

Secretary's Order No.: **2005-A-0035**

RE: Proposed Amendment to Regulation No. 25 of Delaware's Regulations Governing the Control of Air Pollution,
"Requirements for Preconstruction Review",
Section 4: "Minor New Source Review"

Date of Issuance: July 15, 2005

Effective Date of the Amendment: August 11, 2005

I. Background

On Thursday, May 26, 2005, a public hearing was held in the DNREC Auditorium in Dover to receive comment on proposed amendments to Regulation 25 of Delaware's Regulations Governing the Control of Air Pollution. This proposed amendment would create a new rule requiring new sources with emissions of certain pollutants which impact non-attainment for ground-level ozone and PM_{2.5} and of hazardous air pollutants (HAP's) with uncontrolled emissions below major new source review (NSR) thresholds and equal to or above 5 tons per year be evaluated for the addition of air pollution controls at least the equal of best available technology (BAT). It should be noted that this new rule would only apply to new constructed units. Once revisions to the

major NSR Regulation (No. 25) in response to the EPA NSR reforms are complete in early 2006, this regulation will be revised to regulate modifications to existing sources.

Jim Newton from the Kent County Department of Public Works attended the hearing (as did an employee of the Department's Air Quality Management Division). Written comments were received by the Department from both Conectiv and the Delaware State Chamber of Commerce, AQM responded to these comments in a formal response memorandum to the Hearing Officer, dated June 13, 2005

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared her report and recommendation in the form of a Report to the Secretary dated July 11, 2005, and that Report is expressly incorporated herein by reference. Proper notice of the hearing was provided, as required by law.

II. Findings and Conclusions

All of the findings and conclusions contained in the Hearing Officer's Report dated July 11, 2005 are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

III. Order

In view of the above, I hereby order that the proposed regulatory revision be promulgated in final form, in accordance with the customary and established rule-making procedure required by law and as recommended in the Hearing Officer's Report.

IV. Reasons

Adopting the proposed amendment to Regulation No. 25, Section 4: Requirements for Preconstruction Review (MNSR) will be beneficial to the State of Delaware, in that this amendment, once promulgated, will enable the Department to improve and/or enhance the overall performance of its Air Quality Management Section. Furthermore, Regulation No. 25, Section 4, in its amended form, will continue the ongoing efforts by the State of Delaware to strive for compliance under the 8-hour ground-level ozone National Ambient Air Quality Standards (NAAQS).

/s/ John A. Hughes .
John A. Hughes
Secretary

MEMORANDUM

TO: John A. Hughes, Secretary

FROM: Lisa A. Vest, Hearing Officer

RE: Proposed Amendment to Regulation No. 25 of Delaware's Regulations Governing the Control of Air Pollution, "Requirements for Preconstruction Review", Section 4: "Minor New Source Review"

DATE: July 11, 2005

I. Background:

On Thursday, May 26, 2005, a public hearing was held in the DNREC Auditorium in Dover to receive comment on proposed amendments to Regulation 25 of Delaware's Regulations Governing the Control of Air Pollution. This proposed amendment would create a new rule requiring new sources with emissions of certain pollutants which impact non-attainment for ground-level ozone and PM_{2.5} and of hazardous air pollutants (HAP's) with uncontrolled emissions below major new source review (NSR) thresholds and equal to or above 5 tons per year be evaluated for the addition of air pollution controls at least the equal of best available technology (BAT). It should be noted that this new rule would only apply to new constructed units. Once revisions to the major NSR Regulation (No. 25) in response to the EPA NSR reforms are complete in early 2006, this regulation will be revised to regulate modifications to existing sources.

Jim Newton from the Kent County Department of Public Works attended the hearing (as did an employee of the Department's Air Quality Management Division). Written comments were received by the Department from both Conectiv and the Delaware State Chamber of Commerce, and the same will be addressed below. AQM responded to these comments in a formal response memorandum to the Hearing Officer, dated June 13, 2005. Proper notice of the hearing was provided as required by law.

II. Summary of Record:

Following the introduction of exhibits into the record, Gene Pettingill, Environmental Engineer, Engineering and Compliance Branch, Air Quality Management Section, provided a thorough presentation on behalf of the Department which set forth the history behind this rulemaking. Under Regulation 25, new, major stationary sources may be required to install emission controls, depending upon pollutant and the area classification (attainment or non-attainment), for emission levels of 25 to 100 tons per year or more. There is no requirement for such controls below these threshold limits. Delaware is in non-attainment under the 8-hour ground-level ozone National Ambient Air Quality Standards (NAAQS) and the PM_{2.5} NAAQS, and it seems incongruous to allow sources to emit non-attainment pollutants and precursors below these thresholds without requiring some controls. The new proposed amendment to Regulation 25, Section 4 ("Minor New Source Review"

[MNSR]), requires up-to-date air pollution control devices in many cases for new sources emitting certain pollutants at or above 5 tons per year.

Gene Pettingill prepared the Department's Final Response Memorandum concerning this rulemaking, which took into consideration each and every comment presented to the Department with regard to this proposed regulatory amendment. For the sake of brevity, a copy of the Department's *Comment & Response Document* (dated 06/13/05), along with the draft *Regulation No. 25 Amendment*, are both attached hereto and hereby incorporated into this report, so that the Secretary can gain a full understanding of the proposed changes as drafted by the Department at this time.

III. Conclusions and Recommended Findings:

On the basis of the record developed in this matter, it appears that the Engineering & Compliance Branch of the Department's Division of Air Quality Management has provided a sound basis for the proposed Amendment to Regulation No. 25, Section 4, including reasoned responses to the comments received and has, where necessary, proposed minor changes to satisfy public concerns. Therefore, I recommend that the proposed regulatory revisions be promulgated in final form, in accordance with the customary and established rule-making procedure required by law.

In addition, I recommend issuing the attached Secretary's Order to effectuate this purpose and adopting the Hearing Officer's findings and conclusions as expressed hereinabove.

 /s/ Lisa A. Vest
Lisa A. Vest
Hearing Officer