



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**
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DOVER, DELAWARE 19901

Office of the
Secretary

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Secretary's Order No. **2005-A-0008**

Re: Delaware's 2002 Milestone Year Compliance Demonstration of Attaining Federal Clean Air Act's Target Level Reductions Pursuant to the One Hour Ozone Level Standard for New Castle and Kent Counties

Date of Issuance: **January 14, 2005**

Effective Date: **January 14, 2005**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("the Department") under 29 Del. C. §§8001 et seq., the following findings and conclusions are entered as an Order of the Secretary:

1. Based on the record developed, as reviewed in the Hearing Officer's Report ("Report"), dated January 14, 2005, and appended hereto and incorporated herein, I find and conclude that the record supports approval of the issuance, in final form, of the 2002 Demonstration Compliance document prepared pursuant to the federal Clean Air Act, as amended;

2. The 2002 Demonstration Compliance document indicates that Delaware's New Castle and Kent Counties have experienced a 9% reduction in air emissions of Volatile Organic Compounds and Nitrogen Oxide over the three year reporting period. These air contaminants produce ozone, and high levels of ground level ozone will harm the respiratory system and cause breathing problems, throat irritation, coughing, chest pain, and increase the susceptibility to respiratory infection, particularly among children,

the elderly and anyone with respiratory diseases. High levels of ozone also damages agriculture and forests. The progress in achieving the 9% reduction in ozone producing emissions is based upon the success of the Department's State Implementation Plan, which has directed the regulatory steps to reduce ozone producing emissions in Delaware;

3. I find and conclude that the record supports approval of the issuance of the 2002 Demonstration Compliance as the Department's final document, and its submission to the EPA as Delaware's compliance with the federal law, as well as evidence of the success of Delaware's efforts to reduce ozone producing air emissions;

4. The Department provided adequate public notice of the public hearing in a manner required by the applicable law and regulations;

5. The final 2002 Demonstration Compliance document shall be published as a notice in the *Delaware Register of Regulations*;

6. The Department considered all timely public comments and questions on the 2002 Demonstration Compliance document; as presented to the Department in writing and orally at the public hearing; and

7. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

/s/ John A. Hughes

John A. Hughes
Secretary

HEARING OFFICER'S REPORT OF RECOMMENDATIONS

TO: The Honorable John A. Hughes
Secretary, Department of Natural Resources and Environmental Control

FROM: Robert P. Haynes, Esquire
Hearing Officer, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: Delaware's 2002 Milestone Year Compliance Demonstration of Attaining Federal Clean Air Act's Target Level Reductions Pursuant to the One Hour Ozone Level Standard for New Castle and Kent Counties.

DATE: January 14, 2005

I. BACKGROUND

This Hearing Officer, delegated authority by the Secretary of the Department of Natural Resources and Environmental Control ("DNREC" or "Department") pursuant to 29 Del. C. §§6606 and 8003, presided over a duly noticed public hearing on December 1, 2004 commencing 6:00 p.m. in DNREC's Air Quality Management ("AQM") offices in Dover, Delaware.

The hearing was held to consider public comments and questions on the Department's 2002 Demonstration Compliance, which was prepared to comply with the 1990 federal Clean Air Act Amendments ("CAAA") and United States Environmental Protection Agency ("EPA") regulations issued under the CAAA. The federal regulatory scheme established National Ambient Air Quality Standards ("NAAQS") for Delaware to meet in order to reduce ground-level ozone. High levels of ground level ozone will harm the respiratory system and cause breathing problems, throat irritation, coughing, chest pain, and increase the susceptibility to respiratory infection, particularly among children, the elderly and anyone with respiratory diseases. High levels of ozone also damages agriculture and forests.

Delaware is to satisfy the federal ozone standards by reducing ozone producing Volatile Organic Compound ("VOC") and Nitrogen Oxide ("NOx") emissions. Delaware's Kent and

New Castle counties are subject to stricter federal regulation because EPA placed these counties within the Philadelphia Consolidated Metropolitan Statistic Area. This area is one of five national areas nonattainment areas EPA classified as “severe” under the NAAQS’s one hour ozone level standard. A “severe” classification triggers Delaware to undertake remedial action, including implementing a State Implementation Plan (“SIP”) towards reducing ozone levels.

Delaware implemented its EPA approved SIP and submitted Compliance Demonstrations documents to EPA for Milestone Years 1996 and 1999 in February 2000 and June 2003, respectively. A 2005 Milestone Compliance Demonstration will be required as the final compliance demonstration.

II. SUMMARY OF THE PUBLIC HEARING RECORD

The public hearing was the subject of public notice via publication on October 27, 2004 in *The News Journal* and *The Delaware State News*. No member of the public attended the public hearing or submitted written comments. The public hearing record contains a verbatim transcript of the public hearing, and documents, marked as DNREC Exhibits (“Exh.”) 1 through 5, which were admitted into the record as hearing exhibits, and are described in the appendix to this report.

Mr. Frank Gao, Environmental Engineer in the Planning Branch of AQM presented the Department’s hearing exhibits into the record. Mr. Gao stated that Section 182(g)(2) of the CAAA requires Delaware to submit to the EPA a compliance demonstration document for each of the milestone years, which are 1996, 1999, 2002, and 2005. The document that was the subject of the hearing and this report is for the 2002 milestone year.

The compliance demonstration document was included in the record as DNREC Exhibit 2. This Exhibit states that the current ozone standards are 0.12 parts per million (“ppm”) based on a one hour average, and 0.08 ppm based on an eight hour average. Delaware is subject to only

the one hour, and the 2002 Compliance Document sets forth New Castle and Kent Counties' compliance that the actual emissions of VOC and/or NOx did not exceed the required emission targets. These targets are set forth in Delaware's Rate-of-Progress Plan ("RPP"), which, in turn, is part of the SIP. A 1990 Base Year Inventory of VOC and NOx emissions is used to evaluate progress toward final compliance in the Milestone Year 2005. Delaware submits to EPA revised RPPs and SIPs designed to meet the targeted 3% per year reduction in the ozone producing emissions. The Milestone Year Demonstration Compliance documents show compliance over the prior three year period, and use VOC and NOx levels from 1990 as base year levels..

Mr. Gao described the 2002 demonstration compliance analysis of the VOC and NOx emissions in New Castle and Kent Counties to determine if the actual levels are within the target levels. For 2002, the emission targets were 101.54 tons of VOC and 143.12 tons of NOx. The report indicates that the emission levels were 101.54 VOC tpy and 142.08 tpy of NOx, which are at and below the respective standards. The progress towards the 2005 compliance is accordingly satisfied as a result of the regulation promulgated to implement the SIP.

The report also set forth an update to the inventory of the periodic emission inventory pursuant to Section 182(d) of the CAA Amendment of 1990. For 2002, Delaware's compliance demonstration indicates that the 2002 emissions targets and inventoried emissions reflect that VOC emissions were 23.42 tpy under the limit, while NOx emissions were 1.37 tpy above the limit. The net result to the two emissions indicate a total 22.27 tpy below the limit, which means that Delaware is in compliance with the federal law and regulations.

The compliance demonstration report was published as a notice in the *Delaware Register of Regulations* on November 1, 2004, Vol. 8 at page 718, for public comment, and copies also were available for public review in DNREC offices in New Castle, Kent and Sussex counties. A copy of the 2002 Demonstration Compliance report is set forth in DNREC Exhibit 2. The other

exhibits are the various documents that set forth the procedural steps, and legal publication of the notices.

III. DISCUSSION

As the above review of the record indicates, Delaware's two northern counties did achieve the targeted 9% total reduction in ozone producing VOC and NO_x emissions from the Department's 1999 Milestone Year Compliance Demonstration. This means that the Department's regulations that were implemented to reduce the ozone levels are having a positive effect on the environment. These and other future regulatory actions will continue to improve the air quality to meet the lower 2005 target levels. Together, the regulatory actions will result in lower ozone levels in the two northern counties, which will benefit the health and welfare of the Delaware's citizens and economy.

Insofar as there were no public comments, there was no need for additional assistance from the Department's personnel to evaluate the public hearing record, and no Division Response Document was prepared.

I find and conclude that the 2002 Compliance Demonstration indicates that Delaware is in compliance with the CAAA and its regulations and had met the targeted level of reduction in ozone producing emissions caused by VOC and NO_x. This also means that the ozone causing emissions are being reduced and that the air quality in New Castle and Kent Counties is improving. As noted, a draft Demonstration Compliance document was published as a notice in *The Delaware Register of Regulations*, and the final document is recommended to be published in the same manner and submitted to the EPA. My review of the underlying exhibits finds that there is more than adequate support for approval of the draft document as the final document. Consequently, I recommend approval of the proposed document and the Department's final document, which shows Delaware's compliance with federal law and regulations and that

Delaware's SIP has been effective in meeting targeted 3% per year reductions in ozone producing emissions of VOC and NOx in Kent and New Castle Counties.

IV. RECOMMENDED FINDINGS AND CONCLUSIONS

Based on the record developed, I find and conclude that the record supports approval of the proposed 2002 Demonstration Compliance document that demonstrates Delaware's compliance for the 2002 milestone year with the targets for VOC and NOx emission net reduction of at least 9% over the three years since the last Demonstration Compliance document for the 1999 milestone year.

In conclusion, I recommend adoption of the following findings and conclusions:

1. The Department provided adequate public notice of the public hearing in a manner required by the law and regulations;
2. The draft 2002 Milestone Demonstration Compliance document shows that the VOC and NOx emissions for New Castle and Kent Counties have been reduced by 9% over the three-year reporting period, which is the required rate, and that the hearing record supports issuing the draft document as the Department's final document;
3. The 2002 Milestone Compliance Demonstration draft document for New Castle and Kent Counties, as published in the November *Delaware Register of Regulations*, should be adopted as the Department's final action, published as such in the *Delaware Register of Regulations* in the next available issue; and that
4. The final 2002 Demonstration Compliance should be submitted to the EPA to satisfy Delaware's compliance with the CAAA's requirements.

~~/s/ Robert P. Haynes~~ _____
Robert P. Haynes, Esquire
Hearing Officer

Appendix A
Description of Hearing Exhibits

DNREC Ex. 1	Start Action Notice No. 2004-0910/01/04
DNREC Ex. 2	draft Demonstration Compliance for 2002 Milestone Year
DNREC Ex. 3	Affidavits of Publication of Legal Notices
DNREC Ex. 4	Legal Notice to DNREC mailing list
DNREC Ex. 5	Nov. 18, 2004 letter to EPA