity for the applicant to resolve the noncompliance; then, upon resolution, transfer the specified terms and conditions of the construction permit to the 7 **DE Admin. Code** 1130 permit via the administrative permit amendment process specified in 7 **DE Admin. Code** 1130; or

11.5.3.2 Transfer the specified terms and conditions of the construction permit, and an enforceable compliance schedule which satisfies the requirements of 5.4.8.3 of 7 **DE Admin. Code** 1130, to the 7 **DE Admin. Code** 1130 permit by reopening the permit for cause pursuant to the procedures in 7 **DE Admin. Code** 1130; or

11.5.3.3 Deny the request for approval to operate.

11.6 No permit shall be issued by the Department unless the applicant shows to the satisfaction of the Department that the equipment, facility, or air contaminant control device is designed to operate or is operating without causing a violation of the State Implementation Plan, or any rule or regulation of the Department, and without interfering with the attainment or maintenance of National and State ambient air quality standards, and without endangering the health, safety, and welfare of the people of the State of Delaware. The Department may, from time to time, issue or accept criteria for the guidance of applicants indicating the technical specifications which it deems will comply with the performance standards referenced herein.

11.7 Before a permit is issued, the Department may require the applicant to conduct such tests as are necessary in the opinion of the Department to determine the kind or amount of the contaminants emitted from the equipment or whether the equipment or fuel or the operation of the equipment will be in violation of any of the provisions of any rule or regulation of the Department. Such tests shall be made at the expense of the applicant and shall be conducted in a manner approved by the Department.

11.8 The following emission rates or standards for each air contaminant emitted from any equipment, facility or air contaminant control device shall be specified in each permit issued pursuant to this regulation:

11.8.1 The rate or standard established or relied upon in the State Implementation Plan (SIP) to include the State of Delaware 7 **DE Admin. Code** 1100 “Regulations Governing the Control of Air Pollution” and regulations promulgated pursuant to Section 111 and Section 112 of the Clean Air Act (CAA); and

11.8.2 The rate that was shown under 11.6 of this regulation as not interfering with the attainment and maintenance of any National and State ambient air quality standard, and not endangering the health, safety, and welfare of the people of the State of Delaware; or

11.8.3 The rate requested by the applicant. In no case shall this rate be greater than the potential to emit of the equipment, facility, or air contaminant control device; and in no case shall this rate be less stringent than the rate specified in 11.8.1 and 11.2 of this regulation.

11.9 Each emission rate and standard shall be enforceable as a practical matter. Enforceable as a practical matter means that each emission rate and standard:

11.9.1 Is stated in the permit as a technically specific and accurate limitation.

11.9.2 Is specifically associated with a particular piece or pieces of equipment or air contaminant control device or devices.

11.9.3 Has associated conditions which, in total, establish a method to determine compliance. Such associated conditions shall include appropriate testing, monitoring, record keeping, and reporting requirements.

11.9.4 Has a recurring, predictable time period under which compliance with the limitation will be demonstrated. Such time period shall be that specified in the underlying State regulation or federal rule or, in the absence of such specification and upon approval by the Department, shall be hourly, daily, monthly, or some other time period which provides for the demonstration of compliance with the limitation no less frequently than monthly.

11.10 A construction permit or any renewal thereof shall be valid for a period not to exceed three years from the date of issuance, unless sooner revoked by order of the Department, and may be renewed upon application to and approval by the Department.

11.11 An operating permit may be valid for an indefinite period, unless the equipment or operation for which a permit is written has controlled emissions of 100 tons or more per year of any air contaminant, in which case the permit shall be valid for not more than a five-year period and shall be evaluated prior to re-issuance to determine if permitted emission limits are appropriate.

11.12 The provisions of 2.1 and 11.3 of this regulation shall not apply to the operation of equipment or processes for the purpose of initially demonstrating satisfactory performance to the Department following construction, installation, modification or alteration of the equipment or processes. The applicant shall notify the Department sufficiently in advance of the demonstration and shall obtain the Department's prior concurrence of the operating factors, time period and other pertinent details relating to the demonstration.

11.13 Upon receipt of an application for the issuance of an operating permit the Department, in its discretion, may issue a temporary operating permit valid for a period not to exceed 90 days. A temporary operating permit issued pursuant to 11.0 of this regulation shall not be extended more than once for an additional 90-day period.

06/11/2006

12.0 Public Participation

12.1 Information obtained through the provisions of this regulation shall be made available for public inspection at any Department office except where such information is of confidential nature as defined in 7 **Del.C.** §6014. The Department shall provide for public participation and comment in accordance with 12.2 through 12.6 of this regulation, as applicable.

12.2 Upon receipt of a source category permit application or a permit application, in proper form, the Department shall provide for public participation and comment by:

12.2.1 Making available in at least one location in the State of Delaware a public file containing a copy of all materials that the applicant has submitted (other than those granted confidential treatment).

12.2.2 Advertising in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State:

12.2.2.1 the fact that the application has been received, the identity of the affected facility, and the city or town in which the facility is located,

12.2.2.2 a brief description of the nature of the application, to include the activity or activities involved in the permit action and the emissions or the change in emission involved, and

12.2.2.3 the name, address and telephone number of a Department representative with responsibility for the permitting action, the place at which a copy of the public file may be inspected, and a statement of procedures to request a hearing.

12.2.3 Sending notice of the information detailed in 12.2.2 of this regulation by mail to any person who has requested such notification from the Department by providing to the Department their name and mailing address.

12.2.4 Holding, if the Department receives a meritorious request for a hearing within 15 calendar days of the date of the advertisement described in 12.2.2 of this regulation, or if the Department deems it to be in the best interest of the State to do so, a public hearing on an application for interested persons to appear and submit written or oral comments on the air quality impact of the proposed action.

12.2.4.1 A public hearing request shall be deemed meritorious if it exhibits a familiarity with the application and a reasoned statement of the permit's probable impact.

12.2.4.2 Not less than 20 calendar days before the time of said hearing, notification that a public hearing will be held and the time and place of that hearing shall be:

12.2.4.2.1 Served upon the applicant as summonses are served or by registered or certified mail; and

12.2.4.2.2 Published in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State.

12.2.5 Considering all comments submitted by the applicant and the public in reaching its final determination.

12.3 For each permit application requesting to make the terms and conditions in a permit to effectively limit potential to emit to avoid applicability of a federal standard, regulation, or other federal requirement, the Department shall provide for public participation and comment by:

12.3.1 Making available in at least one location in the State of Delaware a public file containing a copy of all materials that the applicant has submitted (other than those granted confidential treatment), a copy of the draft permit, and a copy or summary of other materials, if any, considered in making the preliminary determination.

12.3.2 Advertising in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State: 1) the fact that the application has been received, the identity of the affected facility, and the city or town in which the facility is located, 2) a brief description of the nature of the application, to include the activity or activities involved in the permit action and the emissions or the change in emission involved, and 3) the name, address and telephone number of a Department representative with responsibility for the permitting action, the place at which a copy of the public file may be inspected, and a statement of procedures to request a hearing.

12.3.3 On or before the date of the advertisement described in 12.3.2 of this regulation:

12.3.3.1 Sending notice of the information detailed in 12.3.2 of this regulation by mail to the Administrator of the EPA, through the Region III office, and to any person who has requested such notification from the Department by providing to the Department their name and mailing address.

12.3.3.2 Providing the Administrator of the EPA, through the Region III office, a copy of the draft permit.

12.3.4 Holding, if the Department receives a meritorious request for a hearing within 30 calendar days of the date of the advertisement described in 12.3.2 of this regulation, or if the Department deems it to be in the best interest of the State to do so, a public hearing on an application or the draft permit for interested persons to appear and submit written or oral comments on the air quality impact of the proposed action or on the specific terms and conditions of the draft permit.

12.3.4.1 A public hearing request shall be deemed meritorious if it exhibits a familiarity with the application and a reasoned statement of the permit's probable impact.

12.3.4.2 Not less than 30 calendar days before the time of said hearing, notification that a public hearing will be held and the time and place of that hearing shall be:

12.3.4.2.1 Served upon the applicant as summonses are served or by registered or certified mail; and

12.3.4.2.2 Published in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State.

12.3.5 Affording the applicant an opportunity to submit, within 15 days following the close of the public comment period or the public hearing, whichever is later, a response to any comments made.

12.3.6 Considering all comments submitted by the applicant, the public, and the Administrator of the EPA in reaching its final determination.

12.3.7 Providing to the Administrator of the EPA, through the Region III office, a copy of the permit.

12.4 For each permit application requesting to allow the terms and conditions of a construction permit to transfer to a 7 **DE Admin. Code** 1130 permit via the administrative permit amendment process specified in 7 **DE Admin. Code** 1130, the Department shall provide for public participation and comment by:

12.4.1 Making available in at least one location in the State of Delaware a public file containing a copy of all materials that the applicant has submitted (other than those granted confidential treatment), a copy of the draft permit, and a copy or summary of other materials, if any, considered in making the preliminary determination.

12.4.2 Advertising in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State: 1) the fact that the application has been received, the identity of the affected facility, and the city or town in which the facility is located, 2) a brief description of the nature of the application, to include the activity or activities involved in the permit action and the emissions or the change in emission involved, and 3) the name, address and telephone number of a Department representative with responsibility for the permitting action, the place at which a copy of the public file may be inspected, and a statement of procedures to request a hearing.

12.4.3 On or before the date of the advertisement described in 12.4.2 of this regulation:

12.4.3.1 Sending notice of the information detailed in 12.4.2 of this regulation by mail to any person who has requested such notification from the Department by providing to the Department their name and mailing address, and to the representative of any affected states designated by those states to receive such notices. The term “affected states” retains the meaning accorded to it in 7 **DE Admin. Code** 1130.

12.4.3.2 Providing the Administrator of the EPA, through the Region III office, affected states, any person who requests it, and the applicant a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions).

12.4.3.3 Providing the Administrator of the EPA, through the Region III office, a copy of the permit application unless the Administrator waives the requirement.

12.4.4 Holding, if the Department receives a meritorious request for a hearing within 30 calendar days of the date of the advertisement described in 12.4.2 of this regulation, or if the Department deems it to be in the best interest of the State to do so, a public hearing on an application or the draft permit for interested persons to appear and submit written or oral comments on the air quality impact of the proposed action or on the specific terms and conditions of the draft permit.

12.4.4.1 A public hearing request shall be deemed meritorious if it exhibits a familiarity with the application and a reasoned statement of the permit’s probable impact.

12.4.4.2 Not less than 30 calendar days before the time of said hearing, notification that a public hearing will be held and the time and place of that hearing shall be:

12.4.4.2.1 Served upon the applicant as summonses are served or by registered or certified mail; and

12.4.4.2.2 Published in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State.

12.4.5 Affording the applicant an opportunity to submit, within 15 days following the close of the public comment period or the public hearing, whichever is later, a response to any comments made.

12.4.6 Considering all comments submitted by the applicant, the public, and any affected state in reaching its final determination. The Department shall maintain a list of all commenters and a summary of the issues raised and shall make that information available in the public file and supply it to EPA upon request.

12.4.7 After meeting the requirements of 12.4.1 through 12.4.6 of this regulation, providing the Administrator of the EPA, through the Region III office, a copy of the proposed permit [i.e., the version of the permit that represents the Departments final determination under 12.4.6 of this regulation], all necessary supporting information, and providing a notice to the Administrator and to any affected state of any refusal by the Department to accept all recommendations for the proposed permit that the affected state submitted during the public review period. The notice shall include the Department's reasons for not accepting any such recommendation. The Department is not required to accept recommendations that are not based on applicable requirements. The term "applicable requirement" retains the meaning accorded to it in 7 **DE Admin. Code** 1130.

12.4.8 On or before the date that the Department provides the proposed permit to EPA for review under 12.4.7 of this regulation), issuing a written response to all comments submitted by affected states and all significant comments submitted by the applicant and the public.

12.5 The Department shall not issue the permit if the Administrator objects to its issuance in writing within 45 days of receipt of all of the information provided to the Administrator pursuant to 12.4.7 of this regulation. Any EPA objection under this paragraph shall include a statement of the Administrator's reasons for objection and a description of the terms and conditions that must be revised to respond to the objection. The Administrator will provide the applicant a copy of the objection. The Department may thereafter issue only a revised permit that satisfies EPA's objection.

12.6 If the Administrator does not object in writing under 12.5 of this regulation, any person may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make such objection. Any such petition shall be based only on objections to the permit raised with reasonable specificity during the public comment period provided for in 12.4 of this regulation, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the Administrator objects to the permit as a result of a petition filed under this paragraph, the Department shall not amend the 7 **DE Admin. Code** 1130 permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of the construction permit or the amended 7 **DE Admin. Code** 1130 permit or its requirements if the construction permit or the amended 7 **DE Admin. Code** 1130 permit was issued after the end of the 45-day review period and prior to an EPA objection. If the Department has issued an amended the 7 **DE Admin. Code** 1130 permit prior to receipt of an EPA objection under this paragraph, the Administrator will modify, terminate, or revoke such permit, and shall do so consistent with the time limits established in 40 CFR 70.7(g)(4) or (5)(i) and (ii), except in emergencies, and the Department may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application under 7 **DE Admin. Code** 1130.

06/01/1997

13.0 Department Records

13.1 The Department will keep for five years such records and submit to the Administrator of the EPA such information as the Administrator may reasonably require to ascertain whether the optional procedures to establish and transfer the terms and conditions of a construction permit issued pursuant to this regulation into a 7 **DE Admin. Code** 1130 operating permit via the administrative permit amendment process specified in 7 **DE Admin. Code** 1130 comply with the requirements of the Federal Clean Air Act and 40 CFR Part 70.

1 DE Reg. 48 (07/01/97)

9 DE Reg. 1084 (01/01/06)

9 DE Reg. 1981 (06/01/06)

12 DE Reg. 347 (09/01/08)

06/11/2006

Appendix A

(For the applicability of Appendix A, see 2.2 of this regulation)

1.0 Air contaminant detector, air contaminant recorder, combustion controller or combustion shut-off.

2.0 Except as provided for in 7 **DE Admin. Code** 1122, “Restriction on Quality of Fuel in Fuel Burning Equipment,” external combustion fuel burning equipment which:

2.1 Uses any fuel and has a rated heat input of less than 10 million British-Thermal Units (BTUs) per hour.

2.2 Uses only natural gas, LP gas, or other desulfurized fuel gas and has a rated heat input of less than 15 million British-Thermal Units (BTUs) per hour.

3.0 Air conditioning or comfort ventilating systems.

4.0 Vacuum cleaning systems used exclusively for office applications or residential housekeeping.

5.0 Ventilating or exhaust systems for print storage room cabinets.

6.0 Exhaust systems for controlling steam and heat.

7.0 Any equipment at a facility used exclusively for chemical or physical analysis or determination of product quality and commercial acceptance, provided the operation of the equipment is not an integral part of the production process and the total actual emissions from all such equipment at the facility do not exceed 450 pounds in any calendar month.

8.0 Internal combustion engines in vehicles used for transport of passengers or freight.

9.0 Maintenance, repair, or replacement in kind of equipment for which a permit to operate has been issued.

10.0 Equipment which emits only nitrogen, oxygen, carbon dioxide, or water vapor.

11.0 Ventilating or exhaust systems used in eating establishments where food is prepared for the purpose of consumption.

12.0 Equipment used to liquefy or separate oxygen, nitrogen or the rare gases from the air.

13.0 Fireworks display.

14.0 Smudge pots for orchards or small outdoor heating devices to prevent freezing of plants.

15.0 Outdoor painting and sand blasting equipment.

16.0 Lawnmowers, tractors, farm equipment and construction equipment.

17.0 Gasoline dispensing facilities that never exceed a monthly throughput of 10,000 gallons.

18.0 Stationary gasoline storage tanks that:

18.1 Have a capacity less than 550 gallons and that are used exclusively for the fueling of implements of husbandry; or

18.2 Have a capacity less than 2000 gallons and that were constructed prior to January 1, 1979; or

18.3 Have a capacity less than 250 gallons and that were constructed after December 31, 1978.

19.0 Fire schools or fire fighting training.

20.0 Residential wood burning stoves and wood burning fireplaces.

21.0 Any stationary storage tank not subject to control by the provisions of this regulation, which contains any liquid having a true vapor pressure less than 0.5 psia at 70^{o}F or is less than 5000 gallons capacity.

22.0 Buildings, cabinets, and facilities used for storage of chemicals in closed containers.

23.0 Sewage treatment facilities.

24.0 Water treatment units.

25.0 Quiescent wastewater treatment operations.

26.0 Non-contact water cooling towers (water that has not been in direct contact with process fluids).

27.0 Laundry dryers, extractors, or tumblers used for fabrics cleaned with a water solution of bleach or detergents.

28.0 Equipment used for hydraulic or hydrostatic testing.

29.0 Blueprint copiers and photographic processes.

30.0 Kilns used for firing ceramic ware that are heated exclusively by natural gas, electricity, or liquid petroleum gas, and the BTU input is less than 15 million BTUs per hour.

31.0 Inorganic acid storage tanks equipped with an emission control device.

32.0 Any internal combustion engine associated with a stationary electrical generator that: 1) has a standby power rating of 450 kilowatts or less that is used only during times of emergency; 2) is located at any residence; or 3) is located at any commercial poultry producing premise, as these terms are defined in 7 **DE Admin. Code** 1144.

33.0 Any internal combustion fuel burning equipment, which is not associated with a stationary electrical generator, and has an engine power rating of 450 hp or less.

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01/11/1993

1.0 Definitions and Administrative Principles

"**Actual emission**" means the actual rate of emissions of a pollutant from an emissions unit for the calendar year or seasonal period. Actual emission estimates must include upsets and downtime to parallel the documentation of these events in the emission inventory and must follow an acceptable emission estimation method.

"**AIRS**" means Aerometric Information Retrieval System (AIRS). EPA's mainframe database of state air emissions data.

"**Annual fuel/process rate**" means the actual or estimated annual fuel, process or solid waste operating rate. The AIRS facility subsystem source classification code table prescribes the units to be used with each source classification code (SCC).

"**Base year**" means the year of enactment of the Clean Air Act Amendments, calendar year 1990. Serves as the baseline year for ozone State Implementation Plan (SIP) emission inventories and attainment strategies.

"**Capture efficiency**" means the weight per unit time of a pollutant entering a capture system and delivered to a control device, divided by the weight per unit time of the total pollutant generated by a source of the pollutant, expressed as a percentage. The capture efficiency reflects how much of the pollutant is captured and routed to the control device. It should not be confused with the control efficiency, which is a reflection of how well the control device controls emissions.

"**Certifying individual**" means the individual responsible for the completion and certification of the Emission Statement (e.g., officer of the company) and who will take legal responsibility for the Emission Statement's accuracy.

"**Control efficiency**" means the weight per unit time of a pollutant entering the control device minus the weight per unit time of a pollutant leaving the control device, divided by the weight per unit time of the pollutant entering the control device, expressed as a percentage. The control efficiency reported for Emission Statements and SIP emission inventories should be the measured efficiency, adjusted to an annual average by reflecting any reduction in efficiency due to control equipment downtime and maintenance degradation occurring after the date of measurement. If the measured control efficiency is unavailable, the design efficiency, reduced by 10%, may be used. The downtime and maintenance degradation adjustments are then made to this figure. However, it should be clearly indicated that the design efficiency, and not the measured efficiency, is being reported.

"**Control equipment identification code**" means the AIRS code that defines the equipment (such as an incinerator or carbon absorber) used to reduce, by destruction or removal, the amount of air pollutant or pollutants in an air stream prior to discharge to the ambient air. Table 7-4 of this regulation describes the acceptable equipment codes for Emission Statements and SIP emission inventories.

"**Estimated emissions method code**" means a one digit code that identifies the estimation technique used in the calculation of estimated emissions. Table 7-1 of this regulation describes the acceptable emissions method codes for Emission Statements and SIP emission inventories.

"**Estimated emissions units**" means a two digit code that identifies the units associated with an estimated emissions value. Table 7-3 of this regulation gives the acceptable estimated emissions units for Emission Statements and SIP emission inventories.

"**Measured emissions method code**" means a one digit code that identifies the test method used to ascertain measured emissions. Table 7-2 of this regulation describes the acceptable measured emissions method codes for Emission Statements and SIP emission inventories.

"**Measured emissions units**" means a two digit code that identifies the units associated with a measured emissions value. Table 7-3 of this regulation gives the acceptable measured emissions units for Emission Statements and SIP emission inventories.

"**Peak ozone season**" means that period of the year when conditions for photochemical ozone formation are most favorable. It is characterized by sustained periods of direct sunlight (i.e., long days, small cloud cover) and warm temperatures. For Delaware, the peak ozone season is defined as the period from June 1 through August 31.

"**Percentage annual throughput**" means an estimate of the quarterly percentage of the annual throughput. For boilers, process heaters or similar combustion equipment the percent throughput for each quarter would be a percentage based on the total fuel burned for the entire reporting year. For a process or non-combustion activity the percent throughput for each quarter would be a percent based on the production, consumption or other throughput units of measure. The sum of the four percentages must equal 100%. For Emission Statements and SIP emission inventories the quarters are defined by EPA as follows:

a. January, February and December (e.g., January 1992, February 1992 and December 1992)

b. March through May

c. June through August

d. September through November

"**Periodic ozone SIP emission inventory**" means an inventory of all emissions to the atmosphere of VOC's, NOx, and CO from all categories of emission sources. A periodic ozone SIP inventory must be completed at least every three years after the base year (1990).

"**Point**" means a physical emission point or activity within a facility that results in pollutant emissions.

"**Potential to emit**" means the capability of a source to emit any air pollutant at maximum design capacity, except as constrained by federally-enforceable conditions that include the effect of installed air pollution control equipment, restrictions on the hours of operation, and the type or amount of material burned, stored, or processed. Potential to emit is used for major source determinations under New Source Review (NSR).

"**Source classification code (SCC)**" means an eight digit code used by EPA to identify a process, activity, or segments of a process or activity creating emissions at a point.

"**Segment**" means components of a process or activity at a point, used in the computation of emissions. Each segment must have an associated SCC. For example, in a combustion process that can burn alternate fuels, each specific fuel is considered a segment, and each has a unique SCC.

07/17/1984

2.0 Sampling and Monitoring

2.1 Upon written request of the Department, an owner or operator of an air contaminant source shall, at his expense, install, maintain, and use emission monitoring devices, keep records, and make periodic reports to the Department on the nature and amount of emissions from such source. The Department shall make such data available to the public as reported and as correlated with any applicable emission standards or limitations.

2.2 Upon written request of the Department, an owner or operator of an air contaminant source shall, at his expense, sample the emissions of, or fuel used by, that source, maintain records and submit reports to the Department on the results of such sampling. The Department may make such data available to the public as reported and as correlated with any applicable emission standards or limitations.

2.3 The Department may conduct tests of emissions from or fuel used by any air contaminant source. Upon written request of the department, the owner or operator of the air contaminant source shall provide necessary holes in stacks or ducts, and such other safe and proper sampling and testing facilities, exclusive of instruments and sampling devices, if any are necessary, for proper determinations of the emission of air contaminants. The department shall have access to and use of monitoring, record-keeping and reporting required by federal regulations relating to emissions of air contaminants. The

department may make such data available to the public as reported or received and as correlated with any applicable emissions standards or limitations.

2.4 Upon written request of the department, an owner or operator of an air contaminant source consisting of ships, boats or other waterborne craft engaged in a bulk transfer operation shall, at his expense, provide for the installation, operation and maintenance of such environmental monitoring equipment and appropriate laboratory or other scientific analyses which the Department deems necessary to determine the impact upon the environment of air contaminants emitted from the source.

In the event that the Department provides such monitoring and analytical services for the owner or operator, the Department may recover the cost of such environmental monitoring activities as a fee or fees for any construction or operation permit issued to the owner or operator by the Department.

When more than one bulk transfer operation is permitted to transfer the same solid material within the limits of Big Stone Anchorage, the amortized cost of environmental monitoring equipment and the annual cost of maintenance, operation and laboratory analysis accrued to the Department shall be shared equally by the owners of the bulk transfer operations. Whenever the owner or operator of the transfer facility accepts responsibility for monitoring and analysis activities as required by the department, the owner or operator shall be responsible for determining the shared costs.

The provisions of 2.4 of this regulation shall be applicable only to the transfer of bulk solid materials. Bulk solid material is defined as any solid material which is unpackaged.

2.5 All instrumentation, analytical techniques, calculations, records, and sampling locations and methods required by this regulation shall have the prior approval of the Department.

2.6 Reports required by this regulation shall be submitted in a form approved by the Department and shall be signed by a corporate officer or his designee whose signature shall constitute his own and employer's certification that the data are accurate and complete.

2.7 The reference methods used to determine compliance with the standards prescribed in 7 **DE Admin. Code** 1104; 1105; 1107; 3.0 of 7 **DE Admin. Code** 1108; 7 **DE Admin. Code** 1109 and 1114 shall be those set forth in 1.5 of 7 **DE Admin. Code** 1120 or such other method approved by the Department.

07/17/1984

3.0 Minimum Emission Monitoring Requirements for Existing Sources

3.1 Applicability - The person responsible for existing sources listed in 3.0 of this regulation shall install, calibrate, operate, and maintain all monitoring equipment necessary for the continuous monitoring of the pollutants specified in 3.0 of this regulation for the applicable source category and shall complete the installation and performance tests of the above equipment and begin monitoring and recording within 18 months of the date of plan approval or promulgation.

3.2 Fuel Burning Equipment - Fuel burning equipment except as provided in 3.2 through 3.5 of this regulation, with an annual average capacity factor of greater than 30%, as reported to the Federal Power Commission for calendar year 1974, or as otherwise demonstrated to the Department by the owner or operator, shall conform with the following monitoring requirements:

3.2.1 A continuous monitoring system for the measurement of opacity which meets the performance specifications of 4.1.1 of this regulation shall be installed, calibrated, maintained, and operated in accordance with the procedures of 4.0 of this regulation by the owner or operator of any such equipment of greater than 250 million BTU per hour heat input (1.05 million kilogram-calories per minute) except where:

3.2.1.1 Gaseous fuel is the only fuel burned, or

3.2.1.2 Oil or a mixture of gas and oil are the only fuels burned and source is able to comply with the applicable particulate matter and opacity regulations without utilization of particulate matter collection equipment.

3.2.1.3 Waste heat boilers such as carbon monoxide boilers unless they derive greater than 250 million BTU per hour heat input from the firing of auxiliary fuel.

3.2.2 A continuous monitoring system for the measurement of sulfur dioxide which meets the performance specification of 4.1.3 of this regulation shall be installed, calibrated, maintained, and operated on any fuel burning equipment of greater than 250 million BTU per hour input which has installed sulfur dioxide control equipment.

3.2.3 A continuous monitoring system for the measurement of nitrogen oxides which meets the performance specification of 4.1.2 of this regulation shall be installed, calibrated, maintained, and operated on any fuel burning equipment or combination or such equipment discharging effluents through a common stack of greater than 1000 million BTU per hour heat input, (4.2 million kilogram-calories per minute) when such equipment is located in an Air Quality Control Region which is classified as Priority I with respect to nitrogen dioxide. This requirement shall not be applicable to any source owner or operator who demonstrates during source compliance tests as required by the Department that such a source emits nitrogen oxides at levels 30% or more below the applicable New Source Performance Standard.

3.2.4 A continuous monitoring system for the measurement of the percent oxygen or carbon dioxide shall be installed, calibrated, operated, and maintained on fuel burning equipment where measurements of oxygen or carbon dioxide in the flue gas are required to convert either sulfur dioxide or nitrogen oxides continuous emission monitoring data, or both, to units of the New Source Performance Standard. Measurement of the percent oxygen or carbon dioxide shall meet the performance specifications of 4.1.4 or 4.1.5 of this regulation.

3.3 Sulfuric Acid Plants - Each sulfuric acid plant of greater than 300 tons per day production capacity shall install, calibrate, maintain and operate a continuous monitoring system for the measurement of sulfur dioxide which meets the performance specifications 4.1.3 of this regulation for each sulfuric acid producing facility within such plant.

3.4 Fluid bed catalytic cracking unit catalyst regenerators at petroleum refineries. Each catalyst regenerator for fluid bed catalytic cracking units of greater than 20,000 barrels per day fresh feed capacity shall install, calibrate maintain, and operate a continuous monitoring system for the measurement of opacity which meets the performance specifications of 4.1.1 of this regulation.

3.5 Electric arc furnaces - See 7 **DE Admin. Code** 1123.

07/17/1984

4.0 Performance Specifications

4.1 Any person who installs monitoring equipment to comply with this regulation shall demonstrate compliance with performance specifications set forth in Appendix B, 40 CFR Part 60, dated July 1, 1982, which are hereby adopted by reference:

4.1.1 For measuring opacity; Performance Specification 1;

4.1.2 For measuring NO or NO_x; Performance Specification 2;

4.1.3 For measuring SO_2; Performance Specification 2;

4.1.4 For measuring oxygen; Performance Specification 3;

4.1.5 For measuring carbon dioxide; Performance Specification 3.

4.2 Calibration gases and cycling time in continuous monitoring systems shall comply with the requirements set forth in paragraphs 3.3 and 3.4 of Appendix B in 40 CFR Part 51, dated July 1, 1982, which are hereby adopted by reference.

4.3 Zero and span drift in continuous monitoring systems shall comply with the requirements set forth in paragraphs 3.7 and 3.8 of Appendix P, 40 CFR Part 51, dated July 1, 1982, which are hereby adopted by reference.

4.4 Analytical Reference Methods 3.6 and 7 in 40 CFR Part 60, Appendix A dated July 1, 1982, are hereby adopted by reference.

4.5 Alternative procedures and requirements for continuous monitoring systems may be submitted for Department approval for the situations set forth in paragraph 3.9.1, 3.9.2, 3.9.3, 3.9.4, 3.9.5 and paragraphs 6.1 through 6.4 of Appendix P, 40 CFR Part 51, dated July 1, 1982, which are hereby adopted by reference with the word substitutions "Department" for "State" and "Regulation" for "Appendix." The Department approves the alternative data reduction procedures using wet basis pollutant

and oxygen data set forth in paragraphs a and b in the Federal Register, Volume 41, Number 198, dated Tuesday, October 12, 1976.

4.6 Exemptions

4.6.1 Any source which has purchased an emission monitoring system or systems prior to September 11, 1974, may be exempt from meeting such test procedures prescribed in this regulation for a period not to exceed five years from plan approval or promulgation.

4.6.2 Any source which is regulated under 7 **DE Admin. Code** 1120, New Source Performance Standards, shall be exempt from this regulation.

4.6.3 Any source which is regulated under 7 **DE Admin. Code** 1124, Control of Volatile Organic Compound Emissions, shall be exempt from the provisions of this regulation, except for 7.0 of this regulation.

4.7 Monitor Location - Any person who is required to install continuous monitoring systems or monitoring devices pursuant to this regulation shall install such systems or devices such that representative measurements of emissions or process parameters (i.e., oxygen, or carbon dioxide) from the affected facility are obtained.

4.8 Combined Effluents - When the effluents from two or more affected facilities of similar design and operating characteristics are combined before being released to the atmosphere, the owner or operator may install, as determined by the Department, monitoring systems on the combined effluent. When the affected facilities are not of similar design or operating characteristics, or when the effluent from one affected facility is released to the atmosphere through more than one point, the owner or operator may with prior written approval of the Department establish alternative procedures to implement the intent of these requirements.

07/17/1984

5.0 Minimum Data Requirements

5.1 Owners or operators of facilities required to install continuous monitoring systems shall submit a written report of excess emissions for each calendar quarter and the nature and cause of the excess emissions, if known. The averaging period used for data reporting shall correspond to the averaging period specified in the emission test method used to determine compliance with an emission standard for the pollutant/source category in question. The required report shall include, as a minimum, the data stipulated in this regulation.

5.2 For opacity measurements, the summary shall consist of the magnitude in actual percent of all one-minute (or such other time period deemed appropriate by the Department) averages of opacity greater than the opacity standard in the applicable plan for each hour of operation of the facility. Average values may be obtained by integration over the averaging period or arithmetically averaging a minimum of four equally spaced instantaneous opacity measurements per minute. Any time period exempted shall be considered before determining the excess averages of opacity (e.g., whenever a regulation allows two minutes of opacity measurements in excess of the standard, the Department shall require the source to report all opacity averages in any one hour, in excess of the standard, minus the two-minute exemption). If more than one opacity standard applies, excess emissions data must be submitted in relation to all such standards.

5.3 For gaseous measurements, the summary shall consist of emission averages, in the units of the applicable standard, for each averaging period during which the applicable standard was exceeded.

5.4 The date and time identifying each period during which the continuous monitoring system was inoperative, except for zero and span checks, and the nature of system repairs or adjustments shall be reported. Proof of continuous monitoring system performance whenever system repairs of adjustments have been made shall be required by the Department.

5.5 When no excess emissions have occurred and the continuous monitoring system or systems have not been inoperative, repaired, or adjusted, such information shall be included in the report.

5.6 Owners or operators of affected facilities shall maintain a file of all information reported in the quarterly summaries, and all other data collected either by the continuous monitoring system or as

necessary to convert monitoring data to the units of the applicable standard for a minimum of two years from the date of collection of such data or submission of such summaries.

07/17/1984

6.0 Data Reduction

Owners or operators of affected facilities shall use the following procedures for converting monitoring data to units of the standard where necessary.

6.1 For fuel burning equipment the procedures to be used to convert gaseous emission monitoring data to units of the standard, where necessary, shall be those set forth in paragraphs 5.1.1, 5.1.2 and 5.1.3 of Appendix P, 40 CFR Part 51 dated July 1, 1982, which are hereby adopted by reference with the word or phrase substitutions "Regulation" for "Appendix", "subsection numbers" for "subparagraph", and "3.1.4 of this regulation" for "paragraph 2.1.4 of this Appendix". Factors F and Fc shall be determined by methods approved by the Secretary.

6.2 For sulfuric acid plants the owner or operator shall:

Report the average sulfur dioxide concentration (ppm), production rate (tons H_2SO_4 produced/day), and the SO_2 emission rate (lbs. SO_2/hour) whenever the one-hour average exceeds the applicable standard of 2.1 of 7 **DE Admin. Code** 1109. For excess SO_2 emissions lasting for more than three consecutive hours, the owner or operator shall summarize the data. The data shall be reported to the Department at the end of each calendar quarter.

01/11/1993

7.0 Emission Statement

7.1 Emission Statement requirements apply to all stationary sources located in an ozone nonattainment area that emit nitrogen oxides (NO_x) or volatile organic compounds (VOCs) to the atmosphere. The Department may, with EPA approval, waive the Emission Statement requirements for classes or categories of stationary sources with facility-wide actual emissions of less than 25 tons/year of NO_x or VOCs if the class or category is included in the Base Year and Periodic Ozone SIP Emission Inventories, and the actual emissions were calculated using EPA-approved emission factors or other methods acceptable to the EPA. Emission Statement requirements also apply to all stationary sources located in ozone attainment areas that emit or have the potential to emit 50 tons/year or more of NO_x or VOCs.

7.2 An Emission Statement shall contain data elements addressing source identification information, operating data, actual emissions data, control equipment information and process rate information. Each Emission Statement shall include a certification of the data to ensure that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement. The individual certifying the statement shall be an official of the facility who will take legal responsibility for the Emission Statement's accuracy.

7.2.1 The source identification information provided by the source to the Department shall as a minimum include:

7.2.1.1 Full name;

7.2.1.2 Physical location;

7.2.1.3 Mailing address of the facility.

7.2.2 The minimum operating data provided by the source to the Department shall include:

7.2.2.1 Percentage annual throughput (percentage of annual activity);

7.2.2.2 Hours per day on both the normal operating schedule and during peak ozone season of June 1 through August 31 (if different from the normal operating schedule);

7.2.2.3 Days per week on both the normal operating schedule and during peak ozone season of June 1 through August 31 (if different from the normal operating schedule)

7.2.2.4 Weeks per year on both the normal operating schedule and during peak ozone season of June 1 through August 31 (if different from the normal operating schedule);

7.2.2.5 Start time on both the normal operating schedule and during the peak ozone season from June 1 through August 31;

7.2.2.6 End time on both the normal operating schedule and during the peak ozone season from June 1 through August 31.

7.2.3 The minimum emissions information provided by the source to the Department shall include:

7.2.3.1 Actual volatile organic compound or nitrogen oxide emissions at the process level, in tons per year for an annual emission rate and pounds per day during the peak ozone season from June 1 to August 31 (estimated or measured).

7.2.3.2 Emissions method code for estimated or measured emissions. Valid emissions estimation and measurement method codes and units codes are presented in Table 7-1 and Table 7-2 of this regulation.

7.2.3.3 Units code to identify the units (tons per year or pounds per day) for the units measured or estimated, are presented in Table 7-3 of this regulation.

7.2.3.4 Calendar year for the emissions.

7.2.4 The minimum control equipment information provided by the source to the Department shall include:

7.2.4.1 Current primary and secondary control equipment identification codes. Valid control equipment identification codes are presented in Table 7-4 of this regulation;

7.2.4.2 Current control equipment efficiencies (%);

7.2.4.3 Capture efficiency (%).

7.2.5 The minimum process rate data provided by the source to the Department shall include:

7.2.5.1 Annual fuel/process rate (annual throughput if not a combustion process). For a combustion process, the annual fuel usage must be in units corresponding to the specific Source Classification Code (SCC) for each fuel (e.g., tons for coal, million cubic feet (MMCF) for natural gas). For a noncombustion process, the annual throughput must be given in units of measure corresponding to the specific SCC for the process (e.g., tons of solvent in coating used for metal furniture painting).

7.2.5.2 Peak ozone season daily process rate.

7.2.5.3 Design capacity.

7.2.5.4 Fuel use data (i.e., heat content).

7.2.5.5 Tank data (i.e., vapor pressure, vapor mole weight, diameter, height, age, loading type, color, roof and seal type).

7.2.5.6 Solvent usage data (i.e., solvent purchased and solvent recovered).

TABLE 7-1

ESTIMATED EMISSIONS METHOD CODE

1. User-calculated based on source test or other measurements.
2. User-calculated based on material balance using engineering knowledge of the process.
3. User-calculated based on AP-42.
4. User-calculated by best guess/engineering judgment.
5. User-calculated based on a state or local agency emission factor.
7. Source closed, operation ceased.
8. Computer calculated based on standard emission factor (SCC emission factor file).
9. Computer calculated based on user-supplied emission factor.

TABLE 7-2

MEASURED EMISSIONS METHOD CODE

1. U. S. EPA reference method.
3. Liquid Absorption technique.
4. Solid absorption technique.
5. Freezing-out method.
6. Gram sampling (intermittent) technique.
9. Other, specify in comment.

TABLE 7-3

ESTIMATED AND MEASURED UNITS CODE

PD - Pounds per Day.
TY - Tons per Year.

TABLE 7-4

CONTROL EQUIPMENT CODES

000 - No Equipment	054 - Process Enclosed
019 - Catalytic Afterburner	060 - Process Gas Recovery
020 - Catalytic Afterburner – Heat Exchanger	065 - Catalytic Reduction
021 - Direct Flame Afterburner	066 - Molecular Sieve
022 - Direct Flame Afterburner – Heat Exchanger	072 - Shell and Tube Condenser
023 - Flaring 078 - Baffle	073 - Refrigerated Condenser
024 - Modified Furnace/Burner	074 - Barometric Condenser
025 - Staged Combustion	078 - Baffle
026 - Flue Gas Recirculation	080 - Chemical Oxidation
027 - Reductive Combustion – Air Preheater	081 - Chemical Reduction
028 - Steam or Water Injection	082 - Ozonation
029 - Low/Excess - Air Firing	083 - Chemical Neutralization
030 - Fuel - Low Nitrogen Content	084 - Activated Clay Adsorption
031 - Air Injection	087 - Nitrogen Blanket
032 - Ammonia Injection	088 - Conservation Vent
033 - Control of % O2 in Combustion Air	089 - Bottom Filling
046 - Process Change Tank	090 - Conversion to Variable
047 - Vapor System Recovery	091 - Conversion to Floating Roof Tank
048 - Activated Carbon Adsorption	092 - Conversion to Pressurized Tank
049 - Liquid Filtration System	093 - Submerged Filling
050 - Packed-Gas Absorption	094 - Underground Tank
051 - Tray -Type Gas Absorption Column	095 - White Paint
053 - Venturi Scrubber	096 - Vapor Lock Balance Recovery System
	099 - Miscellaneous Control Devices

7.3 Annual emissions statements are due on April 30 for the preceding calendar year beginning with April 30, 1993 for calendar year 1992. The Department may require more frequent submittal, if the Department determines that either:

7.3.1 A more frequent submission is required by the Environmental Protection Agency; or

7.3.2 Analysis of the data on a more frequent basis is necessary to implement the requirements of 7 **Del.C.**, Chapter 60.

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TITLE 7 NATURAL RESOURCES & ENVIRONMENTAL CONTROL
DELAWARE ADMINISTRATIVE CODE 1
1100 Air Quality Management Section
1130 Title V State Operating Permit Program

12/11/10

1.0 Program Overview

Title V of the Clean Air Act Amendments of November 15, 1990 require that the U.S. Environmental Protection Agency (EPA) promulgate regulations calling for states to establish new operating permit programs or amend existing programs so that they satisfy the minimum requirements of EPA's regulations. EPA promulgated these regulations on July 21, 1992, 57 Fed. Reg. 32,250 et seq. The regulations are published at 40 CFR Part 70.

The Department is adopting this regulation pursuant to 7 Del.C. Ch 60. This regulation shall take effect upon approval by the EPA.

The Department is adopting the operating permit program contained in this regulation to satisfy the requirements of both 40 CFR Part 70, and Title V of the Clean Air Act. This regulation will fully comport with all federal operating permit requirements.

This regulation only addresses the requirements for operating permits under Title V of the Clean Air Act. Any applicable construction permit requirements are not included in this regulation. The operating permit regulations do not provide for the establishment of any new substantive control requirements. The emissions standards or limitations to be included in operating permits are those contained in existing regulations, future construction permits and regulations, and any others contained in applicable control requirements. Under EPA's regulations, certain state requirements are not federally enforceable and must be so designated in operating permits issued for sources subject to the Department's regulations.

11/15/1993

2.0 Definitions

The following definitions apply to this regulation. Except as specifically provided in 2.0 of this regulation, terms used in this regulation retain the meaning accorded them under the applicable requirements of the Act.

"Act" means the Clean Air Act, as amended by the Clean Air Act Amendments of November 15, 1990, 42 U.S.C. 7401 et seq.

"Affected source" means a source that includes one or more *affected units*.

"Affected states" mean all states:

(1) that

(a) are one of the following contiguous states: Maryland, New Jersey and Pennsylvania; and

(b) in the judgment of the Department, may be directly affected by emissions from the facility seeking the permit, permit modification, or permit renewal being proposed; or

(2) that are within 50 miles of the permitted source.

"Affected unit" means a unit that is subject to emission reduction requirements or limitations under Title IV (Acid Disposition Control) of the Act, as defined.

"Applicable requirement" means all of the following as they apply to emissions units in a covered source subject to this regulation (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future-effective compliance dates, provided that those requirements will, upon the effective compliance date, be applicable to the operations addressed in the permit):

(1) Any standard or other requirements provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I (Air pollution Prevention and Control) of the Act that implements the relevant requirements of the Act, including any revisions to that

plan promulgated in 40 CFR, Part 52 (Approval and Promulgation of Implementation Plans);

(2) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under Title I (Air Pollution Prevention and Control), including Parts C (Prevention of Significant Deterioration of Air Quality) or D (Plan Requirements for Nonattainment Areas), of the Act;

(3) Any standard or other requirement under section 111 (Standards of Performance for New Stationary Sources) of the Act, including section 111(d);

(4) Any standard or other requirement under section 112 (Hazardous Air Pollutants) of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act, but not including the contents of any risk management plan required under section 112(r) of the Act;

(5) Any standard or other requirement of the acid rain program under Title IV (Acid Disposition Control) of the Act, or the regulations promulgated thereunder;

(6) Any requirements established pursuant to section 504(b) (Permit Requirements and Conditions - Monitoring and Analysis) or section 114(a)(3) (Inspections, Monitoring and Entry), of the Act;

(7) Any standard or other requirement governing solid waste incineration, under section 129 (Solid Waste Combustion) of the Act;

(8) Any standard or other requirement for consumer and commercial products, under section 183(e) (Federal Ozone Measures – Control of Emissions from Certain Sources) of the Act;

(9) Any standard or other requirement for tank vessels, under section 183(f) (Federal Ozone Measures - Tank Vessel Standards) of the Act;

(10) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 (Air Pollution from Outer Continental Shelf Activities) of the Act;

(11) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI (Stratospheric Ozone Protection) of the Act, unless the Administrator has determined that such requirements need not be contained in a Title V (Permits) permit; and

(12) Any national ambient air quality standard or increment or visibility requirement under Part C (Prevention of Significant Deterioration of Air Quality) of Title I (Air Pollution Prevention and Control) of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) (Inspection, Monitoring and Entry - Temporary Sources) of the Act.

“Area source” means any stationary source of hazardous air pollutants that is not a major source. For purposes of this regulation, the term "area source" shall not include motor vehicles or nonroad vehicles subject to regulation under Title II (National Emission Standards) of the Act.

“Covered source” means sources to which this regulation applies pursuant to 3.0 of this regulation.

“Department” means the Delaware Department of Natural Resources and Environmental Control as defined in 29 Del.C. Ch 80, as amended.

“Designated representative” means a responsible person or official authorized by the owner or operator of a unit to represent the owner or operator in matters pertaining to the holding, transfer or disposition of allowances allocated to a unit and the submission of and compliance with permits, permit applications and compliance plans for the unit, and shall have the meaning given to it in the regulations promulgated under the Act.

“Draft permit” means the version of a permit for which the Department offers public participation under 7.10 or affected state review under 8.1 of this regulation.

“Emissions allowable under the permit” means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

“Emission unit” means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) (Hazardous Air

Pollutants - List of Pollutants) of the Act. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV (Acid Disposition Control) of the Act.

“The EPA or the Administrator” means the Administrator of the EPA or his designee.

“Final permit” means the version of a Part 70 permit issued by the Department that has completed all review procedures required by 7.0 and 8.0 of this regulation.

“Fugitive emissions” mean those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

“Major source” means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraph (1), (2), or (3) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

(1) A major source under section 112 (Hazardous Air Pollutants) of the Act, defined as:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year ("tpy") or more of any hazardous air pollutant which has been listed pursuant to section 112(b) (Hazardous Air Pollutants - List of Pollutants) of the Act, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

(2) A major stationary source of air pollutants, as defined in section 302 (Title III - General Definitions) of the Act, that directly emits or has the potential to emit, 100 tpy or more of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) (Title III - General Definitions) of the Act, unless the source belongs to one of the following categories of stationary sources:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(xxvii) All other stationary source categories regulated by a standard promulgated under section 111 (Standards of Performance for New Stationary Sources) or section 112 (Hazardous Air Pollutants) of the Act, but only with respect to those air pollutants that have been regulated for that category.

(3) A major stationary source as defined in Part D (Plan Requirements for Nonattainment Areas) of Title I (Air Pollution Prevention and Control) of the Act, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as "serious," 25 tpy or more in areas classified as "severe," and 10 tpy or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f) (1) (2) (Plan Submissions and Requirements – NO_x Requirements) of the Act, that requirements under section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to section 184 (Control of Interstate Ozone Air Pollution) of the Act, sources with the potential to emit 50 tpy or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas:

(A) that are classified as "serious", and

(B) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide; and

(iv) For particulate matter (PM_{10}) nonattainment areas classified as "serious", sources with the potential to emit 70 tpy or more of PM_{10}.

(4) For purposes of this regulation, a research and development operation may be treated as a separate source from other stationary sources that are located on a contiguous or adjacent property and under common control only if that operation belongs to a different major group as described in the Standard Industrial Classification Manual, 1987.

“Part 70 permit or permit” (unless the context suggests otherwise) means any permit or group of permits covering a covered source that is issued, renewed, amended, or revised pursuant to this regulation.

“Part 70 program or state program” means a program approved by the Administrator under 40 CFR Part 70 (State Operating Permit Programs).

“Part 70 or Part 70 regulations” means EPA's regulations published at 40 CFR Part 70, July 21, 1992 (State Operating Permit Programs).

“Permit modification” means a revision to a Part 70 permit that meets the requirements of 7.5 of this regulation.

“Permit revision” means any permit modification or administrative permit amendment.

“Potential to emit” means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of

operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator or the Department. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in Title IV (Acid Disposition Control) of the Act, or the regulations promulgated thereunder.

“Proposed permit” means the version of a permit that the Department proposes to issue and forwards to the Administrator for review in compliance with 8.0 of this regulation.

“Regulated air pollutant” means the following:

(1) Nitrogen oxides or any volatile organic compounds;

(2) Any pollutant for which a national ambient air quality standard has been promulgated;

(3) Any pollutant that is subject to any standard promulgated under section 111 (Standards of Performance for New Stationary Sources) of the Act;

(4) Any Class I or II substance subject to a standard promulgated under or established by Title VI (Stratospheric Ozone Protection) of the Act; or

(5) Any pollutant subject to standards promulgated under section 112(d), (f) and (h) (Hazardous Air Pollutants), or other requirements established under sections 112(g), (j), and (r) of the Act. Where such a standard or other requirement applies only to one or more sources or categories of sources of an air pollutant, that pollutant is a "regulated air pollutant" only with respect to those sources or categories. If the Administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated as to that source on the date 18 months after the applicable date established pursuant to section 112(e) of the Act.

“Responsible official” means one of the following:

(1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit, and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter, 1980 dollars); or

(ii) The delegation of authority to such representative is approved in advance by the Department.

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively, or the delegation of authority to a representative approved in advance by the Department;

(3) For a municipality, state, federal, or other public agency: Either a principal executive officer or ranking elected official. For purposes of this regulation, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(4) For affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV (Acid Disposition Control) of the Act, or the regulations promulgated thereunder are concerned; and

(ii) The designated representative for any other purposes under this regulation.

“Section 502(b)(10) changes” (Permit Programs - Regulations) mean changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

“Source category” means sources which may have the same or similar operations, emissions, activities; which may emit the same type of regulated air pollutants; which are subject to the same or similar standards, limitations and operating requirements; or which may be subject to the same or similar monitoring requirements.

“Source category permit” means a Part 70 permit that meets the requirements of 6.4 of this regulation.

"Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under section 112(b) (Hazardous Air Pollutants - List of Pollutants) of the Act.

"Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the EPA, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(1) Greenhouse gases (GHG), the air pollutant defined in 40 CFR 86.1818 – 12(a), September 2, 2010, as the aggregate group of six greenhouse gases: carbon dioxide (CO_2), nitrous oxide (N_2O), methane (CH_4), hydrofluorocarbons (HFC), perfluorocarbons (PFC), and sulfur hexafluoride (SF_6), shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tpy CO_2 equivalent emissions.

(2) The term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHG emitted, and shall be computed by multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHG, by the gas's associated global warming potential as shown in Table 2-1 of this regulation "Global Warming Potentials", and summing the resultant value for each to compute a tpy CO_2e.

Table 2-1

GLOBAL WARMING POTENTIALS

Name	CAS No.	Chemical formula	Global warming potential (100 yr.)
Carbon dioxide	124–38–9	CO_2	1
Methane	74–82–8	CH_4	21
Nitrous oxide	10024–97–2	N_2O	310
HFC–23	75–46–7	CHF_3	11,700
HFC–32	75–10–5	CH_2F_2	650
HFC–41	593–53–3	CH_3F	150
HFC–125	354–33–6	C_2HF_5	2,800
HFC–134	359–35–3	$C_2H_2F_4$	1,000
HFC–134a	811–97–2	CH_2FCF_3	1,300
HFC–143	430–66–0	$C_2H_3F_3$	300
HFC–143a	420–46–2	$C_2H_3F_3$	3,800
HFC–152	624–72–6	CH_2FCH_2F	53
HFC–152a	75–37–6	CH_3CHF_2	140
HFC–161	353–36–6	CH_3CH_2F	12
HFC–227ea	431–89–0	C_3HF_7	2,900
HFC–236cb	677–56–5	$CH_2FCF_2CF_3$	1,340
HFC–236ea	431–63–0	CHF_2CHFCF_3	1,370
HFC–236fa	690–39–1	$C_3H_2F_6$	6,300
HFC–245ca	679–86–7	$C_3H_3F_5$	560
HFC–245fa	460–73–1	$CHF_2CH_2CF_3$	1,030
HFC–365mfc	406–58–6	$CH_3CF_2CH_2CF_3$	794

HFC–43–10mee	138495–42–8	$CF_3CFHCFHCF_2CF_3$	1,300
Sulfur hexafluoride	2551–62–4	SF_6	23,900
PFC–14 (Perfluoromethane)	75–73–0	CF_4	6,500
PFC–116 (Perfluoroethane)	76–16–4	C_2F_6	9,200
PFC–218 (Perfluoropropane)	76–19–7	C_3F_8	7,000
Perfluorocyclopropane	931–91–9	$C\text{-}C_3F_6$	17,340
PFC–3–1–10 (Perfluorobutane)	355–25–9	C_4F_{10}	7,000
Perfluorocyclobutane	115–25–3	$C\text{-}C_4F_8$	8,700
PFC–4–1–12 (Perfluoropentane)	678–26–2	C_5F_{12}	7,500
PFC–5–1–14 (Perfluorohexane)	355–42–0	C_6F_{14}	7,400
PFC–9–1–18	306–94–5	$C_{10}F_{18}$	7,500

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3.0 Applicability

3.1 Covered Sources. Except as exempted from the requirement to obtain a permit under 3.2 of this regulation and elsewhere herein, the following sources are subject to the permitting requirements under this regulation:

3.1.1 Any major source;

3.1.2 Any source, including an area source, subject to a standard, limitation, or other requirement under Section 111 (Standards of Performance for New Stationary Sources) of the Act;

3.1.3 Any source, including an area source, subject to a standard or other requirement under section 112 (National Emissions Standards for Hazardous Air Pollutants) of the Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of the Act;

3.1.4 Any affected source; and

3.1.5 Any source that is subject to applicable requirements.

3.2 Source Category Exemptions

3.2.1 All sources listed in 3.1 of this regulation that are not (i) major sources, (ii) affected sources, or (iii) solid waste incineration units required to obtain a permit pursuant to section 129(e) (Solid Waste Combustion - Permits) of the Act, are exempt from the obligation to obtain a Part 70 permit. Any such exempt source may opt to apply for a permit under this regulation and shall be issued a permit if the applicant otherwise satisfies all of the requirements of this regulation.

3.2.2 Sources in the following source categories are exempted from the obligation to obtain a permit under this regulation:

3.2.2.1 All sources in source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 60, Subpart AAA, "Standards of Performance for New Residential Wood Heaters"; and

3.2.2.2 All sources in source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 61, Subpart M, "National Emission Standards for Hazardous Air Pollutants" for Asbestos, section 61.145, "Standard for Demolition and Renovation".

3.3 Emissions Units and Covered Sources

3.3.1 For major sources, the permit shall include all applicable requirements for all emissions units in the major source.

3.3.2 For any nonmajor source subject to the Part 70 Program under 3.1 or 3.2 of this regulation, the permit shall include all applicable requirements applicable to emissions units that cause the source to be subject to the Part 70 Program.

3.4 Fugitive Emissions. Fugitive emissions from a covered source shall be included in the permit application and the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

3.5 Nonmajor Sources. In the case of nonmajor sources subject to a standard or other requirement under either section 111 or section 112 of the Act after July 21, 1992, the Administrator will determine whether to exempt any or all such applicable sources from the requirement to obtain a Part 70 Permit at the time that the new standard is promulgated.

3.6 Variances. Any determination by the Secretary to not require a permit under 7 Del.C. Ch 60, §6003(e), or any variance granted by the Secretary under 7 Del.C. Ch 60, §6011, shall not apply to this rule until such time as the exemption or variance is approved by the Administrator.

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4.0 Reserved

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5.0 Permit Applications

5.1 Duty to Apply

5.1.1 Timely Application

5.1.1.1 The owners or operators of covered sources, as of the date the program is approved by EPA and becomes effective (the "effective date"), shall file applications on the following schedule:

5.1.1.1.1 Sources that have the potential to emit in the aggregate 150 tons per year or less of regulated air pollutants shall file complete applications within six months of the effective date, provided that, upon request and for good cause shown, the Department may allow a source additional time up to 12 months from the effective date; and

5.1.1.1.2 All other sources shall file complete applications within 12 months of the effective date; and

5.1.1.1.3 Sources requesting creation of a source category shall submit a petition within 90 days of the effective date. If the Department finds that a source category is not appropriate, the source shall file a complete standard application within 12 months of the effective date.

5.1.1.2 The owners or operators of a source that becomes subject to the operating permit program established by this regulation at any time following the effective date shall file a complete application or petition for establishment of a source category or submit a source category application for a previously-adopted source category within 12 months of the date on which the source first becomes subject to the program.

5.1.1.3 Notwithstanding the deadlines established in 5.1.1.1 and 5.1.1.2 of this regulation, a complete application filed at any time following submission of the State program to EPA for approval and before such time as the State program is approved, shall be accepted for processing.

5.1.1.4 A source that is required to meet the requirements under section 112(g) of the Act, or to have a permit under a preconstruction review program under Title I of the Act, shall file a complete application to obtain an operating permit or permit amendment or modification within 12 months of commencing operation, provided that, a source that is required to obtain a preconstruction permit may submit an application for an operating permit or permit modification for concurrent processing. An operating permit application submitted for concurrent processing shall be submitted with the source's preconstruction review application or at such later time as the Department may allow. Where an existing

Part 70 permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

5.1.1.5 Covered sources shall file an application for renewal of an operating permit at least six months before the date of permit expiration, unless a longer period [not to exceed 18 months] is specified in the permit.

5.1.1.6 Sources required to submit applications for initial phase II acid rain permits shall submit such applications to the Department by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides as specified in 40 CFR, Part 70.5(a)(iv).

5.1.1.7 The applicant is encouraged to consult with Department personnel before submitting an application or, at any other time, concerning the operation, construction, expansion, or modification of any installation, or concerning the required pollution control devices or system, the efficiency of such devices or system, or the pollution problem related to the installation.

5.1.2 Complete Application

5.1.2.1 The Department shall review each application, including each petition for establishment of a source category, for completeness, and shall inform the applicant within 60 days of receipt if the application is incomplete or if a source category is not appropriate. In order to be complete for purposes of 5.0 of this regulation, an application must include a completed application form and, to the extent not called for by the form, the information required in 5.4 of this regulation. Unless the Department requests additional information or otherwise notifies the applicant of incompleteness within 60 days of an application, an application will be deemed complete if it contains the information required by the application form and 5.4 of this regulation.

5.1.2.2 If the Department does not notify the source within 60 days of receipt that its application is incomplete or that a source category petition is not applicable, the application or source category petition shall be deemed complete. However, nothing in 5.1.2 of this regulation shall prevent the Department from requesting additional information that is necessary to process the application.

5.1.2.3 If, while processing an application that has been determined or deemed to be complete, the Department determines that additional relevant information is reasonably necessary to evaluate or take final action on that application, the Department may request such additional information in writing. In requesting such information, the Department shall establish a reasonable deadline for a response. The applicant may request an extension of the deadline for the response.

5.1.2.4 In submitting an application for renewal of an operating permit issued under this regulation, a source may identify terms and conditions in its previous permit that should remain unchanged and incorporate by reference those portions of its existing permit and the permit application and any permit amendment or modification applications that describe products, processes, operations, and emissions to which those terms and conditions apply. The source must identify specifically and list which portions of its previous permit or applications are incorporated by reference. The Department shall review the list of terms and conditions from the previous permit that the source submits to be unchanged and make a determination as to the terms and conditions to be incorporated into the renewed permit. In addition, a renewal application must contain:

5.1.2.4.1 information specified in 5.4 of this regulation for those products, processes, operations, and emissions that

5.1.2.4.1.1 are not addressed in the existing permit;

5.1.2.4.1.2 are subject to applicable requirements that are not addressed in the existing permit; or

5.1.2.4.1.3 the source seeks permit terms and conditions that differ from those in the existing permit; and

5.1.2.4.2 a compliance plan and certification as required in 5.4.8 of this regulation.

5.1.3 Checklist

5.1.3.1 The Department shall make available to applicants application forms, together with a checklist of items required for a complete application package. An application will be deemed complete in the first instance if the applicant supplies a completed application form, together with the other items on the checklist, and complies with any requests from the Department for additional information.

5.1.3.2 No completeness determination shall be required for applications for minor permit modification procedures under 7.5.1 of this regulation. The foregoing does not relieve the applicant from the requirement to submit a complete application in accordance with 7.5 of this regulation.

5.1.4 Confidential Information. If a source submits information to the Department under a claim of confidentiality, the source shall also submit a copy of such information directly to the Administrator, if the Department requests that the source do so. Confidential information shall meet the requirements of 7 Del.C., Ch 60, §6014, and 29 Del.C., Ch 100. However, by submitting a permit application, a source waives any right to confidentiality as to the contents of its permit, and the permit contents will not be entitled to protection under 7 Del.C., Ch 60, §6014.

5.2 Duty to Supplement or Correct Application

Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

5.3 Insignificant Activities.

An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, including those that become applicable after the effective date of this regulation. The emissions from the activities listed in Appendix A of this regulation shall be included for purposes of determining whether a source is subject to this rule, or when determining the applicability of any applicable requirement.

5.4 Standard Application Form and Required Information

Covered sources shall submit applications on the standard application form or the source category permit application form that the Department provides for that purpose. The application must include information needed to determine the applicability of any applicable requirement or to evaluate the fee amount as established from time to time by the Delaware General Assembly. The applicant shall submit the information called for by the application form for each emissions unit at the source to be permitted, except for insignificant activities listed on Appendix A of this regulation and those activities listed in 3.2.2 of this regulation. The source must provide a list of any such activities that are excluded because of size, emissions rate, or production rate; however, an application may not omit information needed to determine the applicability of, or to impose, an applicable requirement. The emissions from the activities listed in Appendix A of this regulation shall be included for purposes of determining whether a source is subject to this rule, or when determining the applicability of any applicable requirement. The standard application form and any attachments shall require that the following information be provided:

5.4.1 Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact.

5.4.2 A description of the source's processes and products (by two-digit Standard Industrial Classification Code) including any associated with each alternate scenario identified by the source.

5.4.3 The following emissions-related information:

5.4.3.1 All emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. The permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under 5.4 or 3.2 of this regulation. The source shall submit additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to determine the amount of any permit fees owed under the fee schedule as established from time to time by the Delaware General Assembly.

5.4.3.2 Identification and description of all points of emissions described in 5.4.3.1 of this regulation in sufficient detail to establish the basis for fees and applicability of the Act's requirements.

5.4.3.3 Emissions rates in tons per year, and in such terms as are necessary to establish compliance consistent with the applicable regulation and with the applicable standard reference test method, if any.

5.4.3.4 The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

5.4.3.5 Identification and description of air pollution control equipment and compliance monitoring devices or activities.

5.4.3.6 Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants at the covered source.

5.4.3.7 Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to section 123 of the Act).

5.4.3.8 Calculations on which the information in 5.4.3.1 through 5.4.3.7 of this regulation is based.

5.4.4 The following air pollution control requirements:

5.4.4.1 Citation and description of all applicable requirements, and

5.4.4.2 Description of or reference to any applicable test method for determining compliance with each applicable requirement.

5.4.5 Other specific information required under 7 DE Admin. Code 1100, “Regulations Governing the Control of Air Pollution,” to implement and enforce other applicable requirements of the Act or of this regulation, or to determine the applicability of such requirements.

5.4.6 An explanation of any proposed exemptions from otherwise applicable requirements.

5.4.7 Additional information as determined to be necessary by the Department to define alternative operating scenarios identified by the source pursuant to 6.1.10 of this regulation or to define permit terms and conditions implementing 6.8 or 6.1.11 of this regulation.

5.4.8 A compliance plan for all covered sources that contains all the following:

5.4.8.1 A description of the compliance status of the source with respect to all applicable requirements.

5.4.8.2 A description as follows:

5.4.8.2.1 For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

5.4.8.2.2 For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

5.4.8.2.3 For applicable requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

5.4.8.3 A compliance schedule as follows:

5.4.8.3.1 For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

5.4.8.3.2 For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

5.4.8.3.3 A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance will be supplemental to, and shall not sanction noncompliance with, the applicable requirements upon which it is based.

5.4.8.4 A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a schedule of compliance under 5.4.8 of this regulation.

5.4.8.5 The compliance plan content requirements specified in 5.4.8 of this regulation shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the Act with regard to the schedule and method or methods the source will use to achieve compliance with the acid rain emissions limitations.

5.4.9 Requirements for compliance certification, including the following:

5.4.9.1 A certification of compliance with all applicable requirements by a responsible official consistent with 5.6 of this regulation and section 114(a)(3) of the Act;

5.4.9.2 A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

5.4.9.3 A schedule for submission of compliance certifications during the permit term, which shall be submitted annually, or more frequently if specified by an underlying applicable requirement or by the Department; and

5.4.9.4 A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

5.4.10 The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act

5.5 Source Category Permit Application Form

The Department shall provide for a source category permit Application Form for each designated source category approved for such permit coverage, which shall require such information as the Department determines is necessary to evaluate the appropriateness and applicability of the source for inclusion under the provisions of a source category. An applicant shall submit the information called-for by the application, which shall meet the requirements of Title V of the Act, and include all information necessary to determine qualification for and to ensure compliance with the source category permit.

5.6 Certification

Any application form, report, or compliance certification submitted pursuant to this regulation shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this regulation shall be signed by a responsible official and shall contain the following language: "I certify, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."

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6.0 Permit Contents

6.1 Standard Permit Requirements. Each permit issued under this regulation shall include all applicable requirements that apply to the permitted source at the time of issuance. Each permit shall include the following elements:

6.1.1 Emission Limitations and Standards. The permit shall specify emissions limitations and standards that constitute applicable requirements, and shall include those operational requirements and limitations necessary to assure compliance with all applicable requirements at the time of permit issuance.

6.1.1.1 The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

6.1.1.2 The permit shall state that, where an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by EPA.

6.1.1.3 If an applicable implementation plan or an applicable requirement allows a source to comply through an alternative emission limit or means of compliance, a source may request that such an alternative limit or means of compliance be specified in its permit. Such an alternative emission limit or means of compliance shall be included in a source's permit upon a showing that it is quantifiable, accountable, enforceable, and based on replicable procedures. The source shall propose permit terms and conditions to satisfy these requirements in its application.

6.1.2 Permit Duration. The permit shall specify a fixed term. The Department shall issue permits for any fixed period requested in the permit application, not to exceed five years, except as provided in 6.1.2.1 and 6.1.2.2 of this regulation:

6.1.2.1 Permits issued to affected sources shall in all cases have a fixed term of five years.

6.1.2.2 Permits issued to solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act shall have a term not to exceed 12 years. Such permits shall be reviewed every five years.

6.1.3 Monitoring and Related Recordkeeping and Reporting Requirements.

6.1.3.1 Each permit shall contain the following requirements with respect to monitoring:

6.1.3.1.1 All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to sections 114(a)(3) or 504(b) of the Act;

6.1.3.1.2 Where the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to 6.1.3.3 of this regulation. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of 6.1.3 of this regulation; and

6.1.3.1.3 As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

6.1.3.2 With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

6.1.3.2.1 Records of required monitoring information that include the following:

6.1.3.2.1.1 The date, place as defined in the permit, and time of sampling or measurements;

6.1.3.2.1.2 The date(s) analyses were performed;

6.1.3.2.1.3 The company or entity that performed the analyses;

6.1.3.2.1.4 The analytical techniques or methods used;

6.1.3.2.1.5 The results of such analyses; and

6.1.3.2.1.6 The operating conditions as existing at the time of sampling or measurement.

6.1.3.2.2 Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings, where appropriate, for continuous monitoring instrumentation, and copies of all reports required by the permit. Where appropriate, the permit may specify that records may be maintained in computerized form.

6.1.3.2.3 Unless otherwise mandated by applicable requirements, a permit may require that records be kept of data, or periodic samples of monitoring data, where such data are, in the judgment of the Department, adequate and necessary to demonstrate continued compliance with the terms and conditions of the permit. The provision of 6.1.3.2.3 of this regulation shall not supersede 6.1.3.2.1 or 6.1.3.2.2 of this regulation.

6.1.3.3 With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:

6.1.3.3.1 A permit issued under these regulations shall require the permittee to submit a report of any required monitoring every six months. To the extent possible, the schedule for submission of such reports shall be timed to coincide with other periodic reports required by the permit, including the permittee's annual compliance certification.

6.1.3.3.2 Each report submitted under 6.1.3.3.1 of this regulation shall identify any deviations from permit requirements since the previous report, and any deviations from the monitoring, recordkeeping and reporting requirements under the permit.

6.1.3.3.3 In addition to semiannual monitoring reports, each permittee shall be required to submit supplemental reports as follows:

6.1.3.3.3.1 Any deviation resulting from emergency or malfunction conditions as defined in 6.7 of this regulation shall be reported within two working days of the date on which the permittee first becomes aware of the deviation, if the permittee wishes to assert the affirmative defense authorized under 6.7 of this regulation;

6.1.3.3.3.2 Any deviation that poses an imminent and substantial danger to public health, safety, or the environment shall be reported immediately upon discovery and after activating the appropriate site emergency plan;

6.1.3.3.3.3 Any other deviations that are identified in the permit as requiring more frequent reporting than the permittee's semiannual report shall be reported on the schedule specified in the permit;

6.1.3.3.3.4 All reports of deviations from permit conditions shall identify the probable cause of the deviations and any corrective actions or preventative measures taken.

6.1.3.3.3.5 Nothing herein shall relieve the permittee from any reporting requirements under federal, state or local laws.

6.1.3.3.4 Every report submitted under 6.1.3 of this regulation shall be certified by a responsible official, except that if a report of a deviation required under 6.1.3.3.3 of this regulation must be submitted within 10 days of the deviation, the report may be submitted in the first instance without a certification if an appropriate certification is provided within 10 days thereafter, together with any corrected or supplemental information required concerning the deviation.

6.1.3.3.5 A permittee may request confidential treatment for information in any report submitted under 6.1.3 of this regulation pursuant to the limitations and procedures set out in 5.1.4 of this regulation.

6.1.4 Risk Management Plans. If the source is required to develop and register a risk management plan pursuant to section 112(r) of the Act, the permit need only specify that it will comply with the requirement to register such a plan. The content of the risk management plan need not itself be incorporated as a permit term.

6.1.5 Emissions Exceeding Title IV Allowances. The permit shall prohibit emissions exceeding any allowances that the source lawfully holds under Title IV of the Act or the regulations promulgated thereunder.

6.1.5.1 No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

6.1.5.2 No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

6.1.5.3 Any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Act.

6.1.6 Severability Clause. The permit shall include a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

6.1.7 General Requirements. The permit shall include provisions stating the following:

6.1.7.1 The permittee must comply with all conditions of the permit. Any noncompliance with the permit constitutes a violation of the Act and is grounds for enforcement action, for permit termination, revocation and reissuance or modification, or for denial of a permit renewal application.

6.1.7.2 It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. However, nothing in 6.1.7 of this regulation shall be construed as precluding consideration of a need to halt or reduce activity as a mitigating factor in assessing penalties for noncompliance if the health, safety, or environmental impacts of halting or reducing operations would be more serious than the impacts of continuing operations.

6.1.7.3 The permit may be modified, revoked, reopened, and reissued, or terminated for cause. Except as provided under 7.5.1 of this regulation for minor permit modifications, the filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a modification of planned changes or anticipated noncompliance does not stay any permit condition.

6.1.7.4 The permit does not convey any property rights of any sort, or any exclusive privilege.

6.1.7.5 The permittee shall furnish to the Department, upon receipt of a written request and within a reasonable time, any information that the Department may request to determine whether cause exists to modify, terminate or revoke the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Department copies of records required to be kept by the permit. The permittee may make a claim of confidentiality pursuant to 5.1.4 of this regulation for any information or records submitted under 6.1.7 of this regulation.

6.1.8 Fees. The permit shall provide that the permittee will pay fees to the Department consistent with the fee schedule established from time to time by the Delaware General Assembly.

6.1.9 Emissions Trading. The permit shall provide that no permit revision shall be required under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

6.1.10 Operating Scenarios. The permit shall include terms and conditions applicable to all operating scenarios described in the permit application and eligible for approval under applicable requirements. The permit shall authorize the permittee to make changes among operating scenarios authorized in the permit without notice, but shall require the permittee contemporaneously with making a change from one operating scenario to another to record in a log at the permitted facility the scenario under which it is operating. Each operating scenario shall meet all applicable requirements, and the requirements of this regulation.

6.1.11 Emissions Averaging. The permit shall include terms and conditions, if the permit applicant requests them, for the trading or averaging of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading or averaging such increases and decreases. Such terms and conditions shall include terms under 6.1 and 6.3 of this regulation to determine compliance and shall satisfy all requirements of the applicable requirements authorizing such trading or averaging.

6.2 Federally Enforceable Requirements

6.2.1 Except as provided in 6.2.2 of this regulation, all terms and conditions in a permit issued under 6.0 of this regulation, including any provisions designed to limit a source's potential to emit, are enforceable by the Department, by EPA, and by citizens under section 304 of the Act.

6.2.2 Notwithstanding 6.2.1 of this regulation, the Department shall designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or any of its applicable requirements, and such terms and conditions shall not be enforceable by EPA and citizens under section 304 of the Act. Terms and conditions so designated shall not be subject to the requirements of 7.0 and 8.0 of this regulation or of 40 CFR Part 70. Terms and conditions designated under 6.2 of this regulation may be included in an addendum to the source's permit.

6.3 Compliance Requirements. All permits issued under this regulation shall contain the following elements with respect to compliance:

6.3.1 Consistent with 6.1.3 of this regulation, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by a permit under this regulation shall contain a certification by a responsible official that meets the requirements of 5.6 of this regulation.

6.3.2 Inspection and entry requirements that require that, upon presentation of identification, the permittee shall allow authorized officials of the Department to perform the following:

6.3.2.1 Enter upon the permittee's premises where a source is located or emissions-related activity is conducted, or where records that must be kept under the conditions of the permit may be located;

6.3.2.2 Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

6.3.2.3 Inspect at reasonable times and using reasonable safety practices any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

6.3.2.4 As authorized by the Act, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

6.3.3 A schedule of compliance to the extent required under 5.4.8.3 of this regulation.

6.3.4 To the extent required under an applicable schedule of compliance and 5.4.8 of this regulation, progress reports, to be submitted at least semiannually, or more frequently if specified in the applicable requirement or by the Department. Such progress reports shall contain the following:

6.3.4.1 Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

6.3.4.2 An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

6.3.5 Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Each permit shall specify:

6.3.5.1 The frequency (which shall be annually unless the applicable requirement or the Department specifies submission more frequently) of submissions of compliance certifications;

6.3.5.2 In accordance with 6.1.3 of this regulation, a means for monitoring the compliance of the source with emissions limitations, standards, and work practices contained in applicable requirements;

6.3.5.3 A requirement that the compliance certification include the following:

6.3.5.3.1 The identification of each term or condition of the permit that is the basis of the certification;

6.3.5.3.2 The permittee's current compliance status, as shown by monitoring data and other information reasonably available to the permittee;

6.3.5.3.3 Whether compliance was continuous or intermittent;

6.3.5.3.4 The method or methods used for determining the compliance status of the source, currently and over the reporting period as required by 6.1.3 of this regulation; and

6.3.5.3.5 Such other facts as the Department may require to determine the compliance status of the source;

6.3.5.4 A requirement that all compliance certifications be submitted to EPA as well as to the Department;

6.3.5.5 Such additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the Act; and

6.3.5.6 Such other provisions as the Department may require.

6.4 Source Category Permits

6.4.1 The Department may establish source categories that it concludes are appropriate for source category permits, and any source may petition the Department to establish a source category. The Department may identify a category of sources if it finds that:

6.4.1.1 There are several permittees, permit applicants or potential permit applicants who have the same or substantially similar operations, emissions, activities or facilities;

6.4.1.2 The permittees, permit applicants or potential permit applicants emit the same types of regulated air pollutants;

6.4.1.3 The operations, emissions, activities or facilities are subject to the same or similar standards, limitations and operating requirements; and

6.4.1.4 The operations, emissions, activities or facilities are subject to the same or similar monitoring requirements.

6.4.2 Source Category Permits may be issued for the following purposes:

6.4.2.1 To establish terms and conditions to implement applicable requirements for a source category;

6.4.2.2 To establish terms and conditions to implement applicable requirements for specified categories of changes to permitted sources; and

6.4.2.3 To establish federally-enforceable caps on emissions from sources in the specified category.

6.4.3 No source category permit may be issued for affected sources under the acid rain program unless otherwise provided in regulations promulgated under Title IV of the Act.

6.4.4 For each source category identified, the Department may, after public notice and hearing conducted in accordance with the procedures specified in 7.10 of this regulation, adopt source category requirements including, but not limited to, emission limitations and standards, monitoring and related recordkeeping and reporting requirements, and fees, and criteria by which sources may qualify for source category permits.

6.4.5 After a source category has been established, any qualifying source may submit a source category application.

6.4.5.1 A source category application shall identify the source and provide information sufficient to demonstrate that it falls within the identified source category, together with any additional information that may be specified by the Department;

6.4.5.2 The Department shall act to approve or deny the application within 120 days of receipt; and

6.4.5.3 A final action approving or denying a source category application shall be subject to judicial review.

6.4.6 A source category permit issued under 6.0 of this regulation may provide that the source shall be entitled to the protection of the permit shield for all operations, activities and emissions addressed by the source category permit unless and to the extent that it is subsequently determined that the source does not qualify for the terms and conditions of the source category permit.

6.4.7 If some but not all of a source's operations, activities and emissions are eligible for coverage under one or more source categories, the source may apply for and receive coverage under the source category permits for the operations, activities and emissions that are so eligible. If the source is required under 3.0 of this regulation to obtain a permit addressing the remainder of its operations, activities and emissions, it may apply for and receive a permit that addresses specifically only those items not covered by the source category permits. In such a case, the source's permit shall identify all operations, activities and emissions that are subject to source category permits and incorporate those source category permits by reference. Unless the permit specifically states otherwise, the terms and conditions of any source category permits incorporated by reference shall apply.

6.5 Temporary Sources. The Department may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one change of location during the term of the permit. No affected source shall be permitted as a temporary source. Permits for temporary sources shall include the following:

6.5.1 Conditions that will assure compliance with all applicable requirements at all authorized locations;

6.5.2 Requirements that the owner or operator notify the permitting authority at least 45 days in advance of each change in location;

6.5.3 The proposed change in location shall be subject to public comment and judicial review; and

6.5.4 Conditions that assure compliance with all other provisions of 6.0 of this regulation.

6.6 Permit Shield

6.6.1 Except as provided in this regulation, a source may request that the Department include in the Part 70 permit a provision stating that compliance with the terms and conditions of the permit shall

constitute compliance with any applicable requirement specifically identified in the permit as of the day of permit issuance.

6.6.2 The Department may deny, in whole or in part, a permit shield requested pursuant to 6.6.1 of this regulation. Should the Department make such a denial, it shall identify the portion or portions of the permit to receive the permit shield and the portion or portions denied the permit shield, and shall set-forth the basis for denial.

6.6.3 A Part 70 permit that does not expressly provide a permit shield shall be presumed not to provide such a shield.

6.6.4 Nothing in 6.6 of this regulation shall in any way limit or affect the following:

6.6.4.1 The provisions of section 303 (Emergency Orders) of the Act, including the authority of the Administrator under that section; or

6.6.4.2 The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

6.6.4.3 The applicable requirements of the acid rain program, consistent with section 408(a) of the Act; or

6.6.4.4 The ability of EPA to obtain information from a source pursuant to section 114 of the Act.

6.7 Emergencies or Malfunctions

6.7.1 Definitions

"Emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency.

"Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner, and that causes the source to exceed a technology based emission limitation under the permit, due to unavoidable increases in emissions attributable to the malfunction. An emergency or malfunction shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

6.7.2 Effect of an emergency or malfunction. An emergency or malfunction constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of 6.7.3 of this regulation are met.

6.7.3 The affirmative defense of emergency or malfunction shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

6.7.3.1 An emergency or malfunction occurred and that the permittee can identify the cause or causes of the emergency or malfunction;

6.7.3.2 The permitted facility was at the time being operated in a prudent and professional manner and in compliance with generally accepted industry operations and maintenance procedures;

6.7.3.3 During the period of the emergency or malfunction the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

6.7.3.4 The permittee submitted notice of the emergency or malfunction to the Department within two working days of the time when emission limitations were exceeded due to the emergency or malfunction. Such notice must contain a description of the emergency or malfunction, any steps taken to mitigate emissions, and corrective actions taken.

6.7.4 In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency or malfunction has the burden of proof.

6.7.5 The provision of 6.7 of this regulation is in addition to any emergency or malfunction provision contained in any applicable requirement.

6.8 Operational Flexibility. Each permit issued under this regulation shall provide that a permitted facility is expressly authorized to make a section 502(b)(10) (of the Act) change within the facility without a permit revision, if the change is not a modification under any provision of Title I of the Act or the State Implementation Plan (SIP), does not involve a change in compliance schedule dates, and the change does not result in a level of emissions exceeding the emissions allowable under the permit, whether expressed therein as a rate of emissions or in terms of total emissions.

6.8.1 Before making a change under this provision, the permittee shall provide advance written notice to the Department and to EPA, describing the change to be made, the date on which the change will occur, any changes in emissions, and any permit terms and conditions that are affected, including any new applicable requirements. The permittee shall thereafter maintain a copy of the notice with the permit. The written notice shall be provided to EPA and the Department at least seven calendar days before the change is to be made, except that this period may be shortened or eliminated as necessary for a change that must be implemented more quickly to address unanticipated conditions posing a significant health, safety, or environmental hazard. If less than seven calendar days notice is provided because of a need to respond more quickly to such unanticipated conditions, the permittee shall provide notice to EPA and the Department as soon as possible after learning of the need to make the change, together with the reason or reasons why advance notice could not be given.

6.8.2 The permit shield provided under 6.6 of this regulation shall not apply to changes made under 6.0 of this regulation.

6.8.3 Upon the request of a permit applicant, the Department shall issue a permit that contains terms and conditions allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that assure that the emissions trades are quantifiable and enforceable and comply with all applicable requirements and 6.1 and 6.3 of this regulation. Under 6.8.3 of this regulation, the written notification required above shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

12/11/2000

7.0 Permit Issuance, Renewal, Reopenings, And Revisions

7.1 Action on Application

7.1.1 A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

7.1.1.1 The Department has received a complete application for a permit, permit modification, or permit renewal;

7.1.1.2 The Department has complied with the requirements for public participation under 7.10 of this regulation;

7.1.1.3 The Department has complied with the requirements for notifying and responding to affected states under 8.1 of this regulation;

7.1.1.4 The Department finds that the conditions of the permit provide for compliance with all applicable requirements and the requirements of this regulation; and

7.1.1.5 EPA has received a copy of the proposed permit and any notices required under 8.2 of this regulation, and has not objected to issuance of the permit under 40 CFR, section 70.8(c) within the time specified therein.

7.1.2 Following review of an application submitted in accordance with this regulation, the Department shall either deny the application and state the reasons for doing so, or issue for public notice a draft permit, permit modification, or renewal in accordance with 7.10 of this regulation. The draft shall be accompanied by a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The Department shall send this statement to EPA, to affected states, to any person who requests it, and to the applicant.

7.1.3 Following completion of the public notice period, if no hearing is held, the Department shall either deny the application and state the reasons for doing so, or prepare and submit to EPA a proposed permit, permit modification, or renewal. If a public hearing is held, the Secretary of the Department shall issue an Order in accordance with 7 Del.C. Ch 60, §6006, either denying the application and stating the reasons for doing so, or prepare and submit to EPA a proposed permit, permit modification, or renewal.

7.1.4 Action Following EPA Review

7.1.4.1 Upon receipt of notice from EPA that it will not object to a proposed permit, permit modification, or permit renewal that has been submitted for EPA review pursuant to 7.0 of this regulation, the Department shall issue the permit, permit modification, or permit renewal forthwith.

7.4.1.2 Upon the passage of 45 days after submission of a proposed or revised proposed permit, permit modification, or permit renewal for EPA review and, if EPA has not notified the Department that it objects to the proposed permit action, the Department shall issue the permit, permit modification, or renewal forthwith.

7.1.4.3 If EPA objects to the proposed permit, the Department shall not issue the permit as proposed, but shall consult with EPA, and the applicant and shall submit a revised proposed permit to EPA, unless the Department's decision is to deny the permit.

7.1.5 Except as provided in 7.1.5.1 or 7.1.5.2 of this regulation, the Department shall take final action on each application for a permit within 18 months after receiving a complete application. Final action on each application for a permit modification shall be taken within 12 months after receipt of a complete application. Final action on each application for a permit renewal shall be taken within one year after receipt of a complete application. For each such application, the Department shall either deny the application or submit a proposed permit, modification or renewal to EPA.

7.1.5.1 The Department shall take final action on at least one third of all initial permit applications (as defined in 5.1.1.1 of this regulation) annually during the first three years following final approval of the State program by EPA.

7.1.5.2 The Department shall take action on any permit, permit modification, or renewal issued in compliance with regulations promulgated under Title IV or V of the Act for the permitting of affected sources under the acid rain program within the time specified in those regulations.

7.1.6 To the extent feasible, applications shall be acted upon in the order received, except that:

7.1.6.1 Priority shall be given to taking final action on applications for construction or modification under Title I, Parts C and D of the Act.

7.1.6.2 For processing purposes, the Department may group together applications addressing any group of similar sources.

7.1.6.3 The Department may give expedited treatment to simple applications that do not require significant review (e.g., permits incorporating few or no substantive regulatory requirements).

7.1.6.4 A source may submit a request for expedited processing of any application submitted under this regulation. Any such request shall include a statement of reasons and shall identify the date by which final action is requested, taking into account the time, if any, required for public and affected state comment and EPA review. In reviewing such a request, the Department shall consider, among other relevant factors, the reasons for expedited treatment stated by the applicant, the complexity of the permit action at issue, and the availability of Department staff and resources. The Department shall inform the applicant within 60 days of receipt of a request for expedited treatment whether that request has been granted, granted in part, or denied. A decision regarding expedited processing shall not be subject to review.

7.1.6.5 The Department may give expedited treatment to an application if the source certifies that early approval of the application is required to enable it to comply with applicable requirements. In submitting a certification requesting expedited treatment, the source shall explain why early approval is required for compliance with applicable requirements and identify the date by which final approval is requested.

7.2 Requirement for a Permit. Except as provided in 7.2.1 and 7.2.2 of this regulation, no covered source may operate after the time that it is required to submit a timely and complete application under an approved permit program, except in compliance with a permit issued under this regulation.

7.2.1 If a covered source submits a timely and complete application for permit issuance or renewal, that source's failure to have a permit shall not be a violation of the requirement to have such a permit until the Department takes final action on the application. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to 5.1.2 of this regulation, the applicant fails to submit by the deadline specified in writing by the Department any additional information identified as being reasonably required to process the application.

7.2.2 If a covered source files a timely application that the Department determines to be incomplete, the source's failure to have a permit may be deemed a violation of this regulation until such time as the deficiency is cured.

7.2.3 The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under Title I of the Act.

7.3 Permit Renewal and Expiration

7.3.1 Applications for permit renewal shall be subject to the same procedural requirements, including those for public participation, affected state comment, and EPA review, that apply to initial permit issuance under 7.1 of this regulation, except that an application for permit renewal may address only those portions of the permit that the Department determines require revision, supplementing, or deletion, incorporating the remaining permit terms by reference from the previous permit. The Department may similarly, in issuing a draft renewal permit or proposed renewal permit, specify only those portions that will be revised, supplemented, or deleted, incorporating the remaining permit terms by reference.

7.3.2 A source's right to operate shall terminate upon the expiration of its permit, unless a timely and complete renewal application has been submitted at least six months before the date of expiration or such earlier date as the Department may specify in the permit.

7.3.3 If a timely and complete application for a permit renewal is submitted, but the Department fails to take final action to issue or deny the renewal permit before the end of the term of the previous permit, then the permit shall not expire until the renewal permit has been issued or denied, and any permit shield granted for the permit shall continue in effect during that time.

7.4 Administrative Permit Amendments

7.4.1 An "administrative permit amendment" is a permit revision that:

7.4.1.1 Corrects typographical errors;

7.4.1.2 Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

7.4.1.3 Requires more frequent monitoring or reporting by the permittee;

7.4.1.4 Allows for a change in ownership or operational control of a source where the Department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Department;

7.4.1.5 Incorporates into the permit the requirements from preconstruction review permits issued by the Department under 7 DE Admin. Code 1102 or 7 DE Admin. Code 1125, when such permits were issued meeting the requirements of 11.2.10, 11.5, 12.4, 12.5 and 12.6 of 7 DE Admin. Code 1102.

7.4.2 Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

7.4.3 Administrative Permit Amendment Procedures. An administrative permit amendment shall be made by the Department in accord with the following:

7.4.3.1 The Department shall take final action on a request for an administrative permit amendment within 60 days from the date of receipt of such a request, and may incorporate the proposed changes without providing notice to the public or affected states provided that it designates any such permit revisions as having been made pursuant to 7.4 of this regulation.

7.4.3.2 The Department shall submit a copy of the revised permit to the Administrator.

7.4.3.3 The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

7.4.4 The Department may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in 6.6 of this regulation for administrative permit amendments made pursuant to 7.4.1.5 of this regulation.

7.5 Permit Modification. A permit modification is any revision to an operating permit that cannot be accomplished under the program's provisions for administrative permit amendments under 7.4 of this regulation. A permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

7.5.1 Minor Permit Modification Procedures

7.5.1.1 Criteria.

7.5.1.1.1 Minor permit modification procedures may be used only for those permit modifications that:

7.5.1.1.1.1 Do not violate any applicable requirement;

7.5.1.1.1.2 Do not involve significant changes to existing monitoring, reporting or recordkeeping requirements in the permit;

7.5.1.1.1.3 Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

7.5.1.1.1.4 Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject, or do not seek to establish or change compliance schedule dates. Such terms and conditions include:

7.5.1.1.1.4.1 A federally-enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the Act; and

7.5.1.1.1.4.2 An alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Act;

7.5.1.1.1.5 Are not modifications under any provision of Title I of the Act; and

7.5.1.1.1.6 Are not required by this regulation to be processed as a significant modification.

7.5.1.1.2 Notwithstanding 7.5.2.1.1 and 7.5.3.1 of this regulation, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the Delaware State Implementation Plan, or in applicable requirements promulgated by EPA.

7.5.1.2 Application. To use the minor permit modification procedures, a source shall submit an application requesting such use which shall meet the basic permit application requirements under this regulation and shall include the following:

7.5.1.2.1 A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

7.5.1.2.2 The source's suggested draft permit;

7.5.1.2.3 Certification by a responsible official, consistent with 5.6 of this regulation, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

7.5.1.2.4 Completed forms for the Department to use to notify EPA and affected states as required under 8.0 of this regulation.

7.5.1.3 EPA and Affected State Notification. Within five working days of receipt of a minor permit modification application, the Department shall notify EPA and affected states of the requested permit modification. The Department shall promptly send any notice required under 8.1.2 of this regulation to EPA.

7.5.1.4 Timetable for Issuance. The Department will not issue a final permit modification until after EPA's 45-day review period or until EPA has notified the Department that EPA will not object to issuance of the permit modification, whichever occurs first, although the Department can approve the permit modification prior to that time. Within 90 days of the Department's receipt of an application under

the minor permit modification procedures or 15 days after the end of EPA's 45-day review period under 8.2 of this regulation, whichever is later, the Department shall:

7.5.1.4.1 Issue the permit modification as proposed;

7.5.1.4.2 Deny the permit modification application;

7.5.1.4.3 Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

7.5.1.4.4 Revise the draft permit modification and transmit to EPA the new proposed permit modification as required by 40 CFR Part 70.8(a).

7.5.1.5 Source's Ability to Make Change. Immediately after filing an application meeting the requirements of these minor permit modification procedures, the source is authorized to make the change or changes proposed in the application. After the source makes the change allowed by the preceding sentence, and until the Department takes any of the actions specified in 7.5.1.4.1 through 7.5.1.4.4 of this regulation, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this period, the source need not comply with the existing terms and conditions it seeks to modify; however, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions may be enforced against it.

7.5.1.6 Permit Shield. The permit shield under 6.6 of this regulation shall not extend to minor permit modifications.

7.5.1.7 Public Notice. The provisions of 7.10 of this regulation shall apply to minor permit modifications.

7.5.2 Group Processing of Minor Permit Modifications

Pursuant to 7.5.2 of this regulation, the Department may modify the procedure outlined in 7.5.1 of this regulation to process groups of a source's applications for certain modifications eligible for minor permit modification processing.

7.5.2.1 Criteria. Group processing of modifications may be used only for those permit modifications:

7.5.2.1.1 That meet the criteria for minor permit modification procedures under 7.5.1.1.1 of this regulation; and

7.5.2.1.2 That collectively are below the following threshold level: 10% of the emissions allowable under the permit for the emissions unit for which the change is requested, 20% of the applicable definition of major source, or five tons per year, whichever is least.

7.5.2.2 Application. An application requesting the use of group processing procedures shall meet the requirements of 5.4 of this regulation and shall include the following:

7.5.2.2.1 A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

7.5.2.2.2 The source's suggested draft permit.

7.5.2.2.3 Certification by a responsible official, consistent with 5.6 of this regulation, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

7.5.2.2.4 A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under 7.5.2.1.2 of this regulation.

7.5.2.2.5 Certification, consistent with 5.6 of this regulation, that the source has notified EPA of the proposed modification. Such notification need only contain a brief description of the requested modification.

7.5.2.2.6 Completed forms for the Department to use to notify the Administrator and affected states as required under 8.0 of this regulation.

7.5.2.3 EPA and Affected State Notification. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under 7.5.2.1.2 of this regulation, whichever is earlier, the

Department promptly shall notify the Administrator and affected states of the requested permit modifications. The Department shall send any notice required under 8.1.2 of this regulation to the Administrator.

7.5.2.4 Timetable for Issuance. The provisions of 7.5.1.4 of this regulation shall apply to modifications eligible for group processing, except that the Department shall take one of the actions specified in 7.5.1.4.1 through 7.5.1.4.4 of this regulation within 180 days of receipt of the application or 15 days after the end of the Administrator's 45-day review period under 8.2 of this regulation, whichever is later.

7.5.2.5 Source's Ability to Make Change. The provisions of 7.5.1.5 of this regulation shall apply to modifications eligible for group processing.

7.5.2.6 Permit Shield. The permit shield under 6.6 of this regulation shall not extend to modifications eligible for group processing.

7.5.2.7 Public Notice. The provisions of 7.10 of this regulation shall apply to modifications eligible for group processing.

7.5.3 Significant Modification Procedures

7.5.3.1 Criteria. Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications or administrative amendments, or that:

7.5.3.1.1 Involve a significant change in existing monitoring permit terms or conditions, or constitute a relaxation of reporting or recordkeeping permit terms or conditions;

7.5.3.1.2 Require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

7.5.3.1.3 Seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include, but are not limited to:

7.5.3.1.3.1 A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I;

7.5.3.1.3.2 An alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Act; and

7.5.3.1.4 Are modifications under any provision of Title I of the Act, except those that qualify for processing as administrative permit amendments under 7.4 of this regulation.

7.5.3.2 Nothing herein shall be construed to preclude the permittee from making changes consistent with this regulation that would render existing permit compliance terms and conditions irrelevant.

7.5.3.3 Procedures for processing. Significant permit modifications shall meet all requirements of this regulation that are applicable to permit issuance and renewal, including those for applications, public participation, review by affected states, and review by EPA. The application for the modification shall describe the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs. The Department shall complete review on the majority of significant permit modifications within nine months after receipt of a complete application.

7.6 Reopening for Cause

7.6.1 A permit shall be reopened for cause if:

7.6.1.1 The Department or EPA determines that the permit contains a material mistake or that the emissions standards or other terms of the permit were based on inaccurate information;

7.6.1.2 Additional applicable requirements under the Act become applicable to the source if:

7.6.1.2.1 The source is a major source;

7.6.1.2.2 The permit has a remaining term of more than three years; or

7.6.1.2.3 The effective date of the requirement is earlier than the date on which the permit is due to expire. However, if the original permit or any of its terms and conditions has been extended pursuant to 7.3.3 of this regulation, the Department may require the source to revise the permit renewal application to incorporate additional applicable requirements.

7.6.1.3 The source is an affected source under the acid rain program and additional requirements (including excess emissions requirements) become applicable to that source. Upon approval by EPA excess emissions offset plans shall be deemed to be incorporated into the permit; or

7.6.1.4 The Department or EPA determines that the permit must be revised to assure compliance by the source with applicable requirements.

7.6.2 If the Department finds reason to believe that a permit should be reopened for cause, it shall provide at least 30 days prior written notice to that effect to the source, except the notice period can be shorter if the Department finds that an emergency exists.

7.6.2.1 Such notice shall include a statement of the terms and conditions that the Department proposes to change, delete, or add to the permit. If the Department does not have sufficient information to determine the terms and conditions that must be changed, deleted, or added to the permit, the notice shall request the source to provide that information within a period of time specified in the notice, which shall be not less than 30 days except in the case of an emergency.

7.6.2.2 The Department shall give the source an opportunity to provide evidence that the permit should not be reopened.

7.6.3 In reissuing the permit, the Department shall follow the procedures established under 7.1 and 7.10 of this regulation. The source shall in all cases be afforded an opportunity to comment on the revised permit terms.

7.6.4 Any reopening under 7.6.1.2 of this regulation shall be completed within 18 months after promulgation of the applicable requirements.

7.7 Reopening for Cause by EPA

7.7.1 If the Department receives a notice from EPA that the Administrator has found that cause exists to terminate, modify, or revoke and reissue a permit, the Department shall, within 14 days after receipt of such notification, provide notice to the source. The notice to the source shall include a copy of the notice from EPA and invite the source to comment in writing on the proposed action or request a hearing.

7.7.2 Within 90 days following receipt of the notification from EPA, the Department shall issue and forward to EPA a proposed determination of termination, modification or revocation and reissuance, as appropriate. The Department may request additional time, up to 90 days, for this submission pursuant to EPA's Part 70 regulations if such time is required to obtain a new or revised permit application or other information from the source.

7.7.3 The EPA will review the proposed determination from the Department within 90 days of receipt.

7.7.4 The Department shall have 90 days from receipt of an EPA objection to resolve any objection that EPA makes and to terminate, modify or revoke and reissue the permit in accordance with the Administrator's objection.

7.7.5 If the Department fails to submit a proposed determination pursuant to 7.7.2 of this regulation, or fails to resolve any objection pursuant to 7.7.4 of this regulation, the Administrator will terminate, modify or revoke and reissue the permit after taking the following actions:

7.7.5.1 Providing at least 30 days' notice to the permittee, in writing, of the reasons for any such action. This notice may be given during the procedures in 7.7.1 through 7.7.4 of this regulation; and

7.7.5.2 Providing the permittee an opportunity for comment on the Administrator's proposed action, and an opportunity for a hearing.

7.8 Revocations and Terminations

7.8.1 The Department may revoke a permit upon the request of the permittee or for cause. Cause for revocation includes, but is not limited to:

7.8.1.1 A pattern of unresolved noncompliance at the permitted facility with the terms and conditions of the permit and the permittee has refused to undertake appropriate action (such as a schedule of compliance) to resolve the noncompliance;

7.8.1.2 The permittee has failed to disclose material facts relevant to issuance of the permit or has submitted false or misleading information to the Department;

7.8.1.3 The Department finds that the permitted facility or activity substantially endangers public health, safety, or the environment, and that the danger cannot be removed by a modification of the terms of the permit;

7.8.1.4 The permittee has failed to pay permit fees as established from time to time by the Delaware General Assembly; or

7.8.1.5 The permittee has failed to pay a civil or criminal penalty imposed for violations of the permit.

7.8.2 Upon finding that cause exists for revocation of a permit, the Department shall notify the permittee of that finding in writing, stating the reasons for the proposed revocation. Within 30 days following receipt of that notice, the permittee may submit written comments concerning the proposed revocation and may request a hearing. If the Department thereafter makes a final determination to revoke the permit, it shall provide a written notice to the permittee specifying the reasons for the decision and the effective date of the revocation.

7.8.3 A revocation issued under 7.0 of this regulation may be issued conditionally with a future effective date and may specify that the revocation will not take effect if the permittee satisfies the specified conditions before the effective date.

7.8.4 A permittee may at any time apply for termination of all or a portion of its permit relating solely to operations, activities, and emissions that have been permanently discontinued at the permitted facility. An application for termination shall identify with specificity the permit or permit terms that relate to the discontinued operations, activities, and emissions. The Department shall act on an application for termination on this ground within 90 days of receipt and shall grant the application for termination upon finding that the permit terms for which termination is sought relate solely to operations, activities, and emissions that have been permanently discontinued. In terminating all or portions of a permit pursuant to 7.8 of this regulation, the Department may make appropriate orders for the submission of a final report or other information from the source to verify the complete discontinuation of the relevant operations, activities, and emissions.

7.8.5 A source may apply for termination of its permit on the ground that its operations, activities, and emissions are fully covered by a source category permit for which it has applied and received pursuant to 6.4 of this regulation. The Department shall act on an application for termination on this ground within 90 days of receipt and shall grant the application upon a finding that the source's operations, activities, and emissions are fully covered by a source category permit.

7.8.6 A source that has received a final revocation or termination of its permit may apply for a new permit under the procedures established in 5.0 of this regulation.

7.9 Case-by-Case Determinations. If applicable requirements require the Department to make a case-by-case determination of an emission standard, technology requirement, work practice standard, or other requirement for a source and to include terms and conditions implementing that determination in the source's permit, the source shall include in its permit application under 5.0 of this regulation a proposed determination, together with the data and other information upon which the determination is to be based and proposed terms and conditions to implement the determination. Upon receipt of a request from the source, the Department shall meet with the source before the permit application is submitted to discuss the determination and the information required to make it. In the event that the Department determines that the source's proposed determination and implementing terms and conditions should be revised in the draft permit, the proposed permit, or the final permit, the Department shall in all cases inform the source of the changes to be made and allow the source to comment on those changes before issuing the draft permit, proposed permit, or final permit.

7.10 Public participation. All permit proceedings, including initial permit issuance, permit modifications, and renewals, shall be conducted in accordance with the procedures for public participation specified below.

7.10.1 After receipt of an application for a permit, permit modification, or permit renewal, and no later than 61 days before the deadline under 7.1.5 of this regulation for issuance of a proposed permit, modification, or renewal for EPA review, the Department shall issue a draft permit and solicit comment from the applicant, affected states, and the public as follows:

7.10.1.1 The Department shall provide notice to the public in accordance with 7 Del.C. Ch 60, §6004, by:

7.10.1.1.1 Making available in at least one location in the area in which the facility is located a public file containing copy of all materials that the applicant has submitted (other than those granted confidential treatment under 5.1.4 of this regulation), a copy of the preliminary determination and draft permit or permit renewal, and a copy or summary of other materials, if any, considered in making the preliminary determination; or

7.10.1.1.2 Publishing a public notice in accordance with 7 Del.C. Ch 60, §6004, which requires a minimum 15-day public comment period.

7.10.1.2 Copies of the notice required under 7.10.1.1 of this regulation shall be sent to the representatives of affected states designated by those states to receive such notices.

7.10.1.3 Copies shall also be sent by mail to any person who has requested such notification from the Department by providing the name and mailing address.

7.10.2 The public notice shall establish a period of not less than 30 days in accordance with 40 CFR Part 70.7(h) following publication of the notice for the submission of written comments and hearing requests, and shall identify the affected facility, the name and address of the applicant or permittee, the name, address and telephone number of a Department representative with responsibility for the permitting action, the activity or activities involved in the permit action, the emissions change involved in any permit modification, the time and place of the hearing or a statement of procedures to request a hearing, and the location of the public file.

7.10.3 The Department shall hold a hearing on the draft permit or permit renewal if the Secretary receives a meritorious request for a hearing within a reasonable time, as stated in the advertisement. A public hearing may be held on any application if the Secretary deems it to be in the best interest of the State to do so. A public hearing request shall be deemed meritorious if it exhibits a familiarity with the application and a reasoned statement of the permit's probable impact.

7.10.4 Any public hearing held under 7.0 of this regulation shall be held no earlier than the 31st day following publication of a public notice that a public hearing will be held, and of the time and place that hearing will be held.

7.10.5 The Department may limit participation at the public hearing to issues raised in written comments submitted during the public comment period. The officer conducting the hearing may, as appropriate, impose additional limitations, including time restrictions.

7.10.6 The applicant shall be afforded an opportunity to submit, within 15 days following the close of the public comment period or the public hearing, whichever is later, a response to any comments made.

7.10.7 The Department shall consider all comments submitted by the applicant, the public, and affected states in reaching its final determination and issuing the proposed permit, modification, or renewal for EPA review. The Department shall maintain a list of all commenters and a summary of the issues raised and shall make that information available in the public file and supply it to EPA upon request.

7.10.8 At the time it issues a proposed permit, modification, or renewal for EPA review, the Department shall issue a written response to all comments submitted by affected states and all significant comments submitted by the applicant and the public.

7.10.9 The initial establishment of a source category shall follow the procedures detailed in 7.10.1 through 7.10.8 of this regulation. Once a source category has been established, however, the public notice requirement for each subsequent source category permit application from a qualifying source shall be in accordance with 7 Del.C. Ch 60, §6004.

7.11 Judicial Review. Judicial review shall be in accordance with 7 Del.C. Ch 60, §6008 and §6009. The deadlines established in 7.0 of this regulation shall not apply in the event of judicial review. Failure of

the Department to take timely action under 7.1.5, 7.4.3, 7.5.1.4, 7.5.2.4 and 7.5.3.3 of this regulation shall constitute final agency action, and be subject to judicial review.

11/15/1993

8.0 Permit Review by EPA and Affected States

8.1 Review by Affected States

8.1.1 The Department shall give notice of each draft permit to all affected states on or before the time that the Department provides this notice to the public under 7.10 of this regulation, except to the extent 7.5.1 or 7.5.2 of this regulation requires the timing of the notice to be different.

8.1.2 As part of the Department's submittal of a proposed permit to the Administrator (or as soon as possible after the submittal for minor permit modification procedures under 7.5.1 or 7.5.2 of this regulation), the Department shall notify the Administrator and any affected state in writing of any refusal by the Department to accept all recommendations for the proposed permit that the affected state submitted during the public or affected state review period. The notice will include the Department's reasons for not accepting any such recommendation. The Department is not required to accept recommendations that are not based on applicable requirements or the requirements of this regulation.

8.1.3 The Department shall follow the procedures detailed 8.1.1 and 8.1.2 of this regulation, for the initial establishment of a source category. Upon acceptance of the initial draft source category by the Administrator and all affected states, subsequent source category permits may be issued to qualifying source or sources without further EPA or affected state review.

8.2 EPA Objection

8.2.1 No permit for which an application must be transmitted to the Administrator shall be issued, if the Administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information.

8.2.2 Any EPA objection under 8.2.1 of this regulation shall include a statement of the Administrator's reasons for objection and a description of the terms and conditions that the permit must include to respond to the objections. The Administrator will provide the permit applicant a copy of the objection.

8.2.3 Failure of the Department to do any of the following also shall constitute grounds for an objection:

8.2.3.1 Comply with 8.1 of this regulation;

8.2.3.2 Submit any information necessary to review adequately the proposed permit; or

8.2.3.3 Process the permit under the procedures approved to meet 7.10 of this regulation.

8.2.4 If the Department fails, within 90 days after the date of an objection under 8.2.1 of this regulation, to revise and submit a proposed permit in response to the objection, the Administrator will issue or deny the permit in accordance with the requirements of 40 CFR Part 71 regulations.

8.3 Public Petitions to the Administrator. If the Administrator does not object in writing under 8.2 of this regulation, any person may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make such objection. Any such petition shall be based only on objections to the permit raised with reasonable specificity during the public comment period provided for in 7.10 of this regulation, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the Administrator objects to the permit as a result of a petition filed under 8.0 of this regulation, the Department shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. If the Department has issued a permit prior to receipt of an EPA objection under 8.0 of this regulation, the Administrator will modify, terminate, or revoke such permit, and shall do so consistent with the time limits established in 40 CFR 70.7(g)(4) or 5(i) and (ii), except in emergencies, and the Department may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

8.4 Transmission of Information to the Administrator

8.4.1 Unless the Administrator waives this requirement, the Department shall provide to the Administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final Part 70 permit. The Department may require the applicant to provide a copy of the permit application (including the compliance plan) directly to the Administrator. Upon agreement with the Administrator, the Department may submit to the Administrator a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan. To the extent practicable, the preceding information will be provided in computer-readable format compatible with EPA's national database management system.

8.4.2 The Department will keep for five years such records and submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the State program complies with the requirements of the Act or of this regulation.

11/15/1993

9.0 Permit Fees

Covered sources shall pay fees as established from time to time by the Delaware General Assembly.

4 DE Reg. 1018 (12/01/00)

7 DE Reg. 1573 (05/01/04)

APPENDIX A: INSIGNIFICANT ACTIVITIES

Any information called-for by the permit application in 5.4 of this regulation need not be submitted for the activities and emissions levels described in this appendix; however, the source must provide a list of any such activities that are excluded because of size, emissions rate, or production rate. An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement. The emissions from the activities described in this appendix shall be included when determining the applicability of any applicable requirement.

1.0 Air contaminant detector, air contaminant recorder, combustion controller or combustion shut-off.

2.0 Fuel-burning equipment which:

2.1 Uses any fuel and has a rated heat input of less than 15 million BTU per hour; or

2.2 Is an internal combustion engine which drives compressors, generators, water pumps or other auxiliary equipment during emergency or standby operations.

3.0 Air conditioning or comfort ventilating systems.

4.0 Vacuum cleaning systems used exclusively for office applications or residential housekeeping.

5.0 Ventilating or exhaust systems for print storage room cabinets.

6.0 Exhaust systems for controlling steam and heat.

7.0 Any equipment at a facility used exclusively for chemical or physical analysis or determination of product quality and commercial acceptance, provided the operation of the equipment is not an integral part of the production process and the total actual emissions from all such equipment at the facility do not exceed 204 kilograms (kg) (450 pounds [lb]) in any calendar month.

8.0 Internal combustion engines and vehicles used for transport of passengers or freight, except as may be provided in subsequent regulations.

9.0 Emission units for which an applicable requirement has not yet been promulgated, are not elsewhere listed as an insignificant activity and which have the potential to emit in the aggregate the following air contaminants at less than the specified rates:

VOC 25 tpy in New Castle or Kent Counties or 50 tpy in Sussex County;

Particulate 40 tpy;

PM_{10} 15 tpy;

SO_2 40 tpy; and

NOx 25 tpy in New Castle or Kent Counties or 100 tpy in Sussex County.

10.0 Maintenance, repair or replacement-in-kind of equipment for which a permit to operate has been issued.

11.0 Equipment which emits only elemental nitrogen, oxygen, carbon dioxide ~~and/~~or water vapor.

12.0 Ventilating or exhaust systems used in eating establishments where food is prepared for the purpose of consumption.

13.0 Equipment used to liquify or separate oxygen, nitrogen or the rare gases from the air.

14.0 Fireworks displays.

15.0 Smudge pots for orchards or small outdoor heating devices to prevent the freezing of plants.

16.0 Outdoor painting and sandblasting equipment.

17.0 Lawn mowers, tractors, farm equipment and construction equipment.

18.0 Fireplaces for the burning of wood and paper.

19.0 Any activity related to routine maintenance and repair of a facility where emissions would not be associated with a primary production process of the facility. Such activities may include:

19.1 Cleaning;

19.2 Solvent Use;

19.3 Steam Cleaning;

19.4 Painting;

19.5 Degreasing;

19.6 Washing;

19.7 Welding;

19.8 Vacuuming;

19.9 Coating;

19.10 Sweeping;

19.11 Abrasive Use; and

19.12 Insulation Removal.

20.0 Fire schools or fire fighting training.

21.0 Buildings, cabinets, and facilities used for storage of chemicals in closed containers, unless subject to applicable requirements.

22.0 Gasoline storage tanks that:

22.1 have a capacity less than 550 gallons and that are used exclusively for the fueling of implements of husbandry; or

22.2 have a capacity less than 2000 gallons and that were constructed prior to January 1, 1979; or

22.3 have a capacity less than 250 gallons and that were constructed after December 31, 1978.

23.0 Diesel and fuel oil storage tanks with a capacity of 40,000 gallons or less.

24.0 Gasoline and diesel fuel dispensing systems that never exceed a monthly throughput of 10,000 gallons.

25.0 Kilns used for firing ceramic ware if

25.1 heated exclusively by natural gas, electricity, ~~and/~~or liquid petroleum gas, and

25.2 the BTU input is less than 15 mmBTU per hour.

26.0 Inorganic acid storage tanks equipped with an emission control device.

27.0 Sewage treatment facilities.

28.0 Water treatment units.

29.0 Quiescent wastewater treatment operations.

30.0 Non-contact water cooling towers (water that has not been in direct contact with process fluids).

31.0 Laundry dryers, extractors, or tumblers used for fabrics cleaned with a water solution of bleach or detergents.

32.0 Equipment used for hydraulic or hydrostatic testing.

33.0 Blueprint copiers and photographic processes.

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APPENDIX B

40 CFR Part 60 Subpart XXX, as adopted in Section 30

Appendix B illustrates the changes made in Section 30 of 7 DE Admin. Code 1120 to 40 CFR Part 60 Subpart XXX. The underline indicates additions made to Subpart XXX and the strikeouts indicate deletions made to Subpart XXX.

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Subpart XXX —30.0 Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification After July 17, 2014 After July 11, 2017

§60.760 Applicability, designation of affected source, and delegation of authority.

(a) The provisions of this subpart apply to each municipal solid waste landfill, open or closed, that commenced construction, reconstruction, or modification after July 17, 2014 or that has accepted waste after November 8, 1987 or that has additional capacity available to accept waste. Physical or operational changes made to an MSW landfill solely to comply with subparts Cc, Cf, or WWW of this part are not considered construction, reconstruction, or modification for the purposes of this section.

(b) The following authorities are retained by the Administrator and are not transferred to the state: §60.764(a)(5).

(c) Activities required by or conducted pursuant to a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Resource Conservation and Recovery Act (RCRA), or state remedial action are not considered construction, reconstruction, or modification for purposes of this subpart.

§60.761 Definitions.

As used in this subpart, all terms not defined herein have the meaning given them in the Act or in subpart A of this part.

Active collection system means a gas collection system that uses gas mover equipment.

Active landfill means a landfill in which solid waste is being placed or a landfill that is planned to accept waste in the future.

Closed area means a separately lined area of an MSW landfill in which solid waste is no longer being placed. If additional solid waste is placed in that area of the landfill, that landfill area is no longer closed. The area must be separately lined to ensure that the landfill gas does not migrate between open and closed areas.

Closed landfill means a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed without first filing a notification of modification as prescribed under §60.7(a)(4). Once a notification of modification has been filed, and additional solid waste is placed in the landfill, the landfill is no longer closed.

Closure means that point in time when a landfill becomes a closed landfill.

Commercial solid waste means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

Controlled landfill means any landfill at which collection and control systems are required under this subpart as a result of the nonmethane organic compounds emission rate. The landfill is considered controlled at the time a collection and control system design plan is submitted in compliance with §60.762(b)(2)(i).

Corrective action analysis means a description of all reasonable interim and long-term measures, if any, that are available, and an explanation of why the selected corrective action(s) is/are the best alternative(s), including, but not limited to, considerations of cost effectiveness, technical feasibility, safety, and secondary impacts.

Design capacity means the maximum amount of solid waste a landfill can accept, as indicated in terms of volume or mass in the most recent permit issued by the state, local, or tribal agency responsible for regulating the landfill, plus any in-place waste not accounted for in the most recent permit. If the owner or operator chooses to convert the design capacity from volume to mass or from mass to volume to demonstrate its design capacity is less than 2.5 million megagrams or 2.5 million cubic meters, the calculation must include a site-specific density, which must be recalculated annually.

Disposal facility means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.

Emission rate cutoff means the threshold annual emission rate to which a landfill compares its estimated emission rate to determine if control under the regulation is required.

Enclosed combustor means an enclosed firebox which maintains a relatively constant limited peak temperature generally using a limited supply of combustion air. An enclosed flare is considered an

enclosed combustor.

Flare means an open combustor without enclosure or shroud.

Gas mover equipment means the equipment (*i.e.,* fan, blower, compressor) used to transport landfill gas through the header system.

Gust means the highest instantaneous wind speed that occurs over a 3-second running average.

Household waste means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including, but not limited to, single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). Household waste does not include fully segregated yard waste. Segregated yard waste means vegetative matter resulting exclusively from the cutting of grass, the pruning and/or removal of bushes, shrubs, and trees, the weeding of gardens, and other landscaping maintenance activities. Household waste does not include construction, renovation, or demolition wastes, even if originating from a household.

Industrial solid waste means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under Subtitle C of the Resource Conservation and Recovery Act, parts 264 and 265 of this chapter. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: Electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

Interior well means any well or similar collection component located inside the perimeter of the landfill waste. A perimeter well located outside the landfilled waste is not an interior well.

Landfill means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile as those terms are defined under §257.2 of this title.

Lateral expansion means a horizontal expansion of the waste boundaries of an existing MSW landfill. A lateral expansion is not a modification unless it results in an increase in the design capacity of the landfill.

Leachate recirculation means the practice of taking the leachate collected from the landfill and reapplying it to the landfill by any of one of a variety of methods, including pre-wetting of the waste, direct discharge into the working face, spraying, infiltration ponds, vertical injection wells, horizontal gravity distribution systems, and pressure distribution systems.

Modification means an increase in the permitted volume design capacity of the landfill by either lateral or vertical expansion based on its permitted design capacity as of July 17, 2014. Modification does not occur until the owner or operator commences construction on the lateral or vertical expansion.

Municipal solid waste landfill or *MSW landfill* means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA Subtitle D wastes (§257.2 of this title) such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion.

Municipal solid waste landfill emissions or *MSW landfill emissions* means gas generated by the decomposition of organic waste deposited in an MSW landfill or derived from the evolution of organic compounds in the waste.

NMOC means nonmethane organic compounds, as measured according to the provisions of §60.764.

Nondegradable waste means any waste that does not decompose through chemical breakdown or microbiological activity. Examples are, but are not limited to, concrete, municipal waste combustor ash, and metals.

Passive collection system means a gas collection system that solely uses positive pressure within the landfill to move the gas rather than using gas mover equipment.

Root cause analysis means an assessment conducted through a process of investigation to determine the primary cause, and any other contributing causes, of positive pressure at a wellhead.

Segregated yard waste means vegetative matter resulting exclusively from the cutting of grass, the pruning and/or removal of bushes, shrubs, and trees, the weeding of gardens, and other landscaping maintenance activities.

Sludge means the term sludge as defined in 40 CFR 258.2.

Solid waste means the term solid waste as defined in 40 CFR 258.2.

Sufficient density means any number, spacing, and combination of collection system components, including vertical wells, horizontal collectors, and surface collectors, necessary to maintain emission and migration control as determined by measures of performance set forth in this part.

Sufficient extraction rate means a rate sufficient to maintain a negative pressure at all wellheads in the collection system without causing air infiltration, including any wellheads connected to the system as a result of expansion or excess surface emissions, for the life of the blower.

Treated landfill gas means landfill gas processed in a treatment system as defined in this subpart.

Treatment system means a system that filters, de-waters, and compresses landfill gas for sale or beneficial use.

Untreated landfill gas means any landfill gas that is not treated landfill gas.

§60.762 Standards for air emissions from municipal solid waste landfills.

(a) Each owner or operator of an MSW landfill having a design capacity less than 2.5 million megagrams by mass or 2.5 million cubic meters by volume must submit an initial design capacity report to the ~~Administrator~~ Department as provided in §60.767(a). The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exemption values. Any density conversions must be documented and submitted with the report. For purposes of 7 **DE Admin. Code** 1130, Title V State Operating Permit Program, a landfill with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters does not require an operating permit under 7 **DE Admin. Code** 1130, provided it is not a major source as defined in 7 **DE Admin. Code** 1130. Submittal of the initial design capacity report fulfills the requirements of this subpart except as provided for in paragraphs (a)(1) and (2) of this section.

(1) The owner or operator must submit to the ~~Administrator~~ Department an amended design capacity report, as provided for in §60.767(a)(3).

(2) When an increase in the maximum design capacity of a landfill exempted from the provisions of §60.762(b) through §60.769 on the basis of the design capacity exemption in paragraph (a) of this section results in a revised maximum design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters, the owner or operator must comply with the provisions of paragraph (b) of this section.

(b) Each owner or operator of an MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters, must either comply with paragraph (b)(2) of this section or calculate an NMOC emission rate for the landfill using the procedures specified in §60.764. The NMOC emission rate must be recalculated annually, except as provided in §60.767(b)(1)(ii). The owner or operator of an MSW landfill subject to this subpart with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters is subject to ~~part 70 or 71 permitting requirements~~ 7 **DE Admin. Code** 1130. When a landfill is closed, and either never needed control or meets the conditions for control system removal specified in §60.762(b)(2)(v), a 7 **DE Admin. Code** 1130 operating permit is no longer required.

(1) If the calculated NMOC emission rate is less than 34 megagrams per year, the owner or operator must:

(i) Submit an annual NMOC emission rate emission report to the ~~Administrator~~ Department, except as provided for in §60.767(b)(1)(ii); and

(ii) Recalculate the NMOC emission rate annually using the procedures specified in §60.764(a)(1) until such time as the calculated NMOC emission rate is equal to or greater than 34 megagrams per year,

or the landfill is closed.

(A) If the calculated NMOC emission rate, upon initial calculation or annual recalculation required in paragraph (b) of this section, is equal to or greater than 34 megagrams per year, the owner or operator must either: Comply with paragraph (b)(2) of this section; calculate NMOC emissions using the next higher tier in §60.764; or conduct a surface emission monitoring demonstration using the procedures specified in §60.764(a)(6).

(B) If the landfill is permanently closed, a closure report must be submitted to the ~~Administrator~~ Department as provided for in §60.767(e).

(2) If the calculated NMOC emission rate is equal to or greater than 34 megagrams per year using Tier 1, 2, or 3 procedures, the owner or operator must either:

(i) Calculated *NMOC Emission Rate.* Submit a collection and control system design plan prepared by a professional engineer to the ~~Administrator~~ Department within 1 year as specified in §60.767(c); calculate NMOC emissions using the next higher tier in §60.764; or conduct a surface emission monitoring demonstration using the procedures specified in §60.764(a)(6). The collection and control system must meet the requirements in paragraphs (b)(2)(ii) and (iii) of this section.

(ii) *Collection system.* Install and start up a collection and control system that captures the gas generated within the landfill as required by paragraphs (b)(2)(ii)(C) or (D) and (b)(2)(iii) of this section in accordance with paragraph (b)(2)(ii)(A) or (B) of this section, whichever is applicable. ~~within 30 months after:~~

(A) *For MSW landfills that commenced construction, reconstruction, or modification on or after July 17, 2014.* The collection and control system must be started up in accordance with paragraph (b)(2)(ii)(A)(*1*) or (*2*) of this section, whichever is applicable. ~~The first annual report in which the NMOC emission rate equals or exceeds 34 megagrams per year, unless Tier 2 or Tier 3 sampling demonstrates that the NMOC emission rate is less than 34 megagrams per year, as specified in §60.767(c)(4); or~~

(1) Within 30 months of the first annual report in which the NMOC emission rate equals or exceeds 34 megagrams per year, unless Tier 2 or Tier 3 sampling demonstrates that the NMOC emission rate is less than 34 megagrams per year, as specified in §60.767(c)(4) or

(2) Within 30 months of the most recent NMOC emission rate report in which the NMOC emission rate equals or exceeds 34 megagrams per year based on Tier 2, if the Tier 4 surface emissions monitoring shows a surface methane emission concentration of 500 parts per million methane or greater as specified in §60.767(c)(4)(iii).

(B) *For all other subject MSW landfills.* As expeditiously as practicable but not later than January 8, 2018. ~~The most recent NMOC emission rate report in which the NMOC emission rate equals or exceeds 34 megagrams per year based on Tier 2, if the Tier 4 surface emissions monitoring shows a surface methane emission concentration of 500 parts per million methane or greater as specified in §60.767(c)(4)(iii).~~

(C) An active collection system must:

(*1*) Be designed to handle the maximum expected gas flow rate from the entire area of the landfill that warrants control over the intended use period of the gas control system equipment;

(*2*) Collect gas from each area, cell, or group of cells in the landfill in which the initial solid waste has been placed for a period of 5 years or more if active; or 2 years or more if closed or at final grade.

(*3*) Collect gas at a sufficient extraction rate;

(*4*) Be designed to minimize off-site migration of subsurface gas.

(D) A passive collection system must:

(*1*) Comply with the provisions specified in paragraphs (b)(2)(ii)(C)(*1*), (*2*), and (*3*) of this section.

(*2*) Be installed with liners on the bottom and all sides in all areas in which gas is to be collected. The liners must be installed as required under 40 CFR 258.40.

(iii) *Control system.* Route all the collected gas to a control system that complies with the requirements in either paragraph (b)(2)(iii)(A), (B), or (C) of this section.

(A) A non-enclosed flare designed and operated in accordance with the parameters established in §60.18 except as noted in §60.764(e); or

(B) A control system designed and operated to reduce NMOC by 98 weight-percent, or, when an enclosed combustion device is used for control, to either reduce NMOC by 98 weight percent or reduce the outlet NMOC concentration to less than 20 parts per million by volume, dry basis as hexane at 3 percent oxygen. The reduction efficiency or parts per million by volume must be established by an initial performance test to be completed no later than 180 days after the initial startup of the approved control system using the test methods specified in §60.764(d). The performance test is not required for boilers and process heaters with design heat input capacities equal to or greater than 44 megawatts that burn landfill gas for compliance with this subpart.

(*1*) If a boiler or process heater is used as the control device, the landfill gas stream must be introduced into the flame zone.

(*2*) The control device must be operated within the parameter ranges established during the initial or most recent performance test. The operating parameters to be monitored are specified in §60.766;

(C) Route the collected gas to a treatment system that processes the collected gas for subsequent sale or beneficial use such as fuel for combustion, production of vehicle fuel, production of high-Btu gas for pipeline injection, or use as a raw material in a chemical manufacturing process. Venting of treated landfill gas to the ambient air is not allowed. If the treated landfill gas cannot be routed for subsequent sale or beneficial use, then the treated landfill gas must be controlled according to either paragraph (b)(2)(iii)(A) or (B) of this section.

(D) All emissions from any atmospheric vent from the gas treatment system are subject to the requirements of paragraph (b)(2)(iii)(A) or (B) of this section. For purposes of this subpart, atmospheric vents located on the condensate storage tank are not part of the treatment system and are exempt from the requirements of paragraph (b)(2)(iii)(A) or (B) of this section.

(iv) *Operation.* Operate the collection and control device installed to comply with this subpart in accordance with the provisions of §§60.763, 60.765 and 60.766.

(v) *Removal criteria.* The collection and control system may be capped, removed, or decommissioned if the following criteria are met:

(A) The landfill is a closed landfill (as defined in §60.761). A closure report must be submitted to the ~~Administrator~~ Department as provided in §60.767(e).

(B) The collection and control system has been in operation a minimum of 15 years or the landfill owner or operator demonstrates that the GCCS will be unable to operate for 15 years due to declining gas flow.

(C) Following the procedures specified in §60.764(b), the calculated NMOC emission rate at the landfill is less than 34 megagrams per year on three successive test dates. The test dates must be no less than 90 days apart, and no more than 180 days apart.

(c) For purposes of obtaining an operating permit under title V of the Clean Air Act, the owner or operator of an MSW landfill subject to this subpart with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters is not subject to the requirement to obtain an operating permit for the landfill under ~~part 70 or 71 of this chapter~~ 7 **DE Admin. Code** 1130, unless the landfill is otherwise subject to either part 70 or 71. For purposes of submitting a timely application for an operating permit under part 70 or 71, the owner or operator of an MSW landfill subject to this subpart with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters, and not otherwise subject to ~~either part 70 or 71~~ 7 **DE Admin. Code** 1130, becomes subject to the requirements of ~~§70.5(a)(1)(i) or §71.5(a)(1)(i) of this chapter~~ paragraph 5.1.1 of 7 **DE Admin. Code** 1130, regardless of when the design capacity report is actually submitted, no later than:

(1) ~~November 28, 2016 for MSW landfills that commenced construction, modification, or reconstruction after July 17, 2014 but before August 29, 2016;~~ Ninety days after the date of commenced construction, modification, or reconstruction for MSW landfills that commenced construction, modification, or reconstruction on or after July 17, 2014 or

(2) ~~Niney days after the date of commenced construction, modification, or reconstruction for MSW landfills that commence construction, modification, or reconstruction after August 29, 2016~~ January 8, 2018 for all other subject MSW landfills.

(d) When an MSW landfill subject to this subpart is closed as defined in this subpart, the owner or

operator is no longer subject to the requirement to maintain an operating permit under part 70 or 71 of this chapter for the landfill if the landfill is not otherwise subject to the requirements of either part 70 or 71 and if either of the following conditions are met:

(1) The landfill was never subject to the requirement for a control system under paragraph (b)(2) of this section; or

(2) The owner or operator meets the conditions for control system removal specified in paragraph (b)(2)(v) of this section.

§60.763 Operational standards for collection and control systems.

Each owner or operator of an MSW landfill with a gas collection and control system used to comply with the provisions of §60.762(b)(2) must:

(a) Operate the collection system such that gas is collected from each area, cell, or group of cells in the MSW landfill in which solid waste has been in place for:

(1) 5 years or more if active; or

(2) 2 years or more if closed or at final grade;

(b) Operate the collection system with negative pressure at each wellhead except under the following conditions:

(1) A fire or increased well temperature. The owner or operator must record instances when positive pressure occurs in efforts to avoid a fire. These records must be submitted with the annual reports as provided in §60.767(g)(1);

(2) Use of a geomembrane or synthetic cover. The owner or operator must develop acceptable pressure limits in the design plan;

(3) A decommissioned well. A well may experience a static positive pressure after shut down to accommodate for declining flows. All design changes must be approved by the ~~Administrator~~ Department as specified in §60.767(c);

(c) Operate each interior wellhead in the collection system with a landfill gas temperature less than 55 degrees Celsius (131 degrees Fahrenheit). The owner or operator may establish a higher operating temperature value at a particular well. A higher operating value demonstration must be submitted to the ~~Administrator~~ Department for approval and must include supporting data demonstrating that the elevated parameter neither causes fires nor significantly inhibits anaerobic decomposition by killing methanogens. The demonstration must satisfy both criteria in order to be approved (*i.e.,* neither causing fires nor killing methanogens is acceptable).

(d) Operate the collection system so that the methane concentration is less than 500 parts per million above background at the surface of the landfill. To determine if this level is exceeded, the owner or operator must conduct surface testing using an organic vapor analyzer, flame ionization detector, or other portable monitor meeting the specifications provided in §60.765(d). The owner or operator must conduct surface testing around the perimeter of the collection area and along a pattern that traverses the landfill at no more than 30-meter intervals and where visual observations indicate elevated concentrations of landfill gas, such as distressed vegetation and cracks or seeps in the cover and all cover penetrations. Thus, the owner or operator must monitor any openings that are within an area of the landfill where waste has been placed and a gas collection system is required. The owner or operator may establish an alternative traversing pattern that ensures equivalent coverage. A surface monitoring design plan must be developed that includes a topographical map with the monitoring route and the rationale for any site-specific deviations from the 30-meter intervals. Areas with steep slopes or other dangerous areas may be excluded from the surface testing.

(e) Operate the system such that all collected gases are vented to a control system designed and operated in compliance with §60.762(b)(2)(iii). In the event the collection or control system is not operating, the gas mover system must be shut down and all valves in the collection and control system contributing to venting of the gas to the atmosphere must be closed within 1 hour of the collection or control system not operating; and

(f) Operate the control system at all times when the collected gas is routed to the system.

(g) If monitoring demonstrates that the operational requirement~~s~~ in paragraphs (b), (c), or (d) of this section are not met, corrective action must be taken as specified in §60.765(a)(3) and (5) or §60.765(c). If

corrective actions are taken, as specified in §60.765, the monitored exceedance is not a violation of the operational requirements in this section.

§60.764 Test methods and procedures.

(a)(1) *NMOC Emission Rate.* The landfill owner or operator must calculate the NMOC emission rate using either Equation 1 provided in paragraph (a)(1)(i) of this section or Equation 2 provided in paragraph (a)(1)(ii) of this section. Both Equation 1 and Equation 2 may be used if the actual year-to-year solid waste acceptance rate is known, as specified in paragraph (a)(1)(i) of this section, for part of the life of the landfill and the actual year-to-year solid waste acceptance rate is unknown, as specified in paragraph (a)(1)(ii) of this section, for part of the life of the landfill. The values to be used in both Equation 1 and Equation 2 are 0.05 per year for k, 170 cubic meters per megagram for L_o, and 4,000 parts per million by volume as hexane for the C_{NMOC}. For landfills located in geographical areas with a 30-year annual average precipitation of less than 25 inches, as measured at the nearest representative official meteorologic site, the k value to be used is 0.02 per year.

(i)(A) Equation 1 must be used if the actual year-to-year solid waste acceptance rate is known.

$$M_{NMOC} = \sum_{i=1}^{n} 2\,k\,L_o M_i \left(e^{-kt_i}\right)\left(C_{NMOC}\right)\left(3.6\times10^{-9}\right) \qquad \text{(Eq. 1)}$$

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Where:

M_{NMOC} = Total NMOC emission rate from the landfill, megagrams per year.

k = Methane generation rate constant, $year^{-1}$.

L_o = Methane generation potential, cubic meters per megagram solid waste.

M_i = Mass of solid waste in the i^{th} section, megagrams.

t_i = Age of the i^{th} section, years.

C_{NMOC} = Concentration of NMOC, parts per million by volume as hexane.

3.6×10^{-9} = Conversion factor.

(B) The mass of nondegradable solid waste may be subtracted from the total mass of solid waste in a particular section of the landfill when calculating the value for M_i if documentation of the nature and amount of such wastes is maintained.

(ii)(A) Equation 2 must be used if the actual year-to-year solid waste acceptance rate is unknown.

$$M_{NMOC} = 2L_oR\,(e^{-kc}-e^{-kt})\,C_{NMOC}(3.6 \times 10^{-9}) \qquad \text{(Eq.2)}$$

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Where:

M_{NMOC} = Mass emission rate of NMOC, megagrams per year.

L_o = Methane generation potential, cubic meters per megagram solid waste.

R = Average annual acceptance rate, megagrams per year.

k = Methane generation rate constant, $year^{-1}$.

t = Age of landfill, years.

C_{NMOC} = Concentration of NMOC, parts per million by volume as hexane.

c = Time since closure, years; for active landfill c = 0 and $e^{-kc} = 1$.

3.6×10^{-9} = Conversion factor.

(B) The mass of nondegradable solid waste may be subtracted from the total mass of solid waste in a particular section of the landfill when calculating the value of R, if documentation of the nature and amount of such wastes is maintained.

(2) *Tier 1.* The owner or operator must compare the calculated NMOC mass emission rate to the standard of 34 megagrams per year.

(i) If the NMOC emission rate calculated in paragraph (a)(1) of this section is less than 34 megagrams per year, then the landfill owner or operator must submit an NMOC emission rate report according to §60.767(b), and must recalculate the NMOC mass emission rate annually as required under

§60.762(b).

(ii) If the calculated NMOC emission rate as calculated in paragraph (a)(1) of this section is equal to or greater than 34 megagrams per year, then the landfill owner must either:

(A) Submit a gas collection and control system design plan within 1 year as specified in §60.767(c) and install and operate a gas collection and control system within 30 months according to §60.762(b)(2)(ii) and (iii);

(B) Determine a site-specific NMOC concentration and recalculate the NMOC emission rate using the Tier 2 procedures provided in paragraph (a)(3) of this section; or

(C) Determine a site-specific methane generation rate constant and recalculate the NMOC emission rate using the Tier 3 procedures provided in paragraph (a)(4) of this section.

(3) *Tier 2.* The landfill owner or operator must determine the site-specific NMOC concentration using the following sampling procedure. The landfill owner or operator must install at least two sample probes per hectare, evenly distributed over the landfill surface that has retained waste for at least 2 years. If the landfill is larger than 25 hectares in area, only 50 samples are required. The probes should be evenly distributed across the sample area. The sample probes should be located to avoid known areas of nondegradable solid waste. The owner or operator must collect and analyze one sample of landfill gas from each probe to determine the NMOC concentration using Method 25 or 25C of appendix A of this part. Taking composite samples from different probes into a single cylinder is allowed; however, equal sample volumes must be taken from each probe. For each composite, the sampling rate, collection times, beginning and ending cylinder vacuums, or alternative volume measurements must be recorded to verify that composite volumes are equal. Composite sample volumes should not be less than one liter unless evidence can be provided to substantiate the accuracy of smaller volumes. Terminate compositing before the cylinder approaches ambient pressure where measurement accuracy diminishes. If more than the required number of samples are taken, all samples must be used in the analysis. The landfill owner or operator must divide the NMOC concentration from Method 25 or 25C of appendix A of this part by six to convert from C_{NMOC} as carbon to C_{NMOC} as hexane. If the landfill has an active or passive gas removal system in place, Method 25 or 25C samples may be collected from these systems instead of surface probes provided the removal system can be shown to provide sampling as representative as the two sampling probe per hectare requirement. For active collection systems, samples may be collected from the common header pipe. The sample location on the common header pipe must be before any gas moving, condensate removal, or treatment system equipment. For active collection systems, a minimum of three samples must be collected from the header pipe.

(i) Within 60 days after the date of completing each performance test (as defined in §60.8), the owner or operator must submit the results according to §60.767(i)(1).

(ii) The landfill owner or operator must recalculate the NMOC mass emission rate using Equation 1 or Equation 2 provided in paragraph (a)(1)(i) or (a)(1)(ii) of this section and using the average site-specific NMOC concentration from the collected samples instead of the default value provided in paragraph (a)(1) of this section.

(iii) If the resulting NMOC mass emission rate is less than 34 megagrams per year, then the owner or operator must submit a periodic estimate of NMOC emissions in an NMOC emission rate report according to §60.767(b)(1), and must recalculate the NMOC mass emission rate annually as required under §60.762(b). The site-specific NMOC concentration must be retested every 5 years using the methods specified in this section.

(iv) If the NMOC mass emission rate as calculated using the Tier 2 site-specific NMOC concentration is equal to or greater than 34 megagrams per year, the landfill owner or operator must either:

(A) Submit a gas collection and control system design plan within 1 year as specified in §60.767(c) and install and operate a gas collection and control system within 30 months according to §60.762(b)(2)(ii) and (iii);

(B) Determine a site-specific methane generation rate constant and recalculate the NMOC emission rate using the site-specific methane generation rate using the Tier 3 procedures specified in paragraph (a)(4) of this section; or

(C) Conduct a surface emission monitoring demonstration using the Tier 4 procedures specified in

paragraph (a)(6) of this section.

(4) *Tier 3.* The site-specific methane generation rate constant must be determined using the procedures provided in Method 2E of appendix A of this part. The landfill owner or operator must estimate the NMOC mass emission rate using Equation 1 or Equation 2 in paragraph (a)(1)(i) or (ii) of this section and using a site-specific methane generation rate constant, and the site-specific NMOC concentration as determined in paragraph (a)(3) of this section instead of the default values provided in paragraph (a)(1) of this section. The landfill owner or operator must compare the resulting NMOC mass emission rate to the standard of 34 megagrams per year.

(i) If the NMOC mass emission rate as calculated using the Tier 2 site-specific NMOC concentration and Tier 3 site-specific methane generation rate is equal to or greater than 34 megagrams per year, the owner or operator must either:

(A) Submit a gas collection and control system design plan within 1 year as specified in §60.767(c) and install and operate a gas collection and control system within 30 months according to §60.762(b)(2)(ii) and (iii); or

(B) Conduct a surface emission monitoring demonstration using the Tier 4 procedures specified in paragraph (a)(6) of this section.

(ii) If the NMOC mass emission rate is less than 34 megagrams per year, then the owner or operator must recalculate the NMOC mass emission rate annually using Equation 1 or Equation 2 in paragraph (a)(1) of this section and using the site-specific Tier 2 NMOC concentration and Tier 3 methane generation rate constant and submit a periodic NMOC emission rate report as provided in §60.767(b)(1). The calculation of the methane generation rate constant is performed only once, and the value obtained from this test must be used in all subsequent annual NMOC emission rate calculations.

(5) *Other methods.* The owner or operator may use other methods to determine the NMOC concentration or a site-specific methane generation rate constant as an alternative to the methods required in paragraphs (a)(3) and (4) of this section if the method has been approved by the Administrator.

(6) *Tier 4.* The landfill owner or operator must demonstrate that surface methane emissions are below 500 parts per million. Surface emission monitoring must be conducted on a quarterly basis using the following procedures. Tier 4 is allowed only if the landfill owner or operator can demonstrate that NMOC emissions are greater than or equal to 34 Mg/yr but less than 50 Mg/yr using Tier 1 or Tier 2. If both Tier 1 and Tier 2 indicate NMOC emissions are 50 Mg/yr or greater, then Tier 4 cannot be used. In addition, the landfill must meet the criteria in paragraph (a)(6)(viii) of this section.

(i) The owner or operator must measure surface concentrations of methane along the entire perimeter of the landfill and along a pattern that traverses the landfill at no more than 30-meter intervals using an organic vapor analyzer, flame ionization detector, or other portable monitor meeting the specifications provided in §60.765(d).

(ii) The background concentration must be determined by moving the probe inlet upwind and downwind at least 30 meters from the waste mass boundary of the landfill.

(iii) Surface emission monitoring must be performed in accordance with section 8.3.1 of Method 21 of appendix A of this part, except that the probe inlet must be placed no more than 5 centimeters above the landfill surface; the constant measurement of distance above the surface should be based on a mechanical device such as with a wheel on a pole, except as described in paragraph (a)(6)(iii)(A) of this section.

(A) The owner or operator must use a wind barrier, similar to a funnel, when onsite average wind speed exceeds 4 miles per hour or 2 meters per second or gust exceeding 10 miles per hour. Average on-site wind speed must also be determined in an open area at 5-minute intervals using an on-site anemometer with a continuous recorder and data logger for the entire duration of the monitoring event. The wind barrier must surround the SEM monitor, and must be placed on the ground, to ensure wind turbulence is blocked. SEM cannot be conducted if average wind speed exceeds 25 miles per hour.

(B) Landfill surface areas where visual observations indicate elevated concentrations of landfill gas, such as distressed vegetation and cracks or seeps in the cover, and all cover penetrations must also be monitored using a device meeting the specifications provided in §60.765(d).

(iv) Each owner or operator seeking to comply with the Tier 4 provisions in paragraph (a)(6) of this section must maintain records of surface emission monitoring as provided in §60.768(g) and submit a Tier 4 surface emissions report as provided in §60.767(c)(4)(iii).

(v) If there is any measured concentration of methane of 500 parts per million or greater from the surface of the landfill, the owner or operator must submit a gas collection and control system design plan within 1 year of the first measured concentration of methane of 500 parts per million or greater from the surface of the landfill according to §60.767(c) and install and operate a gas collection and control system according to §60.762(b)(2)(ii) and (iii) within 30 months of the most recent NMOC emission rate report in which the NMOC emission rate equals or exceeds 34 megagrams per year based on Tier 2.

(vi) If after four consecutive quarterly monitoring periods at a landfill, other than a closed landfill, there is no measured concentration of methane of 500 parts per million or greater from the surface of the landfill, the owner or operator must continue quarterly surface emission monitoring using the methods specified in this section.

(vii) If after four consecutive quarterly monitoring periods at a closed landfill there is no measured concentration of methane of 500 parts per million or greater from the surface of the landfill, the owner or operator must conduct annual surface emission monitoring using the methods specified in this section.

(viii) If a landfill has installed and operates a collection and control system that is not required by this subpart, then the collection and control system must meet the following criteria:

(A) The gas collection and control system must have operated for 6,570 out of 8,760 hours preceding the Tier 4 surface emissions monitoring demonstration.

(B) During the Tier 4 surface emissions monitoring demonstration, the gas collection and control system must operate as it normally would to collect and control as much landfill gas as possible.

(b) After the installation and startup of a collection and control system in compliance with this subpart, the owner or operator must calculate the NMOC emission rate for purposes of determining when the system can be capped, removed or decommissioned as provided in §60.762(b)(2)(v), using Equation 3:

$$M_{NMOC} = 1.89 \times 10^{-3} Q_{LFG} C_{NMOC} \qquad \text{(Eq. 3)}$$

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Where:

M_{NMOC} = Mass emission rate of NMOC, megagrams per year.

Q_{LFG} = Flow rate of landfill gas, cubic meters per minute.

C_{NMOC} = NMOC concentration, parts per million by volume as hexane.

(1) The flow rate of landfill gas, Q_{LFG}, must be determined by measuring the total landfill gas flow rate at the common header pipe that leads to the control system using a gas flow measuring device calibrated according to the provisions of section 10 of Method 2E of appendix A of this part.

(2) The average NMOC concentration, C_{NMOC}, must be determined by collecting and analyzing landfill gas sampled from the common header pipe before the gas moving or condensate removal equipment using the procedures in Method 25 or Method 25C. The sample location on the common header pipe must be before any condensate removal or other gas refining units. The landfill owner or operator must divide the NMOC concentration from Method 25 or Method 25C of appendix A of this part by six to convert from C_{NMOC} as carbon to C_{NMOC} as hexane.

(3) The owner or operator may use another method to determine landfill gas flow rate and NMOC concentration if the method has been approved by the ~~Administrator~~ Department.

(i) Within 60 days after the date of completing each performance test (as defined in §60.8), the owner or operator must submit the results of the performance test, including any associated fuel analyses, according to §60.767(i)(1).

(ii) [Reserved]

(c) When calculating emissions for Prevention of Significant Deterioration purposes, the owner or operator of each MSW landfill subject to the provisions of this subpart must estimate the NMOC emission rate for comparison to the Prevention of Significant Deterioration major source and significance levels in §§51.166 or 52.21 of this chapter using Compilation of Air Pollutant Emission Factors, Volume I:

Stationary Point and Area Sources (AP-42) or other approved measurement procedures.

(d) For the performance test required in §60.762(b)(2)(iii)(B), Method 25 or 25C (Method 25C may be used at the inlet only) of appendix A of this part must be used to determine compliance with the 98 weight-percent efficiency or the 20 parts per million by volume outlet concentration level, unless another method to demonstrate compliance has been approved by the ~~Administrator~~ Department as provided by §60.767(c)(2). Method 3, 3A, or 3C must be used to determine oxygen for correcting the NMOC concentration as hexane to 3 percent. In cases where the outlet concentration is less than 50 ppm NMOC as carbon (8 ppm NMOC as hexane), Method 25A should be used in place of Method 25. Method 18 may be used in conjunction with Method 25A on a limited basis (compound specific, *e.g.,* methane) or Method 3C may be used to determine methane. The methane as carbon should be subtracted from the Method 25A total hydrocarbon value as carbon to give NMOC concentration as carbon. The landowner or operator must divide the NMOC concentration as carbon by 6 to convert from the CNMOC as carbon to CNMOC as hexane. Equation 4 must be used to calculate efficiency:

$$\text{Control Efficiency} = (NMOC_{in} - NMOC_{out})/(NMOC_{in}) \qquad \text{(Eq.4)}$$

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Where:

$NMOC_{in}$ = Mass of NMOC entering control device.

$NMOC_{out}$ = Mass of NMOC exiting control device.

(e) For the performance test required in §60.762(b)(2)(iii)(A), the net heating value of the combusted landfill gas as determined in §60.18(f)(3) is calculated from the concentration of methane in the landfill gas as measured by Method 3C. A minimum of three 30-minute Method 3C samples are determined. The measurement of other organic components, hydrogen, and carbon monoxide is not applicable. Method 3C may be used to determine the landfill gas molecular weight for calculating the flare gas exit velocity under §60.18(f)(4).

(1) Within 60 days after the date of completing each performance test (as defined in §60.8), the owner or operator must submit the results of the performance tests, including any associated fuel analyses, required by §60.764(b) or (d) according to §60.767(i)(1).

(2) [Reserved]

§60.765 Compliance provisions.

(a) Except as provided in §60.767(c)(2), the specified methods in paragraphs (a)(1) through (6) of this section must be used to determine whether the gas collection system is in compliance with §60.762(b)(2)(ii).

(1) For the purposes of calculating the maximum expected gas generation flow rate from the landfill to determine compliance with §60.762(b)(2)(ii)(C)(*1*), either Equation 5 or Equation 6 must be used. The methane generation rate constant (k) and methane generation potential (L_o) kinetic factors should be those published in the most recent Compilation of Air Pollutant Emission Factors (AP-42) or other site specific values demonstrated to be appropriate and approved by the ~~Administrator~~ Department. If k has been determined as specified in §60.764(a)(4), the value of k determined from the test must be used. A value of no more than 15 years must be used for the intended use period of the gas mover equipment. The active life of the landfill is the age of the landfill plus the estimated number of years until closure.

(i) For sites with unknown year-to-year solid waste acceptance rate:

$$Q_m = 2L_oR\ (e^{-kc} - e^{-kt}) \qquad \text{(Eq. 5)}$$

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Where:

Q_m = Maximum expected gas generation flow rate, cubic meters per year.

L_o = Methane generation potential, cubic meters per megagram solid waste.

R = Average annual acceptance rate, megagrams per year.

k = Methane generation rate constant, $year^{-1}$.

t = Age of the landfill at equipment installation plus the time the owner or operator intends to use the gas mover equipment or active life of the landfill, whichever is less. If the equipment is installed

after closure, t is the age of the landfill at installation, years.

c = Time since closure, years (for an active landfill c = 0 and $e^{-kc} = 1$).

(ii) For sites with known year-to-year solid waste acceptance rate:

$$Q_M = \sum_{i=1}^{n} 2kL_o M_i (e^{-kt_i}) \quad \text{(Eq. 6)}$$

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Where:

Q_M = Maximum expected gas generation flow rate, cubic meters per year.

k = Methane generation rate constant, $year^{-1}$.

L_o = Methane generation potential, cubic meters per megagram solid waste.

M_i = Mass of solid waste in the i^{th} section, megagrams.

t_i = Age of the i^{th} section, years.

(iii) If a collection and control system has been installed, actual flow data may be used to project the maximum expected gas generation flow rate instead of, or in conjunction with, Equation 5 or Equation 6 in paragraphs (a)(1)(i) and (ii) of this section. If the landfill is still accepting waste, the actual measured flow data will not equal the maximum expected gas generation rate, so calculations using Equation 5 or Equation 6 in paragraphs (a)(1)(i) or (ii) of this section or other methods must be used to predict the maximum expected gas generation rate over the intended period of use of the gas control system equipment.

(2) For the purposes of determining sufficient density of gas collectors for compliance with §60.762(b)(2)(ii)(C)(*2*), the owner or operator must design a system of vertical wells, horizontal collectors, or other collection devices, satisfactory to the ~~Administrator~~ Department, capable of controlling and extracting gas from all portions of the landfill sufficient to meet all operational and performance standards.

(3) For the purpose of demonstrating whether the gas collection system flow rate is sufficient to determine compliance with §60.762(b)(2)(ii)(C)(*3*), the owner or operator must measure gauge pressure in the gas collection header applied to each individual well, monthly. If a positive pressure exists, action must be initiated to correct the exceedance within 5 calendar days, except for the three conditions allowed under §60.763(b). Any attempted corrective measure must not cause exceedances of other operational or performance standards.

(i) If negative pressure cannot be achieved without excess air infiltration within 15 calendar days of the first measurement of positive pressure, the owner or operator must conduct a root cause analysis and correct the exceedance as soon as practicable, but no later than 60 days after positive pressure was first measured. The owner or operator must keep records according to §60.768(e)(3).

(ii) If corrective actions cannot be fully implemented within 60 days following the positive pressure measurement for which the root cause analysis was required, the owner or operator must also conduct a corrective action analysis and develop an implementation schedule to complete the corrective action(s) as soon as practicable, but no more than 120 days following the positive pressure measurement. The owner or operator must submit the items listed in §60.767(g)(7) as part of the next annual report. The owner or operator must keep records according to §60.768(e)(4).

(iii) If corrective action is expected to take longer than 120 days to complete after the initial exceedance, the owner or operator must submit the root cause analysis, corrective action analysis, and corresponding implementation timeline to the ~~Administrator~~ Department, according to §60.767(g)(7) and §60.767(j). The owner or operator must keep records according to §60.768(e)(5).

(4) [Reserved]

(5) For the purpose of identifying whether excess air infiltration into the landfill is occurring, the owner or operator must monitor each well monthly for temperature as provided in §60.763(c). If a well exceeds the operating parameter for temperature, action must be initiated to correct the exceedance within 5 calendar days. Any attempted corrective measure must not cause exceedances of other operational or performance standards.

(i) If a landfill gas temperature less than 55 degrees Celsius (131 degrees Fahrenheit) cannot be achieved within 15 calendar days of the first measurement of landfill gas temperature greater than 55 degrees Celsius (131 degrees Fahrenheit), the owner or operator must conduct a root cause analysis and

correct the exceedance as soon as practicable, but no later than 60 days after a landfill gas temperature greater than 55 degrees Celsius (131 degrees Fahrenheit) was first measured. The owner or operator must keep records according to §60.768(e)(3).

(ii) If corrective actions cannot be fully implemented within 60 days following the positive pressure measurement for which the root cause analysis was required, the owner or operator must also conduct a corrective action analysis and develop an implementation schedule to complete the corrective action(s) as soon as practicable, but no more than 120 days following the measurement of landfill gas temperature greater than 55 degrees Celsius (131 degrees Fahrenheit). The owner or operator must submit the items listed in §60.767(g)(7) as part of the next annual report. The owner or operator must keep records according to §60.768(e)(4).

(iii) If corrective action is expected to take longer than 120 days to complete after the initial exceedance, the owner or operator must submit the root cause analysis, corrective action analysis, and corresponding implementation timeline to the ~~Administrator~~ Department, according to §60.767(g)(7) and §60.767(j). The owner or operator must keep records according to §60.768(e)(5).

(6) An owner or operator seeking to demonstrate compliance with §60.762(b)(2)(ii)(C)(*4*) through the use of a collection system not conforming to the specifications provided in §60.769 must provide information satisfactory to the ~~Administrator~~ Department as specified in §60.767(c)(3) demonstrating that off-site migration is being controlled.

(b) For purposes of compliance with §60.763(a), each owner or operator of a controlled landfill must place each well or design component as specified in the approved design plan as provided in §60.767(c). Each well must be installed no later than 60 days after the date on which the initial solid waste has been in place for a period of:

(1) Five (5) years or more if active; or

(2) Two (2) years or more if closed or at final grade.

(c) The following procedures must be used for compliance with the surface methane operational standard as provided in §60.763(d).

(1) After installation and startup of the gas collection system, the owner or operator must monitor surface concentrations of methane along the entire perimeter of the collection area and along a pattern that traverses the landfill at 30 meter intervals (or a site-specific established spacing) for each collection area on a quarterly basis using an organic vapor analyzer, flame ionization detector, or other portable monitor meeting the specifications provided in paragraph (d) of this section.

(2) The background concentration must be determined by moving the probe inlet upwind and downwind outside the boundary of the landfill at a distance of at least 30 meters from the perimeter wells.

(3) Surface emission monitoring must be performed in accordance with section 8.3.1 of Method 21 of appendix A of this part, except that the probe inlet must be placed within 5 to 10 centimeters of the ground. Monitoring must be performed during typical meteorological conditions.

(4) Any reading of 500 parts per million or more above background at any location must be recorded as a monitored exceedance and the actions specified in paragraphs (c)(4)(i) through (v) of this section must be taken. As long as the specified actions are taken, the exceedance is not a violation of the operational requirements of §60.763(d).

(i) The location of each monitored exceedance must be marked and the location and concentration recorded.

(ii) Cover maintenance or adjustments to the vacuum of the adjacent wells to increase the gas collection in the vicinity of each exceedance must be made and the location must be re-monitored within 10 calendar days of detecting the exceedance.

(iii) If the re-monitoring of the location shows a second exceedance, additional corrective action must be taken and the location must be monitored again within 10 days of the second exceedance. If the re-monitoring shows a third exceedance for the same location, the action specified in paragraph (c)(4)(v) of this section must be taken, and no further monitoring of that location is required until the action specified in paragraph (c)(4)(v) of this section has been taken.

(iv) Any location that initially showed an exceedance but has a methane concentration less than 500 ppm methane above background at the 10-day re-monitoring specified in paragraph (c)(4)(ii) or (iii) of this

section must be re-monitored 1 month from the initial exceedance. If the 1-month re-monitoring shows a concentration less than 500 parts per million above background, no further monitoring of that location is required until the next quarterly monitoring period. If the 1-month re-monitoring shows an exceedance, the actions specified in paragraph (c)(4)(iii) or (v) of this section must be taken.

(v) For any location where monitored methane concentration equals or exceeds 500 parts per million above background three times within a quarterly period, a new well or other collection device must be installed within 120 calendar days of the initial exceedance. An alternative remedy to the exceedance, such as upgrading the blower, header pipes or control device, and a corresponding timeline for installation may be submitted to the ~~Administrator~~ Department for approval.

(5) The owner or operator must implement a program to monitor for cover integrity and implement cover repairs as necessary on a monthly basis.

(d) Each owner or operator seeking to comply with the provisions in paragraph (c) of this section or §60.764(a)(6) must comply with the following instrumentation specifications and procedures for surface emission monitoring devices:

(1) The portable analyzer must meet the instrument specifications provided in section 6 of Method 21 of appendix A of this part, except that “methane” replaces all references to “VOC”.

(2) The calibration gas must be methane, diluted to a nominal concentration of 500 parts per million in air.

(3) To meet the performance evaluation requirements in section 8.1 of Method 21 of appendix A of this part, the instrument evaluation procedures of section 8.1 of Method 21 of appendix A of this part must be used.

(4) The calibration procedures provided in sections 8 and 10 of Method 21 of appendix A of this part must be followed immediately before commencing a surface monitoring survey.

(e) The provisions of this subpart apply at all times, including periods of startup, shutdown or malfunction. During periods of startup, shutdown, and malfunction, you must comply with the work practice specified in §60.763(e) in lieu of the compliance provisions in §60.765.

§60.766 Monitoring of operations.

Except as provided in §60.767(c)(2):

(a) Each owner or operator seeking to comply with §60.762(b)(2)(ii)(C) for an active gas collection system must install a sampling port and a thermometer, other temperature measuring device, or an access port for temperature measurements at each wellhead and:

(1) Measure the gauge pressure in the gas collection header on a monthly basis as provided in §60.765(a)(3); and

(2) Monitor nitrogen or oxygen concentration in the landfill gas on a monthly basis as follows:

(i) The nitrogen level must be determined using Method 3C, unless an alternative test method is established as allowed by §60.767(c)(2).

(ii) Unless an alternative test method is established as allowed by §60.767(c)(2), the oxygen level must be determined by an oxygen meter using Method 3A, 3C, or ASTM D6522-11 (incorporated by reference, see §60.17). Determine the oxygen level by an oxygen meter using Method 3A, 3C, or ASTM D6522-11 (if sample location is prior to combustion) except that:

(A) The span must be set between 10 and 12 percent oxygen;

(B) A data recorder is not required;

(C) Only two calibration gases are required, a zero and span;

(D) A calibration error check is not required;

(E) The allowable sample bias, zero drift, and calibration drift are ±10 percent.

(iii) A portable gas composition analyzer may be used to monitor the oxygen levels provided:

(A) The analyzer is calibrated; and

(B) The analyzer meets all quality assurance and quality control requirements for Method 3A or ASTM D6522-11 (incorporated by reference, see §60.17).

(3) Monitor temperature of the landfill gas on a monthly basis as provided in §60.765(a)(5). The

temperature measuring device must be calibrated annually using the procedure in 40 CFR part 60, appendix A-1, Method 2, Section 10.3.

(b) Each owner or operator seeking to comply with §60.762(b)(2)(iii) using an enclosed combustor must calibrate, maintain, and operate according to the manufacturer's specifications, the following equipment:

(1) A temperature monitoring device equipped with a continuous recorder and having a minimum accuracy of ±1 percent of the temperature being measured expressed in degrees Celsius or ±0.5 degrees Celsius, whichever is greater. A temperature monitoring device is not required for boilers or process heaters with design heat input capacity equal to or greater than 44 megawatts.

(2) A device that records flow to the control device and bypass of the control device (if applicable). The owner or operator must:

(i) Install, calibrate, and maintain a gas flow rate measuring device that must record the flow to the control device at least every 15 minutes; and

(ii) Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism must be performed at least once every month to ensure that the valve is maintained in the closed position and that the gas flow is not diverted through the bypass line.

(c) Each owner or operator seeking to comply with §60.762(b)(2)(iii) using a non-enclosed flare must install, calibrate, maintain, and operate according to the manufacturer's specifications the following equipment:

(1) A heat sensing device, such as an ultraviolet beam sensor or thermocouple, at the pilot light or the flame itself to indicate the continuous presence of a flame.

(2) A device that records flow to the flare and bypass of the flare (if applicable). The owner or operator must:

(i) Install, calibrate, and maintain a gas flow rate measuring device that records the flow to the control device at least every 15 minutes; and

(ii) Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism must be performed at least once every month to ensure that the valve is maintained in the closed position and that the gas flow is not diverted through the bypass line.

(d) Each owner or operator seeking to demonstrate compliance with §60.762(b)(2)(iii) using a device other than a non-enclosed flare or an enclosed combustor or a treatment system must provide information satisfactory to the ~~Administrator~~ Department as provided in §60.767(c)(2) describing the operation of the control device, the operating parameters that would indicate proper performance, and appropriate monitoring procedures. The ~~Administrator~~ Department must review the information and either approve it, or request that additional information be submitted. The ~~Administrator~~ Department may specify additional appropriate monitoring procedures.

(e) Each owner or operator seeking to install a collection system that does not meet the specifications in §60.769 or seeking to monitor alternative parameters to those required by §§60.763 through 60.766 must provide information satisfactory to the ~~Administrator~~ Department as provided in §60.767(c)(2) and (3) describing the design and operation of the collection system, the operating parameters that would indicate proper performance, and appropriate monitoring procedures. The ~~Administrator~~ Department may specify additional appropriate monitoring procedures.

(f) Each owner or operator seeking to demonstrate compliance with the 500 parts per million surface methane operational standard in §60.763(d) must monitor surface concentrations of methane according to the procedures in §60.765(c) and the instrument specifications in §60.765(d). Any closed landfill that has no monitored exceedances of the operational standard in three consecutive quarterly monitoring periods may skip to annual monitoring. Any methane reading of 500 ppm or more above background detected during the annual monitoring returns the frequency for that landfill to quarterly monitoring.

(g) Each owner or operator seeking to demonstrate compliance with §60.762(b)(2)(iii) using a landfill gas treatment system must maintain and operate all monitoring systems associated with the treatment system in accordance with the site-specific treatment system monitoring plan required in §60.768(b)(5)(ii)

and must calibrate, maintain, and operate according to the manufacturer's specifications a device that records flow to the treatment system and bypass of the treatment system (if applicable). The owner or operator must:

(1) Install, calibrate, and maintain a gas flow rate measuring device that records the flow to the treatment system at least every 15 minutes; and

(2) Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism must be performed at least once every month to ensure that the valve is maintained in the closed position and that the gas flow is not diverted through the bypass line.

(h) The monitoring requirements of paragraphs (b), (c) (d) and (g) of this section apply at all times the affected source is operating, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities. A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. You are required to complete monitoring system repairs in response to monitoring system malfunctions and to return the monitoring system to operation as expeditiously as practicable.

§60.767 Reporting requirements.

(a) *Design capacity report.* Each owner or operator subject to the requirements of this subpart must submit an initial design capacity report to the ~~Administrator~~ Department.

(1) *Submission.* The initial design capacity report fulfills the requirements of the notification of the date construction is commenced as required by §60.7(a)(1) and must be submitted no later than:

(i) ~~November 28, 2016, for landfills that commenced construction, modification, or reconstruction after July 17, 2014 but before August 29, 2016;~~ Ninety days after the date of commenced construction, modification, or reconstruction for MSW landfills that commenced construction, modification, or reconstruction on or after July 17, 2014 or

(ii) ~~Ninety days after the date of commenced construction, modification, or reconstruction for landfills that commence construction, modification, or reconstruction after August 29, 2016~~ The date specified in a State construction or operating permit, if applicable, or January 8, 2018, whichever is earlier, for all other subject MSW landfills.

(2) *Initial design capacity report.* The initial design capacity report must contain the following information:

(i) A map or plot of the landfill, providing the size and location of the landfill, and identifying all areas where solid waste may be landfilled according to the permit issued by the state~~, local, or tribal~~ agency responsible for regulating the landfill.

(ii) The maximum design capacity of the landfill. Where the maximum design capacity is specified in the permit issued by the state~~, local, or tribal~~ agency responsible for regulating the landfill, a copy of the permit specifying the maximum design capacity may be submitted as part of the report. If the maximum design capacity of the landfill is not specified in the permit, the maximum design capacity must be calculated using good engineering practices. The calculations must be provided, along with the relevant parameters as part of the report. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exemption values. If the owner or operator chooses to convert the design capacity from volume to mass or from mass to volume to demonstrate its design capacity is less than 2.5 million megagrams or 2.5 million cubic meters, the calculation must include a site-specific density, which must be recalculated annually. Any density conversions must be documented and submitted with the design capacity report. The ~~state, tribal, local agency or Administrator~~ Department may request other reasonable information as may be necessary to verify the maximum design capacity of the landfill.

(3) *Amended design capacity report.* An amended design capacity report must be submitted to the ~~Administrator~~ Department providing notification of an increase in the design capacity of the landfill, within 90 days of an increase in the maximum design capacity of the landfill to meet or exceed 2.5 million megagrams and 2.5 million cubic meters. This increase in design capacity may result from an increase in the permitted volume of the landfill or an increase in the density as documented in the annual recalculation required in §60.768(f).

(b) *NMOC emission rate report.* Each owner or operator subject to the requirements of this subpart must submit an NMOC emission rate report following the procedure specified in paragraph (i)(2) of this section to the ~~Administrator~~ Department initially and annually thereafter, except as provided for in paragraph (b)(1)(ii) of this section. The ~~Administrator~~ Department may request such additional information as may be necessary to verify the reported NMOC emission rate.

(1) The NMOC emission rate report must contain an annual or 5-year estimate of the NMOC emission rate calculated using the formula and procedures provided in §60.764(a) or (b), as applicable.

(i) The initial NMOC emission rate report may be combined with the initial design capacity report required in paragraph (a) of this section and must be submitted no later than indicated in paragraphs (b)(1)(i)(A) and (B) of this section. Subsequent NMOC emission rate reports must be submitted annually thereafter, except as provided for in paragraph (b)(1)(ii) of this section.

(A) ~~November 28, 2016, for landfills that commenced construction, modification, or reconstruction after July 17, 2014, but before August 29, 2016,~~ Ninety days after the date of commenced construction, modification, or reconstruction for MSW landfills that commenced construction, modification, or reconstruction on or after July 17, 2014 or

(B) ~~Ninety days after the date of commenced construction, modification, or reconstruction for landfills that commence construction, modification, or reconstruction after August 29, 2016~~ January 8, 2018 for all other subject MSW landfills.

(ii) If the estimated NMOC emission rate as reported in the annual report to the ~~Administrator~~ Department is less than 34 megagrams per year in each of the next 5 consecutive years, the owner or operator may elect to submit, following the procedure specified in paragraph (i)(2) of this section, an estimate of the NMOC emission rate for the next 5-year period in lieu of the annual report. This estimate must include the current amount of solid waste-in-place and the estimated waste acceptance rate for each year of the 5 years for which an NMOC emission rate is estimated. All data and calculations upon which this estimate is based must be provided to the ~~Administrator~~ Department. This estimate must be revised at least once every 5 years. If the actual waste acceptance rate exceeds the estimated waste acceptance rate in any year reported in the 5-year estimate, a revised 5-year estimate must be submitted to the ~~Administrator~~ Department. The revised estimate must cover the 5-year period beginning with the year in which the actual waste acceptance rate exceeded the estimated waste acceptance rate.

(2) The NMOC emission rate report must include all the data, calculations, sample reports and measurements used to estimate the annual or 5-year emissions.

(3) Each owner or operator subject to the requirements of this subpart is exempted from the requirements to submit an NMOC emission rate report, after installing a collection and control system that complies with §60.762(b)(2), during such time as the collection and control system is in operation and in compliance with §§60.763 and 60.765.

(c) *Collection and control system design plan.* Each owner or operator subject to the provisions of §60.762(b)(2) must submit a collection and control system design plan to the ~~Administrator~~ Department for approval according to the schedule in paragraph (c)(4) of this section. The collection and control system design plan must be prepared and approved by a professional engineer and must meet the following requirements:

(1) The collection and control system as described in the design plan must meet the design requirements in §60.762(b)(2).

(2) The collection and control system design plan must include any alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping or reporting provisions of §§60.763 through 60.768 proposed by the owner or operator.

(3) The collection and control system design plan must either conform with specifications for active collection systems in §60.769 or include a demonstration to the ~~Administrator~~ Department's satisfaction of the sufficiency of the alternative provisions to §60.769.

(4) Each owner or operator of an MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must submit a collection and control system design plan to the ~~Administrator~~ Department for approval within 1 year of the first NMOC emission rate report in which the NMOC emission rate equals or exceeds 34 megagrams per year, except as follows:

(i) If the owner or operator elects to recalculate the NMOC emission rate after Tier 2 NMOC sampling and analysis as provided in §60.764(a)(3) and the resulting rate is less than 34 megagrams per year, annual periodic reporting must be resumed, using the Tier 2 determined site-specific NMOC concentration, until the calculated emission rate is equal to or greater than 34 megagrams per year or the landfill is closed. The revised NMOC emission rate report, with the recalculated emission rate based on NMOC sampling and analysis, must be submitted, following the procedures in paragraph (i)(2) of this section, within 180 days of the first calculated exceedance of 34 megagrams per year.

(ii) If the owner or operator elects to recalculate the NMOC emission rate after determining a site-specific methane generation rate constant k, as provided in Tier 3 in §60.764(a)(4), and the resulting NMOC emission rate is less than 34 Mg/yr, annual periodic reporting must be resumed. The resulting site-specific methane generation rate constant k must be used in the emission rate calculation until such time as the emissions rate calculation results in an exceedance. The revised NMOC emission rate report based on the provisions of §60.764(a)(4) and the resulting site-specific methane generation rate constant k must be submitted, following the procedure specified in paragraph (i)(2) of this section, to the ~~Administrator~~ Department within 1 year of the first calculated emission rate equaling or exceeding 34 megagrams per year.

(iii) If the owner or operator elects to demonstrate that site-specific surface methane emissions are below 500 parts per million methane, based on the provisions of §60.764(a)(6), then the owner or operator must submit annually a Tier 4 surface emissions report as specified in this paragraph following the procedure specified in paragraph (i)(2) of this section until a surface emissions readings of 500 parts per million methane or greater is found. If the Tier 4 surface emissions report shows no surface emissions readings of 500 parts per million methane or greater for four consecutive quarters at a closed landfill, then the landfill owner or operator may reduce Tier 4 monitoring from a quarterly to an annual frequency. The ~~Administrator~~ Department may request such additional information as may be necessary to verify the reported instantaneous surface emission readings. The Tier 4 surface emissions report must clearly identify the location, date and time (to nearest second), average wind speeds including wind gusts, and reading (in parts per million) of any value 500 parts per million methane or greater, other than non-repeatable, momentary readings. For location, you must determine the latitude and longitude coordinates using an instrument with an accuracy of at least 4 meters. The coordinates must be in decimal degrees with at least five decimal places. The Tier 4 surface emission report must also include the results of the most recent Tier 1 and Tier 2 results in order to verify that the landfill does not exceed 50 Mg/yr of NMOC.

(A) The initial Tier 4 surface emissions report must be submitted annually, starting within 30 days of completing the fourth quarter of Tier 4 surface emissions monitoring that demonstrates that site-specific surface methane emissions are below 500 parts per million methane, and following the procedure specified in paragraph (i)(2) of this section.

(B) The Tier 4 surface emissions report must be submitted within 1 year of the first measured surface exceedance of 500 parts per million methane, following the procedure specified in paragraph (i)(2) of this section.

(5) The landfill owner or operator must notify the ~~Administrator~~ Department that the design plan is completed and submit a copy of the plan's signature page. The ~~Administrator~~ Department has 90 days to decide whether the design plan should be submitted for review. If the ~~Administrator~~ Department chooses to review the plan, the approval process continues as described in paragraph (c)(6) of this section. However, if the ~~Administrator~~ Department indicates that submission is not required or does not respond within 90 days, the landfill owner or operator can continue to implement the plan with the recognition that the owner or operator is proceeding at their own risk. In the event that the design plan is required to be modified to obtain approval, the owner or operator must take any steps necessary to conform any prior actions to the approved design plan and any failure to do so could result in an enforcement action.

(6) Upon receipt of an initial or revised design plan, the ~~Administrator~~ Department must review the information submitted under paragraphs (c)(1) through (3) of this section and either approve it, disapprove it, or request that additional information be submitted. Because of the many site-specific factors involved with landfill gas system design, alternative systems may be necessary. A wide variety of system designs are possible, such as vertical wells, combination horizontal and vertical collection systems, or horizontal trenches only, leachate collection components, and passive systems. If the ~~Administrator~~ Department does not approve or disapprove the design plan, or does not request that

additional information be submitted within 90 days of receipt, then the owner or operator may continue with implementation of the design plan, recognizing they would be proceeding at their own risk.

(7) If the owner or operator chooses to demonstrate compliance with the emission control requirements of this subpart using a treatment system as defined in this subpart, then the owner or operator must prepare a site-specific treatment system monitoring plan as specified in §60.768(b)(5).

(d) *Revised design plan.* The owner or operator who has already been required to submit a design plan under paragraph (c) of this section must submit a revised design plan to the ~~Administrator~~ Department for approval as follows:

(1) At least 90 days before expanding operations to an area not covered by the previously approved design plan.

(2) Prior to installing or expanding the gas collection system in a way that is not consistent with the design plan that was submitted to the ~~Administrator~~ Department according to paragraph (c) of this section.

(e) *Closure report.* Each owner or operator of a controlled landfill must submit a closure report to the ~~Administrator~~ Department within 30 days of waste acceptance cessation. The ~~Administrator~~ Department may request additional information as may be necessary to verify that permanent closure has taken place in accordance with the requirements of 40 CFR 258.60. If a closure report has been submitted to the ~~Administrator~~ Department, no additional wastes may be placed into the landfill without filing a notification of modification as described under §60.7(a)(4).

(f) *Equipment removal report.* Each owner or operator of a controlled landfill must submit an equipment removal report to the ~~Administrator~~ Department 30 days prior to removal or cessation of operation of the control equipment.

(1) The equipment removal report must contain all of the following items:

(i) A copy of the closure report submitted in accordance with paragraph (e) of this section;

(ii) A copy of the initial performance test report demonstrating that the 15-year minimum control period has expired, unless the report of the results of the performance test has been submitted to the EPA via the EPA's CDX, or information that demonstrates that the GCCS will be unable to operate for 15 years due to declining gas flows. In the equipment removal report, the process unit(s) tested, the pollutant(s) tested, and the date that such performance test was conducted may be submitted in lieu of the performance test report if the report has been previously submitted to the EPA's CDX; and

(iii) Dated copies of three successive NMOC emission rate reports demonstrating that the landfill is no longer producing 34 megagrams or greater of NMOC per year, unless the NMOC emission rate reports have been submitted to the EPA via the EPA's CDX. If the NMOC emission rate reports have been previously submitted to the EPA's CDX, a statement that the NMOC emission rate reports have been submitted electronically and the dates that the reports were submitted to the EPA's CDX may be submitted in the equipment removal report in lieu of the NMOC emission rate reports.

(2) The ~~Administrator~~ Department may request such additional information as may be necessary to verify that all of the conditions for removal in §60.762(b)(2)(v) have been met.

(g) *Annual report.* The owner or operator of a landfill seeking to comply with §60.762(b)(2) using an active collection system designed in accordance with §60.762(b)(2)(ii) must submit to the ~~Administrator~~ Department, following the procedure specified in paragraph (i)(2) of this section, annual reports of the recorded information in paragraphs (g)(1) through (7) of this section. The initial annual report must be submitted within 180 days of installation and startup of the collection and control system, and must include the initial performance test report required under §60.8, as applicable, unless the report of the results of the performance test has been submitted to the EPA via the EPA's CDX. In the initial annual report, the process unit(s) tested, the pollutant(s) tested, and the date that such performance test was conducted may be submitted in lieu of the performance test report if the report has been previously submitted to the EPA's CDX. For enclosed combustion devices and flares, reportable exceedances are defined under §60.768(c).

(1) Value and length of time for exceedance of applicable parameters monitored under §60.766(a), (b), (c), (d), and (g).

(2) Description and duration of all periods when the gas stream was diverted from the control device

or treatment system through a bypass line or the indication of bypass flow as specified under §60.766.

(3) Description and duration of all periods when the control device or treatment system was not operating and length of time the control device or treatment system was not operating.

(4) All periods when the collection system was not operating.

(5) The location of each exceedance of the 500 parts per million methane concentration as provided in §60.763(d) and the concentration recorded at each location for which an exceedance was recorded in the previous month. For location, you must determine the latitude and longitude coordinates using an instrument with an accuracy of at least 4 meters. The coordinates must be in decimal degrees with at least five decimal places.

(6) The date of installation and the location of each well or collection system expansion added pursuant to §60.765(a)(3), (a)(5), (b), and (c)(4).

(7) For any corrective action analysis for which corrective actions are required in §60.765(a)(3) or (5) and that take more than 60 days to correct the exceedance, the root cause analysis conducted, including a description of the recommended corrective action(s), the date for corrective action(s) already completed following the positive pressure reading, and, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates.

(h) *Initial performance test report.* Each owner or operator seeking to comply with §60.762(b)(2)(iii) must include the following information with the initial performance test report required under §60.8:

(1) A diagram of the collection system showing collection system positioning including all wells, horizontal collectors, surface collectors, or other gas extraction devices, including the locations of any areas excluded from collection and the proposed sites for the future collection system expansion;

(2) The data upon which the sufficient density of wells, horizontal collectors, surface collectors, or other gas extraction devices and the gas mover equipment sizing are based;

(3) The documentation of the presence of asbestos or nondegradable material for each area from which collection wells have been excluded based on the presence of asbestos or nondegradable material;

(4) The sum of the gas generation flow rates for all areas from which collection wells have been excluded based on nonproductivity and the calculations of gas generation flow rate for each excluded area; and

(5) The provisions for increasing gas mover equipment capacity with increased gas generation flow rate, if the present gas mover equipment is inadequate to move the maximum flow rate expected over the life of the landfill; and

(6) The provisions for the control of off-site migration.

(i) *Electronic reporting.* The owner or operator must submit reports electronically according to paragraphs (i)(1) and (2) of this section.

(1) Within 60 days after the date of completing each performance test (as defined in §60.8), the owner or operator must submit the results of each performance test according to the following procedures:

(i) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT Web site (*https://www3.epa.gov/ttn/chief/ert/ert_info.html*) at the time of the test, you must submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). CEDRI can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternative file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT Web site, once the XML schema is available. If you claim that some of the performance test information being submitted is confidential business information (CBI), you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT Web site, including information claimed to be CBI, on a compact disc, flash drive or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's

CDX as described earlier in this paragraph.

(ii) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT Web site at the time of the test, you must submit the results of the performance test to the ~~Administrator~~ Department ~~at the appropriate address listed in §60.4~~.

(2) Each owner or operator required to submit reports following the procedure specified in this paragraph must submit reports to the EPA via the CEDRI. (CEDRI can be accessed through the EPA's CDX.) The owner or operator must use the appropriate electronic report in CEDRI for this subpart or an alternate electronic file format consistent with the XML schema listed on the CEDRI Web site (*https://www3.epa.gov/ttn/chief/cedri/index.html*). If the reporting form specific to this subpart is not available in CEDRI at the time that the report is due, the owner or operator must submit the report to the ~~Administrator~~ Department at the appropriate address listed in §60.4. Once the form has been available in CEDRI for 90 calendar days, the owner or operator must begin submitting all subsequent reports via CEDRI. The reports must be submitted by the deadlines specified in this subpart, regardless of the method in which the reports are submitted.

(j) *Corrective action and the corresponding timeline.* The owner or operator must submit according to paragraphs (j)(1) and (j)(2) of this section.

(1) For corrective action that is required according to §60.765(a)(3)(iii) or (a)(5)(iii) and is expected to take longer than 120 days after the initial exceedance to complete, you must submit the root cause analysis, corrective action analysis, and corresponding implementation timeline to the ~~Administrator~~ Department as soon as practicable but no later than 75 days after the first measurement of positive pressure or temperature monitoring value of 55 degrees Celsius (131 degrees Fahrenheit). The ~~Administrator~~ Department must approve the plan for corrective action and the corresponding timeline.

(2) For corrective action that is required according to §60.765(a)(3)(iii) or (a)(5)(iii) and is not completed within 60 days after the initial exceedance, you must submit a notification to the ~~Administrator~~ Department as soon as practicable but no later than 75 days after the first measurement of positive pressure or temperature exceedance.

(k) *Liquids addition.* The owner or operator of an affected landfill with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters that has employed leachate recirculation or added liquids based on a Research, Development, and Demonstration permit (issued through Resource Conservation and Recovery Act, subtitle D, part 258) within the last 10 years must submit to the ~~Administrator~~ Department, annually, following the procedure specified in paragraph (i)(2) of this section, the following information:

(1) Volume of leachate recirculated (gallons per year) and the reported basis of those estimates (records or engineering estimates).

(2) Total volume of all other liquids added (gallons per year) and the reported basis of those estimates (records or engineering estimates).

(3) Surface area (acres) over which the leachate is recirculated (or otherwise applied).

(4) Surface area (acres) over which any other liquids are applied.

(5) The total waste disposed (megagrams) in the areas with recirculated leachate and/or added liquids based on on-site records to the extent data are available, or engineering estimates and the reported basis of those estimates.

(6) The annual waste acceptance rates (megagrams per year) in the areas with recirculated leachate and/or added liquids, based on on-site records to the extent data are available, or engineering estimates.

(7) The initial report must contain items in paragraph (k)(1) through (6) of this section per year for the initial annual reporting period as well as for each of the previous 10 years, to the extent historical data are available in on-site records, and the report must be submitted no later than~~:~~ thirteen (13) months after the date of commenced construction, modification, or reconstruction for landfills that commenced construction, modification, or reconstruction on or after July 17, 2014 containing data for the first 12 months after August 29, 2016.

(i) ~~September 27, 2017, for landfills that commenced construction, modification, or reconstruction after July 17, 2014 but before August 29, 2016 containing data for the first 12 months after August 29,~~

~~2016; or~~ [Reserved].

(ii) ~~Thirteen (13) months after the date of commenced construction, modification, or reconstruction for landfills that commence construction, modification, or reconstruction after August 29, 2016 containing data for the first 12 months after August 29, 2016~~ [Reserved].

(8) Subsequent annual reports must contain items in paragraph (k)(1) through (6) of this section for the 365-day period following the 365-day period included in the previous annual report, and the report must be submitted no later than 365 days after the date the previous report was submitted.

(9) Landfills may cease annual reporting of items in paragraphs (k)(1) through (7) of this section once they have submitted the closure report in paragraph (e) of this section.

(l) *Tier 4 notification.* (1) The owner or operator of an affected landfill with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must provide a notification of the date(s) upon which it intends to demonstrate site-specific surface methane emissions are below 500 parts per million methane, based on the Tier 4 provisions of §60.764(a)(6). The landfill must also include a description of the wind barrier to be used during the SEM in the notification. Notification must be postmarked not less than 30 days prior to such date.

(2) If there is a delay to the scheduled Tier 4 SEM date due to weather conditions, including not meeting the wind requirements in §60.764(a)(6)(iii)(A), the owner or operator of a landfill shall notify the ~~Administrator~~ Department by email or telephone no later than 48 hours before any delay or cancellation in the original test date, and arrange an updated date with the ~~Administrator~~ Department by mutual agreement.

§60.768 Recordkeeping requirements.

(a) Except as provided in §60.767(c)(2), each owner or operator of an MSW landfill subject to the provisions of §60.762(b)(2)(ii) and (iii) must keep for at least 5 years up-to-date, readily accessible, on-site records of the design capacity report that triggered §60.762(b), the current amount of solid waste in-place, and the year-by-year waste acceptance rate. Off-site records may be maintained if they are retrievable within 4 hours. Either paper copy or electronic formats are acceptable.

(b) Except as provided in §60.767(c)(2), each owner or operator of a controlled landfill must keep up-to-date, readily accessible records for the life of the control system equipment of the data listed in paragraphs (b)(1) through (5) of this section as measured during the initial performance test or compliance determination. Records of subsequent tests or monitoring must be maintained for a minimum of 5 years. Records of the control device vendor specifications must be maintained until removal.

(1) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with §60.762(b)(2)(ii):

(i) The maximum expected gas generation flow rate as calculated in §60.765(a)(1). The owner or operator may use another method to determine the maximum gas generation flow rate, if the method has been approved by the ~~Administrator~~ Department.

(ii) The density of wells, horizontal collectors, surface collectors, or other gas extraction devices determined using the procedures specified in §60.769(a)(1).

(2) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with §60.762(b)(2)(iii) through use of an enclosed combustion device other than a boiler or process heater with a design heat input capacity equal to or greater than 44 megawatts:

(i) The average temperature measured at least every 15 minutes and averaged over the same time period of the performance test.

(ii) The percent reduction of NMOC determined as specified in §60.762(b)(2)(iii)(B) achieved by the control device.

(3) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with §60.762(b)(2)(iii)(B)(*1*) through use of a boiler or process heater of any size: A description of the location at which the collected gas vent stream is introduced into the boiler or process heater over the same time period of the performance testing.

(4) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with §60.762(b)(2)(iii)(A) through use of a non-enclosed flare, the flare type (*i.e.,* steam-assisted, air-assisted, or nonassisted), all visible emission readings, heat content determination, flow rate

or bypass flow rate measurements, and exit velocity determinations made during the performance test as specified in §60.18; continuous records of the flare pilot flame or flare flame monitoring and records of all periods of operations during which the pilot flame of the flare flame is absent.

(5) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with §60.762(b)(2)(iii) through use of a landfill gas treatment system:

(i) *Bypass records.* Records of the flow of landfill gas to, and bypass of, the treatment system.

(ii) *Site-specific treatment monitoring plan,* to include:

(A) Monitoring records of parameters that are identified in the treatment system monitoring plan and that ensure the treatment system is operating properly for each intended end use of the treated landfill gas. At a minimum, records should include records of filtration, de-watering, and compression parameters that ensure the treatment system is operating properly for each intended end use of the treated landfill gas.

(B) Monitoring methods, frequencies, and operating ranges for each monitored operating parameter based on manufacturer's recommendations or engineering analysis for each intended end use of the treated landfill gas.

(C) Documentation of the monitoring methods and ranges, along with justification for their use.

(D) Identify who is responsible (by job title) for data collection.

(E) Processes and methods used to collect the necessary data.

(F) Description of the procedures and methods that are used for quality assurance, maintenance, and repair of all continuous monitoring systems.

(c) Except as provided in §60.767(c)(2), each owner or operator of a controlled landfill subject to the provisions of this subpart must keep for 5 years up-to-date, readily accessible continuous records of the equipment operating parameters specified to be monitored in §60.766 as well as up-to-date, readily accessible records for periods of operation during which the parameter boundaries established during the most recent performance test are exceeded.

(1) The following constitute exceedances that must be recorded and reported under §60.767(g):

(i) For enclosed combustors except for boilers and process heaters with design heat input capacity of 44 megawatts (150 million British thermal units per hour) or greater, all 3-hour periods of operation during which the average temperature was more than 28 degrees Celsius (82 degrees Fahrenheit) below the average combustion temperature during the most recent performance test at which compliance with §60.762(b)(2)(iii) was determined.

(ii) For boilers or process heaters, whenever there is a change in the location at which the vent stream is introduced into the flame zone as required under paragraph (b)(3) of this section.

(2) Each owner or operator subject to the provisions of this subpart must keep up-to-date, readily accessible continuous records of the indication of flow to the control system and the indication of bypass flow or records of monthly inspections of car-seals or lock-and-key configurations used to seal bypass lines, specified under §60.766.

(3) Each owner or operator subject to the provisions of this subpart who uses a boiler or process heater with a design heat input capacity of 44 megawatts or greater to comply with §60.762(b)(2)(iii) must keep an up-to-date, readily accessible record of all periods of operation of the boiler or process heater. (Examples of such records could include records of steam use, fuel use, or monitoring data collected pursuant to other state~~, local, tribal,~~ or federal regulatory requirements.)

(4) Each owner or operator seeking to comply with the provisions of this subpart by use of a non-enclosed flare must keep up-to-date, readily accessible continuous records of the flame or flare pilot flame monitoring specified under §60.766(c), and up-to-date, readily accessible records of all periods of operation in which the flame or flare pilot flame is absent.

(5) Each owner or operator of a landfill seeking to comply with §60.762(b)(2) using an active collection system designed in accordance with §60.762(b)(2)(ii) must keep records of periods when the collection system or control device is not operating.

(d) Except as provided in §60.767(c)(2), each owner or operator subject to the provisions of this subpart must keep for the life of the collection system an up-to-date, readily accessible plot map showing

each existing and planned collector in the system and providing a unique identification location label for each collector.

(1) Each owner or operator subject to the provisions of this subpart must keep up-to-date, readily accessible records of the installation date and location of all newly installed collectors as specified under §60.765(b).

(2) Each owner or operator subject to the provisions of this subpart must keep readily accessible documentation of the nature, date of deposition, amount, and location of asbestos-containing or nondegradable waste excluded from collection as provided in §60.769(a)(3)(i) as well as any nonproductive areas excluded from collection as provided in §60.769(a)(3)(ii).

(e) Except as provided in §60.767(c)(2), each owner or operator subject to the provisions of this subpart must keep for at least 5 years up-to-date, readily accessible records of the following:

(1) All collection and control system exceedances of the operational standards in §60.763, the reading in the subsequent month whether or not the second reading is an exceedance, and the location of each exceedance.

(2) Each owner or operator subject to the provisions of this subpart must also keep records of each wellhead temperature monitoring value of 55 degrees Celsius (131 degrees Fahrenheit) or above, each wellhead nitrogen level at or above 20 percent, and each wellhead oxygen level at or above 5 percent.

(3) For any root cause analysis for which corrective actions are required in §60.765(a)(3)(i) or (a)(5)(i), keep a record of the root cause analysis conducted, including a description of the recommended corrective action(s) taken, and the date(s) the corrective action(s) were completed.

(4) For any root cause analysis for which corrective actions are required in §60.765(a)(3)(ii) or (a)(5)(ii), keep a record of the root cause analysis conducted, the corrective action analysis, the date for corrective action(s) already completed following the positive pressure reading or high temperature reading, and, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates.

(5) For any root cause analysis for which corrective actions are required in §60.765(a)(3)(iii) or (a)(5)(iii), keep a record of the root cause analysis conducted, the corrective action analysis, the date for corrective action(s) already completed following the positive pressure reading or high temperature reading, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates, and a copy of any comments or final approval on the corrective action analysis or schedule from the regulatory agency.

(f) Landfill owners or operators who convert design capacity from volume to mass or mass to volume to demonstrate that landfill design capacity is less than 2.5 million megagrams or 2.5 million cubic meters, as provided in the definition of “design capacity”, must keep readily accessible, on-site records of the annual recalculation of site-specific density, design capacity, and the supporting documentation. Off-site records may be maintained if they are retrievable within 4 hours. Either paper copy or electronic formats are acceptable.

(g) Landfill owners or operators seeking to demonstrate that site-specific surface methane emissions are below 500 parts per million by conducting surface emission monitoring under the Tier 4 procedures specified in §60.764(a)(6) must keep for at least 5 years up-to-date, readily accessible records of all surface emissions monitoring and information related to monitoring instrument calibrations conducted according to sections 8 and 10 of Method 21 of appendix A of this part, including all of the following items:

(1) Calibration records:

(i) Date of calibration and initials of operator performing the calibration.

(ii) Calibration gas cylinder identification, certification date, and certified concentration.

(iii) Instrument scale(s) used.

(iv) A description of any corrective action taken if the meter readout could not be adjusted to correspond to the calibration gas value.

(v) If an owner or operator makes their own calibration gas, a description of the procedure used.

(2) Digital photographs of the instrument setup, including the wind barrier. The photographs must be

time and date-stamped and taken at the first sampling location prior to sampling and at the last sampling location after sampling at the end of each sampling day, for the duration of the Tier 4 monitoring demonstration.

(3) Timestamp of each surface scan reading:

(i) Timestamp should be detailed to the nearest second, based on when the sample collection begins.

(ii) A log for the length of time each sample was taken using a stopwatch (*e.g.,* the time the probe was held over the area).

(4) Location of each surface scan reading. The owner or operator must determine the coordinates using an instrument with an accuracy of at least 4 meters. Coordinates must be in decimal degrees with at least five decimal places.

(5) Monitored methane concentration (parts per million) of each reading.

(6) Background methane concentration (parts per million) after each instrument calibration test.

(7) Adjusted methane concentration using most recent calibration (parts per million).

(8) For readings taken at each surface penetration, the unique identification location label matching the label specified in paragraph (d) of this section.

(9) Records of the operating hours of the gas collection system for each destruction device.

(h) Except as provided in §60.767(c)(2), each owner or operator subject to the provisions of this subpart must keep for at least 5 years up-to-date, readily accessible records of all collection and control system monitoring data for parameters measured in §60.766(a)(1), (2), and (3).

(i) Any records required to be maintained by this subpart that are submitted electronically via the EPA's CDX may be maintained in electronic format.

(j) For each owner or operator reporting leachate or other liquids addition under §60.767(k), keep records of any engineering calculations or company records used to estimate the quantities of leachate or liquids added, the surface areas for which the leachate or liquids were applied, and the estimates of annual waste acceptance or total waste in place in the areas where leachate or liquids were applied.

§60.769 Specifications for active collection systems.

(a) Each owner or operator seeking to comply with §60.762(b)(2)(i) must site active collection wells, horizontal collectors, surface collectors, or other extraction devices at a sufficient density throughout all gas producing areas using the following procedures unless alternative procedures have been approved by the ~~Administrator~~ Department as provided in §60.767(c)(2) and (3):

(1) The collection devices within the interior must be certified to achieve comprehensive control of surface gas emissions by a professional engineer. The following issues must be addressed in the design: Depths of refuse, refuse gas generation rates and flow characteristics, cover properties, gas system expandability, leachate and condensate management, accessibility, compatibility with filling operations, integration with closure end use, air intrusion control, corrosion resistance, fill settlement, resistance to the refuse decomposition heat, and ability to isolate individual components or sections for repair or troubleshooting without shutting down entire collection system.

(2) The sufficient density of gas collection devices determined in paragraph (a)(1) of this section must address landfill gas migration issues and augmentation of the collection system through the use of active or passive systems at the landfill perimeter or exterior.

(3) The placement of gas collection devices determined in paragraph (a)(1) of this section must control all gas producing areas, except as provided by paragraphs (a)(3)(i) and (ii) of this section.

(i) Any segregated area of asbestos or nondegradable material may be excluded from collection if documented as provided under §60.768(d). The documentation must provide the nature, date of deposition, location and amount of asbestos or nondegradable material deposited in the area, and must be provided to the ~~Administrator~~ Department upon request.

(ii) Any nonproductive area of the landfill may be excluded from control, provided that the total of all excluded areas can be shown to contribute less than 1 percent of the total amount of NMOC emissions from the landfill. The amount, location, and age of the material must be documented and provided to the ~~Administrator~~ Department upon request. A separate NMOC emissions estimate must be made for each

section proposed for exclusion, and the sum of all such sections must be compared to the NMOC emissions estimate for the entire landfill.

(A) The NMOC emissions from each section proposed for exclusion must be computed using Equation 7:

$$Q_i = 2\ k\ L_o M_i (e^{-kt_i})\ (C_{NMOC})\ (3.6 \times 10^{-9}) \qquad \text{(Eq. 7)}$$

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Where:

Q_i = NMOC emission rate from the i^{th} section, megagrams per year.

k = Methane generation rate constant, $year^{-1}$.

L_o = Methane generation potential, cubic meters per megagram solid waste.

M_i = Mass of the degradable solid waste in the i^{th} section, megagram.

t_i = Age of the solid waste in the i^{th} section, years.

C_{NMOC} = Concentration of nonmethane organic compounds, parts per million by volume.

3.6×10^{-9} = Conversion factor.

(B) If the owner/operator is proposing to exclude, or cease gas collection and control from, nonproductive physically separated (*e.g.,* separately lined) closed areas that already have gas collection systems, NMOC emissions from each physically separated closed area must be computed using either Equation 3 in §60.764(b) or Equation 7 in paragraph (a)(3)(ii)(A) of this section.

(iii) The values for k and C_{NMOC} determined in field testing must be used if field testing has been performed in determining the NMOC emission rate or the radii of influence (this distance from the well center to a point in the landfill where the pressure gradient applied by the blower or compressor approaches zero). If field testing has not been performed, the default values for k, L_o and C_{NMOC} provided in §60.764(a)(1) or the alternative values from §60.764(a)(5) must be used. The mass of nondegradable solid waste contained within the given section may be subtracted from the total mass of the section when estimating emissions provided the nature, location, age, and amount of the nondegradable material is documented as provided in paragraph (a)(3)(i) of this section.

(b) Each owner or operator seeking to comply with §60.762(b)(2)(ii)(A) construct the gas collection devices using the following equipment or procedures:

(1) The landfill gas extraction components must be constructed of polyvinyl chloride (PVC), high density polyethylene (HDPE) pipe, fiberglass, stainless steel, or other nonporous corrosion resistant material of suitable dimensions to: Convey projected amounts of gases; withstand installation, static, and settlement forces; and withstand planned overburden or traffic loads. The collection system must extend as necessary to comply with emission and migration standards. Collection devices such as wells and horizontal collectors must be perforated to allow gas entry without head loss sufficient to impair performance across the intended extent of control. Perforations must be situated with regard to the need to prevent excessive air infiltration.

(2) Vertical wells must be placed so as not to endanger underlying liners and must address the occurrence of water within the landfill. Holes and trenches constructed for piped wells and horizontal collectors must be of sufficient cross-section so as to allow for their proper construction and completion including, for example, centering of pipes and placement of gravel backfill. Collection devices must be designed so as not to allow indirect short circuiting of air into the cover or refuse into the collection system or gas into the air. Any gravel used around pipe perforations should be of a dimension so as not to penetrate or block perforations.

(3) Collection devices may be connected to the collection header pipes below or above the landfill surface. The connector assembly must include a positive closing throttle valve, any necessary seals and couplings, access couplings and at least one sampling port. The collection devices must be constructed of PVC, HDPE, fiberglass, stainless steel, or other nonporous material of suitable thickness.

(c) Each owner or operator seeking to comply with §60.762(b)(2)(iii) must convey the landfill gas to a control system in compliance with §60.762(b)(2)(iii) through the collection header pipe(s). The gas mover equipment must be sized to handle the maximum gas generation flow rate expected over the intended use period of the gas moving equipment using the following procedures:

(1) For existing collection systems, the flow data must be used to project the maximum flow rate. If no flow data exists, the procedures in paragraph (c)(2) of this section must be used.

(2) For new collection systems, the maximum flow rate must be in accordance with §60.765(a)(1).

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APPENDIX C

Certification of Public Noticing [and Public Hearing]

1 Legal Notice in News Journal on March 12
2 Legal Notice in Delaware State News on March 12
3 Public Notice on DNREC website
4 Public Notice on Delaware's Statewide Meeting Calendar
5 Public Notice in biweekly E-News Update from DNREC's Office of Environmental Protection
6 Notification to EPA Region 3 and the state and local agencies in the region
7 Certification that the hearing was held in accordance with the requirements of 40 CFR 60.23(d)
8 List of hearing attendees and their affiliation
9 Brief summary of presentations or written submissions to the Public Hearing Record

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03/12/17 **A.D 2017**

Sherry Ann Salvia
Sworn and subscribed before me, this 13 day of March, 2017

Linda Barber

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MY COMMISSION
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Ad Number: 0001985376 Run Dates: 03/12/17

DNREC – Division of Air Quality

LEGAL NOTICE

PUBLIC HEARING

The Department of Natural Resources and Environmental Control (DNREC) will conduct a public hearing on a proposed State Plan and amendment to existing **Regulation No. 1120** New Source Performance Standards to add a new standard (Section 30) that is applicable to municipal solid waste landfills (MSWLs).

On August 29, 2016, the EPA promulgated two regulations applicable to MSWLs. The EPA promulgated 40 CFR Part 60 Subpart XXX, which regulates the emissions from new (i.e., newly constructed, reconstructed, or modified) MSWLs and 40 CFR Part 60 Subpart Cf, which requires States to regulate emissions from existing MSWLs. The purpose of these two federal regulations is to reduce volatile organic compounds (VOCs) and methane emissions from MSWLs.

DNREC is proposing to incorporate the federal new MSWL requirements in Subpart XXX by reference as Section 30 of **Regulation No. 1120**. To satisfy the existing MSWL requirements of Subpart Cf, the applicability of Section 30 will be expanded to include both existing and new MSWLs. Once finalized, Section 30 and the State Plan will be submitted to the EPA for approval. There are three MSWLs in Delaware; all are operated by the Delaware Solid Waste Authority and will be subject to the State Plan and amended regulation.

The public hearing on this proposed State Plan and amendment of Regulation No. 1120 will be held on Monday, April 24, 2017, beginning at 6:00PM in the Department's office located at 100 W. Water Street, Suite 6A, Dover, DE.

The proposed amendment and the State Plan are available for public review (1) at the Department's office at 715 Grantham Lane in New Castle, DE; (2) at the Department's office at 100 W. Water Street, Suite 6A in Dover, DE; (3) in the statewide Public Meeting Calendar notice for this hearing at https://publicmeetings.delaware.gov/, and (4) in the April 1, 2017 edition of the Delaware Register of Regulations on and after April 1 at http://regulations.delaware.gov/services/register.shtml. For additional information or any appointment to inspect the proposed amendment and State Plan, please contact either Jim Snead at the New Castle office at (302) 323-4542 or jsnead@state.de.us or Ron Amirikian at the Dover office at (302) 739-9402 or ronald.amirikian@state.de.us.

Statements and testimony may be presented either orally or in writing at the April 24 public hearing. If you are unable to attend or wish to submit your comments in advance of the public hearing, please send your comments to the address below. Interested parties may also submit written comments to the Department, to the same address below, up until the end of the comment period, which will extend through May 9, 2017, unless a longer comment period is designated by the hearing officer at the public hearing.

DNREC – Division of Air Quality
Subject: April 24 Public Hearing
715 Grantham Lane
New Castle, DE 19720

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3/12- NJ

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Before me, a Notary Public, for the County and State aforesaid, Edward Dulin, known to me to be such, who being sworn according to law deposes and says that he is President of Independent Newsmedia Inc. USA, the publisher of the **Delaware State News**, a daily newspaper published at Dover, County of Kent, and State of Delaware, and that the notice, a copy of which is hereto attached, as published in the **Delaware State News** in its issue of March 12, 2017.

President
Independent Newsmedia Inc. USA

Sworn to and subscribed before me this 12th

Day of March A.D. 2017

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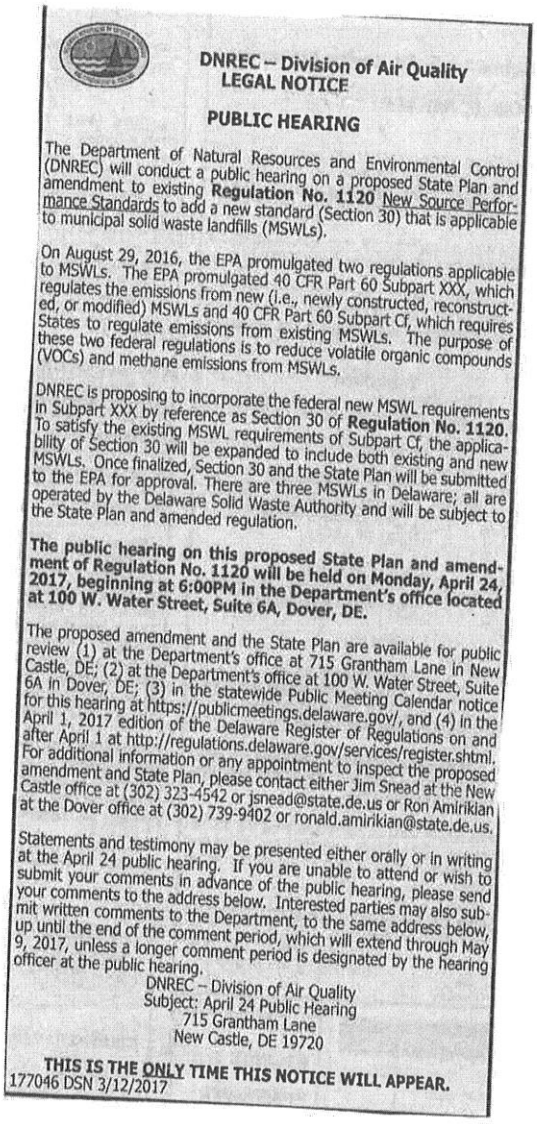
Janet Levy
Notary Public

C - 2



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The public hearing on this proposed State Plan and amendment of Regulation No. 1120 will be held on Monday, April 24, 2017, beginning at 6:00PM in the Department's office located at 100 W. Water Street, Suite 6A, Dover, DE.

The proposed amendment and the State Plan are available for public review (1) at the Department's office at 715 Grantham Lane in New Castle, DE; (2) at the Department's office at 100 W. Water Street, Suite 6A in Dover, DE; (3) in the statewide Public Meeting Calendar notice for this hearing at https://publicmeetings.delaware.gov/, and (4) in the April 1, 2017 edition of the Delaware Register of Regulations on and after April 1 at http://regulations.delaware.gov/services/register.shtml. For additional information or any appointment to inspect the proposed amendment and State Plan, please contact either Jim Snead at the New Castle office at (302) 323-4542 or jsnead@state.de.us or Ron Amirikian at the Dover office at (302) 739-9402 or ronald.amirikian@state.de.us.

Statements and testimony may be presented either orally or in writing at the April 24 public hearing. If you are unable to attend or wish to submit your comments in advance of the public hearing, please send your comments to the address below. Interested parties may also submit written comments to the Department, to the same address below, up until the end of the comment period, which will extend through May 9, 2017, unless a longer comment period is designated by the hearing officer at the public hearing.

DNREC – Division of Air Quality
Subject: April 24 Public Hearing
715 Grantham Lane
New Castle, DE 19720

THIS IS THE ONLY TIME THIS NOTICE WILL APPEAR.
177046 DSN 3/12/2017

DNREC Public Notices Website

http://www.dnrec.delaware.gov/Lists/Public%20Notices/DispForm.aspx?ID=3670&Source=http%3A%2F%2Fwww%2Ednrec%2Edelaware%2Egov%2FLists%2FPublic%2520Notices%2FAllItems%2Easpx&ContentTypeId=0x010034FD6D348B0CF04392485E93FC15AB3A

Public Notices : PUBLIC HEARING

Start Date	3/12/2017
End Date	4/24/2017
Division	Air Quality
Notice Text	DNREC/DIVISION OF AIR QUALITY LEGAL NOTICE PUBLIC HEARING The Department of Natural Resources and Environmental Control (DNREC) will conduct a public hearing on a proposed State Plan and amendment to existing Regulation No. 1120 New Source Performance Standards to add a new standard (Section 30) that is applicable to municipal solid waste landfills (MSWLs). On August 29, 2016, the EPA promulgated two regulations applicable to MSWLs. The EPA promulgated 40 CFR Part 60 Subpart XXX, which regulates the emissions from new (i.e., newly constructed, reconstructed, or modified) MSWLs and 40 CFR Part 60 Subpart Cf, which requires States to regulate emissions from existing MSWLs. The purpose of these two federal regulations is to reduce volatile organic compounds (VOCs) and methane emissions from MSWLs. DNREC is proposing to incorporate the federal new MSWL requirements in Subpart XXX by reference as Section 30 of Regulation No. 1120. To satisfy the existing MSWL requirements of Subpart Cf, the applicability of Section 30 will be expanded to include both existing and new MSWLs. Once finalized, Section 30 and the State Plan will be submitted to the EPA for approval. There are three MSWLs in Delaware; all are operated by the Delaware Solid Waste Authority and will be subject to the State Plan and amended regulation. The public hearing on this proposed State Plan and amendment of Regulation No. 1120 will be held on Monday, April 24, 2017, beginning at 6:00PM in the Department's office located at 100 W. Water Street, Suite 6A, Dover, DE. The proposed amendment and the State Plan are available for public review (1) at the Department's office at 715 Grantham Lane in New Castle, DE; (2) at the Department's office at 100 W. Water Street, Suite 6A in Dover, DE; (3) in the statewide Public Meeting Calendar notice for this hearing at https://publicmeetings.delaware.gov/, and (4) in the April 1, 2017 edition of the Delaware Register of Regulations on and after April 1 at http://regulations.delaware.gov/services/register.shtml. For additional information or any appointment to inspect the proposed amendment and State Plan, please contact either Jim Snead at the New Castle office at (302) 323-4542 or jsnead@state.de.us or Ron Amirikian at the Dover office at (302) 739-9402 or ronald.amirikian@state.de.us. Statements and testimony may be presented either orally or in writing at the April 24 public hearing. If you are unable to attend or wish to submit your comments in advance of the public hearing, please send your comments to the address below. Interested parties may also submit written comments to the Department, to the same address below, up until the end of the comment period, which will extend through May 9, 2017, unless a longer comment period is designated by the hearing officer at the public hearing. DNREC – Division of Air Quality Subject: April 24 Public Hearing 715 Grantham Lane New Castle, DE 19720 THIS IS THE ONLY TIME THIS NOTICE WILL APPEAR.
Start + 7	3/19/2017

Created at 3/8/2017 2:36 PM by mpolo
Last modified at 3/8/2017 2:36 PM by mpolo

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https://publicmeetings.delaware.gov/Meeting/52522

Public Hearing – Section 30 of 7 DE Admin Code 1120/State Plan (Municipal Solide Waste Landfills)

06:00 PM – 06:00 PM Monday April 24, 2017
DNREC Division of Air Quality / Air Quality / Natural Resources and Environmental Control

MEETING DESCRIPTION

On 8/29/16, EPA finalized 2 rules applicable to MSWLs. EPA finalized 40 CFR Part 60 Sub XXX, which regulated the emissions of new MSWLs. EPA finalized 40 CFR Part 60 Sub Cf, which mandated states to develop plans to regulate emissions of existing MSWLs. The purpose of this action is to incorporate the requirements in Sub XXX by reference as Sect. 30 of Reg. 1120 and to satisfy the existing requirements of Sub Cf by expanding the applicability of Sect. 30 to include existing & new MSWLs.

The proposed amendment and the State Plan are available for public review (1) at the Departments office at 715 Grantham Lane in New Castle, DE; (2) at the Departments office at 100 W. Water Street, Suite 6A in Dover, DE; (3) in the statewide Public Meeting Calendar notice for this hearing at https://publicmeetings.delaware.gov/, and (4) in the April 1, 2017 edition of the Delaware Register of Regulations on and after April 1 at http://regulations.delaware.gov/services/register.shtml. For additional information or any appointment to inspect the proposed amendment and State Plan, please contact either Jim Snead at the New Castle office at (302) 323-4542 or jsnead@state.de.us or Ron Amirikian at the Dover office at (302) 739-9402 or ronald.amirikian@state.de.us.

CHANGE HISTORY

Change Date	Change Reason
03/20/2017	Topic change - Purpose
03/17/2017	Location change - Location Comments
03/17/2017	Topic change - Purpose
03/17/2017	Document change - Associated Document saved
03/17/2017	Document change - Associated Document saved
03/17/2017	Document change - Associated Document saved
03/17/2017	Document change - Associated Document saved
03/17/2017	Document change - Agenda saved
03/17/2017	Document change - Associated Document saved
03/17/2017	Document change - Associated Document saved
03/17/2017	Location change - Location Comments
03/17/2017	Topic change - Meeting Information
03/17/2017	New

CONTACT INFORMATION

Jim Snead
302-323-4542
james.snead@state.de.us
Website

ADDRESS

Department of Natural Resources & Environmental Control
100 W. Water Street
Dover, DE 19904

Statements and testimony may be presented either orally or in writing at a public hearing. If you are unable to attend or wish to submit your comments in advance send them to Jim Snead, 715 Grantham Lane, New Castle, DE 9720. Interested parties may also submit written comments to the Department, to Jim Snead until the end of the comment period, which will extend through May 9, unless a longer period is designated by the hearing officer at the hearing

VIRTUAL MEETING INFORMATION

None

DOCUMENTS

Agenda
Document

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Snead, James (DNREC)

From: Nedelka, Katherine (DNREC)
Sent: Tuesday, March 21, 2017 9:51 AM
Subject: DNREC E-News March 21 2017

NEWS FROM DNREC'S OFFICE OF ENVIRONMENTAL PROTECTION, 03/21/17

The biweekly E-News Update features current information on the Divisions of Air Quality (DAQ), Waste and Hazardous Substances (WHS), and Water regarding public meetings, workshops, hearings, and regulatory documents available for public comment, as well as general news updates. For those of you who are receiving the E-News Update for the first time, the subscription is FREE!
Please sign up at: http://www.dnrec.delaware.gov/Pages/DNRECLists.aspx under "Division of Waste & Hazardous Substances Lists." There is no form to fill out; it's done in three clicks!
Suggestions? Additions? Please call Kathy Nedelka at 302-739-9400, or send an email to katherine.nedelka@state.de.us
Published by the Divisions of Air Quality, Waste and Hazardous Substances, and Water.
Visit us at: www.awm.delaware.gov

SECRETARY'S ORDERS

Secretary's Order No. 2017-A-0009
RE: Notice of Administrative Penalty Assessment and Secretary's Order issued to Delaware City Refining Company for violation of 7 Del. Code Chapter 60, pursuant to 7 Del.C. §6005(b)(3).

Secretary's Order No. 2017-WH-0010
RE: Cease and desist Secretary's Order to Heritage-Crystal Clean, LLC, for violation of 7 Del. C. Chapters 60 and 63 and 7 DE Admin. Code 1302, Delaware's Regulations Governing Hazardous Waste ("DRGHW"). Accordingly, the Department is issuing this Order to Cease and Desist, pursuant to 7 Del. C. § 6018.

Secretary's Order No. 2017-WH-0013
RE: Approving Final Regulations to Amend 7 DE Admin. Code 1352: Regulations Governing Aboveground Storage Tank Systems Hearing officer's report included

UPCOMING AIR, WASTE, & WATER-RELATED HEARINGS, MEETINGS, & EVENTS

DELAWARES ENVIRONMENTAL MITIGATION PLAN- This meeting will be held on **March 23** beginning at 6pm at 100 W Water St, Dover 19904. On October 25, 2016, a Partial Consent Decree was finalized between the United States Justice Department, the Volkswagen (VW) Corporation, and its subsidiaries regarding the installation and use of emissions testing defeat devices in over 500,000 vehicles sold and operated in the United States beginning in 2009. Use of these defeat devices has increased air emissions of nitrogen oxide (NOX), resulting in adverse impacts to air quality and violating the federal Clean Air Act. In response to the Settlement, the Division of Air Quality has developed a proposed mitigation plan to accept and distribute these funds to eligible projects. The proposed plan is focused on the eligible types of mitigation actions that can produce the greatest air quality benefit in terms of NOX emission reductions, reduce public exposure, and promote clean vehicle technologies. The plan is expected to have a significant positive impact on Delaware; DAQ is requesting input from the public to help develop a final mitigation plan prior to taking any formal action. Public comments are being accepted until **April 3**. Written comments may be sent to VW_Mitigation_Plan@state.de.us or mailed to: Division of Air Quality, State Street Commons, 100 W. Water Street, Suite 6A, Dover, 19904. For more information visit:
https://publicmeetings.delaware.gov/Meeting/51374

WATER SUPPLY COORDINATING COUNCIL MEETING - The Council will hold a meeting on **March 30** from 10am to 12pm at the Kent County Administration Complex, Conference Room 220, 555 Bay Road, Dover, 19901. For additional information, please contact Kimberly Burris at (302) 739-9945; or visit:
https://publicmeetings.delaware.gov/Meeting/51191

BOARD OF CERTIFICATION FOR WASTEWATER OPERATORS MONTHLY MEETING – This is a regular monthly meeting of the Board of Certification for Wastewater Operators. Meeting will take place on **April 4** from 9am to10am at the Richardson & Robbins Building, Conference Room B172, 89 Kings Hwy, Dover 19901. For additional information contact Faye Wheeler at (302) 739-9946; or visit:
https://publicmeetings.delaware.gov/Meeting/39380

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BOILER SAFETY COUNCIL MEETING – Meeting will discuss proposed regulation changes and will take place on **April 5** beginning at 10am at the Cannon Building, 1st floor, 861 Silver Lake Blvd, Dover, 19904. For additional information contact Alex Rittberg at 302-395-2500; or visit: https://publicmeetings.delaware.gov/Meeting/51236

ON-SITE SYSTEMS ADVISORY BOARD MEETING – This is a regular monthly meeting that will be held on **April 5** from 9:15am to 11:30am at the Richardson and Robbins Building, Conference Room B228: 89 Kings Highway, Dover, 19901. For additional information, contact Dawn Dryden, 302-739-9948; or visit: https://publicmeetings.delaware.gov/Meeting/50645

PUBLIC HEARING - Section 30 of 7 DE Admin Code 1120/State Plan (Municipal Solide Waste Landfills) – This meeting will be held on April 24 beginning at 6pm at DNREC, 100 W Water St, Dover, 19904. On 8/29/16, EPA finalized 2 rules applicable to MSWLs. EPA finalized 40 CFR Part 60 Sub XXX, which regulated the emissions of new MSWLs. EPA finalized 40 CFR Part 60 Sub Cf, which mandated states to develop plans to regulate emissions of existing MSWLs. The purpose of this action is to incorporate the requirements in Sub XXX by reference as Sect. 30 of Reg. 1120 and to satisfy the existing requirements of Sub Cf by expanding the applicability of Sect. 30 to include existing & new MSWLs. The proposed amendment and the State Plan are available for public review (1) at the Departments office at 715 Grantham Lane in New Castle, (2) at the Departments office at 100 W. Water Street, Suite 6A in Dover, (3) in the statewide Public Meeting Calendar notice for this hearing at https://publicmeetings.delaware.gov/, and (4) in the April 1 edition of the Delaware Register of Regulations on and after April 1 at http://regulations.delaware.gov/services/register.shtml. For additional information or any appointment to inspect the proposed amendment and State Plan, please contact either Jim Snead at the New Castle office at (302) 323-4542 or jsnead@state.de.us or Ron Amirikian at the Dover office at (302) 739-9402 or ronald.amirikian@state.de.us; or visit: https://publicmeetings.delaware.gov/Meeting/52522

BOARD OF CERTIFICATION FOR WASTEWATER OPERATORS MONTHLY MEETING – This is a regular monthly meeting of the Board of Certification for Wastewater Operators. Meeting will take place on **May 2** from 9am to10am at the Richardson & Robbins Building, Conference Room B172, 89 Kings Hwy, Dover 19901. For additional information contact Faye Wheeler at (302) 739-9946; or visit: https://publicmeetings.delaware.gov/Meeting/39381

OPT-IN! THE DELAWARE DIVISION OF AIR QUALITY (DAQ) is committed to working with citizens to continuously optimize Delaware's air quality and protect public health, welfare, and the environment. To determine that the DAQ is meeting the air quality needs of the citizens across the state, we encourage you to participate in our opt-in list. In the future you will receive surveys that will allow us to analyze our performance. You can access the opt-in list by clicking: https://survey.co1.qualtrics.com/jfe/form/SV_1RGZGUYt8fSuqkB

AIR QUALITY PERMITTING PROGRAM – Notice has been given that the facilities listed below have submitted applications for air quality management permits. The applications, the "draft/proposed" permits, all materials that the applicant has submitted (other than those granted confidential treatment under DNREC rules), and a copy of summary of other materials, if any, considered in preparing the "draft/proposed" permit, may be inspected at the offices of the Division of Air Quality, 100 W. Water Street, Suite 6A, Dover, 19904. **All comments and public hearing requests** should be mailed to the following address: DIVISION OF AIR QUALITY, 100 W. Water Street, Suite 6A, Dover 19904. To submit comments, for additional information, or for an appointment to inspect the application, please contact Penny Gentry at (302) 739-9402.

NOTICE HAS BEEN GIVEN THAT New Haven Packaging, LLC, requests a construction permit to construct a fluidized bed dryer with a high efficiency cyclone to dry salt at their 612 Christiana Avenue, Wilmington facility. The salt drying process will be permitted to emit 23.20 TPY of particulate matter (PM), 5.50 TPY of particulate matter (PM10), 1.09 TPY of particulate matter (PM2.5), 4.15 TPY of carbon monoxide (CO), 4.94 TPY of nitrogen oxides (NOx), 0.03 TPY of sulfur oxides (SOx), and 0.27 TPY of volatile organic compounds (VOCs) by Permit: APC-2017/0082. A public hearing on any of the above applications will NOT be held unless the Secretary receives a request for a hearing regarding that application by **March 21**. A request for a hearing shall be in writing. The request must also show a familiarity with the application and a reasoned statement of the permit's probable impact. For more information visit: http://www.dnrec.delaware.gov/Lists/Public%20Notices/DispForm.aspx?ID=3665&Source=http%3A%2F%2Fwww%2Ednrec%2Edelaware%2Egov%2FLists%2FPublic%2520Notices%2FAllItems%2Easpx&ContentTypeId=0x010034FD6D348B0CF04392485E93FC15AB3A

NOTICE IS HEREBY GIVEN THAT Stonetech, LLC, requests a permit to operate one (1) 200 tons per hour McCloskey Impact Crusher at County Road 323, Georgetown, Sussex County, 3700 Bay Road, Dover, Kent County, 1230 Railcar Avenue, Wilmington, New Castle County, 36393 Sussex Highway, Delmar, Sussex County, US 113 and Road 207, Lincoln, Sussex County, 30548 Thorogood Road, Dagsboro, Sussex County, 26020 River

Snead, James (DNREC)

From:	Snead, James (DNREC)
Sent:	Wednesday, March 22, 2017 9:47 AM
To:	'Fernandez.Cristina@epa.gov'; gordon.mike@epa.gov; 'cecily.beall@dc.gov'; 'george.aburn@maryland.gov'; 'mgdowd@deq.virginia.gov'; 'william.f.durham@wv.gov'; 'kramamurth@pa.gov'; 'francis.steitz@dep.nj.gov'; Kassahun.Sellassie@phila.gov ;' jgraham@achd.net'
Cc:	Mirzakhalili, Ali (DNREC); Amirikian, Ronald A. (DNREC); Gray, Valerie A. (DNREC); Marconi, Angela D. (DNREC)
Subject:	Delaware DNREC Public Hearing Notice on proposed Ill(d) State Plan and Regulation for Municipal Solid Waste Landfills (MSWLS)
Attachments:	Proposed MSWL State Plan - 3-l2AB.pdf; 1120-30 Proposed 3-l2.pdf

The Delaware Department of Natural Resources and Environmental Control (DNREC) will hold a public hearing concerning the State's proposed intention to incorporate the requirements in 40 CFR Part 60 Subpart XXX by reference as Section 30 of 7 DE Admin. Code 1120 (Section 30) and to satisfy the existing requirements of 40 CFR Part 60 Subpart Cf by expanding the applicability of Section 30 to include existing & new Municipal Solid Waste Landfills (MSWLs).

The proposed State Plan and Section 30, which are attached, will be published in the Delaware Register of Regulations on April 1st and can be accessed at http://regulations.delaware.gov/services/current_issue.shtml on and after that date.

A public hearing will be held on April 24, 2017 beginning at 6 p.m. at the Delaware DNREC office located at 100 W. Water Street, Suite 6A, Dover, DE 19904. After consideration of comments received, the State Plan and regulation will be finalized and submitted to the United States Environmental Protection Agency for approval.

Interested persons are invited to attend or submit comments. The hearing information was published in Delaware newspapers on March 12 and has been published on the following State websites.

- https://publicmeetings.delaware.gov/Meeting/52522
- http://www.dnrec.delaware.gov/Lists/Public%20Notices/DispForm.aspx?ID=3670&Source=http%3A%2F%2Fwww%2Ednrec%2Edelaware%2Egov%2FLists%2FPublic%2520Notices%2FAllItems%2Easpx&ContentTypeId=0x010034FD6D348B0CF04392485E93FC15AB3A

Interested parties may submit written comments to the Department, to the address below, up until the end of the comment period, which will extend through May 9, 2017, unless a longer comment period is designated by the hearing officer at the public hearing.

DNREC – Division of Air Quality
Subject: April 24 Public Hearing
715 Grantham Lane
New Castle, DE 19720

For more information or to submit comments, call or email.

Jim Snead
DNREC - Division of Air Quality – Planning
(302) 324-2083 jsnead@state.de.us

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STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF AIR QUALITY
STATE STREET COMMONS
100 W. Water Street, Suite 6A
DOVER, DELAWARE 19904

Telephone: (302) 739 - 9402
Fax No.: (302) 739 - 3106

CERTIFICATION
May 30, 2017

I hereby certify that a public hearing was held April 24, 2017, on revisions to the State of Delaware State Implementation Plan to existing **Regulation No. 1120** New Source Performance Standards by incorporating the federal new MSWL requirements in Subpart XXX, by reference, as a new standard (Section 30) that is applicable to municipal solid waste landfills (MSWLs). To satisfy the existing MSWL requirements of Subpart Cf, the applicability of Section 30 will be expanded to include both existing and new MSWLs. Once finalized, Section 30 and the State Plan will be submitted to the EPA for approval. There are three MSWLs in Delaware; all are operated by the Delaware Solid Waste Authority and will be subject to the State Plan and amended regulation.

On August 29, 2016, the EPA promulgated two regulations applicable to MSWLs. The EPA promulgated 40 CFR Part 60 Subpart XXX, which regulates the emissions from new (i.e., newly constructed, reconstructed, or modified) MSWLs and 40 CFR Part 60 Subpart Cf, which requires States to regulate emissions from existing MSWLs. The purpose of these two federal regulations is to reduce volatile organic compounds (VOCs) and methane emissions from MSWLs.

These amendments are to satisfy the US EPA requirements related to air emissions during equipment start-ups and shutdown as required by EPA SIP Call (80 FR 33840). The effective date of these amendments is July 11, 2017.

I further certify that the hearing was held in accordance with the notice required by Subsection 51.102 of 40 CFR 51.

Ali Mirzakhalili, P.E.
Director
Division of Air Quality

Delaware's good nature depends on you!

Printed on
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Public Hearing for Municipal Solid Waste Landfills

Proposed MSWL State Plan and Section 30 of Regulation 1120

April 24, 2017

Name	Representing	Position	Address	Phone	Fax	E-Mail
Lisa A. Vest	DNREC - OTS	Public Hearing Officer	Delaware DNREC89 Kings Highway Dover , DE 19901	(302) 739-9042		Lisa.Vest@state.de.us
Ron Amirikian	DNREC - Air Quality	Planning Manager	100 W. Water Street Suite 6A Dover , DE 19904	(302) 739-9402	(302) 739-3106	ronald.amirikian@state.de.us
Jim Snead	DNREC - Air Quality	Environmental Engineer	715 Grantham Lane New Castle, DE 19720	(302) 323-4542	(302) 323-4598	jsnead@state.de.us
Valerie Gray	DNREC - Air Quality	Planning Supervisor	715 Grantham Lane New Castle, DE 19720	(302) 323-4542	(302) 323-4598	valerie.gray@state.de.us
Angela Marconi	DNREC - Air Quality	Engineering Manager	715 Grantham Lane New Castle, DE 19720	(302) 323-4542	(302) 323-4598	angela.marconi@state.de.us
Rich Walford	DNREC - Air Quality	Environmental Engineer	100 W. Water Street Suite 6A Dover , DE 19904	(302) 739-9402	(302) 739-3106	joanna.french@state.de.us
Michael Lenkiewicz	DSWA	Landfill Gas Engineer	1107 Willow Grove Rd Felton, DE 19943	(302) 284-8857		mrl@dswa.com
V. Nicole Burkhardt	DSWA	Landfill Gas Engineer	1706 E. 12th Street Wilmington, DE 19809	(302) 764-5385	(302) 764-5386	vngb@dswa.com
Brad Richardson	DNREC - SHWMS	Environmental Scientist	Delaware DNREC 89 Kings Highway Dover, DE 19901	(302) 764-5385		brad.richardson@state.de.us

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Record of Public Hearing

As required by 40 CFR 60.23(e), the complete record of the public hearing, along with a list of the public hearing attendees and the text of the written presentations is located at the Dover Office of the Department's Division of Air Quality. The Department contact to access this information is the Director, Division of Air Quality.

A brief summary of the Department's presentation and the one written submission received follows.

Brief Summary of Presentations or Written Submissions to the Public Hearing Record

Prior to the public hearing

V. Nicole Burkhardt of the Delaware Solid Waste Authority (DSWA) submitted an email to the Department on 4/24/17 at 1215 hours. The email provided newly developed facility information (design capacity and estimated 2016 uncontrolled NMOC emissions) for each of DSWA's 3 landfills. In addition, DSWA inquired as to . . .

- Whether there was any information available on how to use the EPA's electronic reporting systems;
- Whether hard copy reports would still be submitted to the Department; and
- Which datum should be used to identify "locations", when conducting surface emissions monitoring.

The Public Hearing Officer entered the DSWA email into the formal hearing record as DSWA – Exhibit 1.

At the hearing

Jim Snead presented the Department's information during the 4/24/17 public hearing. The Department's presentation included the following:

- The statutory and regulatory backgrounds for the two actions being considered at the 4/24/17 public hearing.
  - The adoption of a federal NSPS (Subpart XXX) requirements applicable to new MSW landfills as Section 30 in Air Regulation 1120 and
  - The development of Delaware's State Plan applicable to existing MSW landfills in accordance with the federal emission guideline (Subpart Cf).
- A description of the mechanism that the Department used in developing the State Plan. The Department plans to adopt new regulatory requirements into Air Regulation 1120, as Section 30, by incorporating federal Subpart XXX by reference. When adopting Subpart XXX, the MSW landfills being subject to Section 30 will be expanded to include both new and existing MSW landfills. Thus, Delaware's 3 existing MSW landfills are subject to Section 30; thereby enabling Delaware to meet the applicability requirements of Subpart Cf.
- The introduction of the Department's 19 exhibits, which illustrated that the Department . . .
  - Has met or exceeded all federal, Delaware, and Departmental statutory and regulatory requirements and
  - Has widely provided public noticing of the 4/24 public hearing and of the publics' opportunity to comment through the Department's use of printed media, electronic mail, State and Departmental electronic bulletin boards, as well as hard copy information available at Division of Air Quality offices.

The Public Hearing Officer entered the Department's exhibits into the formal hearing record as DNREC – Exhibits 1 – 19.

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