

HEARING OFFICER'S REPORT

Regarding: Proposed Revision to Section 2.21 of
Delaware Regulations
Governing the Control of Water Pollution

Lisa A. Vest
Hearing Officer

January 12, 2005

I. Background:

The Department of Natural Resources and Environmental Control held a public hearing on November 22, 2004 to receive comments on a proposed revision to the Department's Regulations Governing the Control of Water Pollution. The proposed changes and a notice advertising the aforementioned public hearing were published in the Delaware Register of Regulations on November 1, 2004.

When the Delaware Regulations Governing Aboveground Storage Tanks became effective on June 11, 2004, an overlap between Delaware's Regulations Governing Aboveground Storage Tanks and Delaware's Regulations Governing the Control of Water Pollution was created. The definition of "Aboveground Storage Tank" as stated in Title 7, Del.C., Chapter 74A and as set forth in the AST Regulations, and the definition of "Bulk storage facility" in the Water Pollution Regulations encompass the same set of aboveground storage tanks. Therefore, the purpose of this revision is to remove from the Water Pollution Regulations those aboveground storage tanks that are included by definition in the AST Regulations.

No comments were received by the Department regarding this proposed revision to these regulations. Proper notice of this hearing was provided as required by law.

II. Summary of Record:

As noted above, the Department recently adopted Regulations Governing Aboveground Storage Tanks, which outline the following: a set of minimum design or manufacturing standards for the construction of new tanks; inspection, monitoring, testing and record keeping requirements; financial responsibility requirements and corrective action requirements. The Department's Regulations Governing the Control of Water Pollution (which is the subject of this current regulatory matter) also addresses the construction, installation, replacement, modification and use of any aboveground storage tanks that are used for the express purpose of storage of 40,000 or more gallons of any hazardous material, petroleum product or liquid waste. Such tanks are defined in these present regulations as "bulk storage facilities", and anyone who proposes to construct, install, replace, modify, operate or use a "bulk storage facility" must first obtain a permit from the Department, pursuant to Section 4.02 of the Department's current water pollution control regulations.

Both sets of the aforementioned regulations attempt to address the same issues, to wit: (1) potential contamination from aboveground storage tanks, and (2) the protection of surface and groundwater resources. The present wording when comparing these two sets of regulations, however, appears to be, at best, overlapping and, at worst, conflicting. The proposed revision to the Regulations Governing the

Control of Water Pollution is being considered at this time by the Department in order to eliminate any duplicity and confusion caused by this overlapping of these two sets of Departmental Regulations.

As noted above, this is a minor revision to the Department's current regulations on water pollution control. No comments were received by the Department during the pre-hearing, hearing, or post-hearing phases of the development of this record.

III. Conclusions and Recommended Findings:

The record developed in this matter confirms that this proposed amendment is minor in nature, and will only serve to provide clarity and eliminate public confusion within the existing regulations as noted above. Therefore, I recommend promulgation of this proposed revision to the Delaware Regulations Governing the Control of Water Pollution in the customary manner required by law.

Lisa A. Vest
Hearing Officer