



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2023-0617; FRL-11781-02-R3]

Air Plan Approval; Delaware; Amendments to Delaware's Requirements for Public Notice of Certain Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of Delaware (Delaware SIP). This revision approves amendments Delaware made to its underlying regulation to standardize the public notices requirements across various permits covered by Delaware regulation 1102. That process will be consistent with EPA's October 18, 2016 final rule which amended the notice and comment requirements for title V, new source review and outer continental shelf (OCS) permit programs. EPA is approving these revisions to the Delaware SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2023-0617. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through www.regulations.gov, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Yongtian He, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2339. Mr. He can also be reached via electronic mail at *He.Yongtian@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On March 1, 2024 (89 FR 15096), EPA published a notice of proposed rulemaking (NPRM) proposing approval of revisions to the Delaware SIP. The revision will incorporate into the Delaware SIP amendments to subsections 12.3.2 and 12.4.2 of Title 7 Delaware Administrative Code 1102 (7 DE Admin Code 1102), Permits. The formal SIP revision was submitted by Delaware Department of Natural Resources and Environmental Control (DNREC) on behalf of the State of Delaware on November 10, 2022. Delaware amended 7 DE Admin Code 1102 (DE 1102) to update the public notice requirements for permits covered by the regulation to be consistent with certain provisions of the October 18, 2016 rule regulatory revisions “Revisions to Public Notice Provisions in Clean Air Act Permitting Programs,” (81 FR 71613, October 18, 2016) and the implementing regulations codified in the Code of Federal Regulations (CFR) at 40 CFR 70.7(h)(2).

II. Summary of SIP Revision and EPA Analysis

Delaware’s November 10, 2022 SIP submission reflects amendments made to its public notice requirements in DE 1102 that are consistent with those in the EPA October 18, 2016 rule’s public notice requirements. While DE 1102 applies to some permits that are not covered by EPA’s October 18, 2016 rule (such as minor sources), some of the permits covered by DE 1102 are addressed by the October 18, 2016 rule, such as major source operating permits (which are covered under DE 1130¹).

¹ Delaware had previously revised the public notice operating requirements of its title V operating permit regulations, 7 DE Admin. Code 1130 (DE 1130). DE 1102 also applies to title V sources covered by 1130 as well as

Specifically, Delaware's submittal consists of changes to subsections 12.3.2 and 12.4.2 of DE 1102. These subsections have been amended to require that each public notice include: (1) the name, address, and telephone number of a person (or an email or website address) of DNREC Staff from whom interested persons may obtain additional information; and (2) the time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled). The updated regulatory language in DE 1102 (and DE 1130) is consistent with that of EPA's October 18, 2016 rule and Federal regulations regarding public notice requirements for major source permits (81 FR 71613 and 40 CFR 70.7(h)(2)).

The rationale for EPA's action is further explained in the NPRM, and will not be restated here.

III. EPA's Response to Comments Received

EPA received one public comment for the NPRM. That comment is not relevant to this action. EPA therefore offers no response to the comment.

IV. Final Action

EPA is approving revision to subsections 12.3.2 and 12.4.2 of 7 DE Admin Code 1102, Permits as a revision to the Delaware SIP.

V. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the amendments to subsections 12.3.2 and 12.4.2 of DE 1102, as discussed in sections I and II of this preamble. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of

other sources, such as minor sources not covered by DE 1130. The effect of these changes is to make all sources covered by DE 1102 and 1130 subject to identical state public notice requirements. The changes to DE 1130 have not been submitted to EPA for approval and are not part of this rule.

this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rule of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.²

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub.L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to

² 62 FR 27968 (May 22, 1997).

Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act;

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. EPA further defines the term fair treatment to mean that no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.

The DNREC did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this final rule. Due to the nature of this action being taken here, where EPA is approving revisions of the State

regulations to be consistent with notice and comment provisions previously established by EPA, this final rule is expected to have a neutral to positive impact on the air quality of the affected area.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action of amendments to Delaware’s Requirements for Public Notice of Permits under DE 1102 may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Adam Ortiz,
Regional Administrator,
Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart I—Delaware

2. In § 52.420, in the table in paragraph (c), revise the entry for “Section 12.0” to read as follows:

§ 52.420 Identification of plan.

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(c) * * *

EPA-Approved Regulations and Statutes in the Delaware SIP

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
1102 Permits				
*	*	*	*	*
Section 12.0	Public Participation	8/11/22	<u>[INSERT DATE OF PUBLICATI ON IN THE FEDERAL REGISTER].</u> <u>[INSERT FEDERAL REGISTER CITATION]</u>	Subsections 12.3.2 and 12.4.2 are amended.
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