

MEMORANDUM

TO: John A. Hughes, Secretary

FROM: Lisa A. Vest, Hearing Officer

RE: Proposed Amendment to Delaware Regulation #1201:
Accidental Release Prevention Regulation

DATE: February 10, 2006

I. Background:

A public hearing was held on December 5, 2005, to receive comment on proposed amendments to the existing Delaware No. 1201 entitled, "Accidental Release Prevention Regulation". The Department is planning to amend the Delaware regulation pertaining to this matter to include the 1999, 2000, and 2004 amendments made by the Environmental Protection Agency (EPA) to the Accidental Release Prevention Requirements contained in Federal Rule 40 CFR Part 68. In addition, several minor changes and corrections are proposed for the "Additional Delaware Accident Release Prevention Provisions" contained in Section 6 of the Regulation. Specifically, this includes minor changes to the "Delaware only" lists, and simplifying the Delaware risk management plan submission requirements.

Of note is the fact that Federal amendments pertaining to this issue are already in effect, and this proposed Delaware amendment will have no impact on them. The main purpose of this proposed amendment is to

correct the existing Delaware regulation, and to bring it into agreement with the most recent Federal rule changes.

In preparation for the hearing, a public workshop was held by the Emergency Prevention and Response Branch of the Department on September 29, 2005, at which time several minor comments were received and addressed. At both the time of the hearing, and subsequent to the hearing (the record was held open through December 15, 2005 for public comment), the Department received no public comments or concerns about these proposed amendments. Following the close of the record on December 15, 2005, the Air Quality Management section of the Department confirmed in its memorandum to the Hearing Officer dated January 6, 2006 that no additional public comment had been received with regard to this matter. Proper notice of the hearing was provided as required by law.

II. Summary of Hearing Record:

As indicated above, the intent of this Regulation is to prevent accidental releases and mitigate the consequences of such releases by focusing on prevention measures for extremely hazardous substances. Based on Federal Rule 40 CFR, Part 68, and containing "Delaware Only" additional sections, the Regulation as amended was promulgated January 11, 1999. The State of Delaware requested delegation from the EPA Region III. Delegation was granted the State of Delaware (i.e., DNREC) August 7, 2001. The purpose of this amendment is to reflect

the amendments to the delegated Federal Rule 40 CFR, Part 68, made by the EPA in January 1999, March 2000, and April 2004. The statutory basis for this action is 7 Del.C., Chapter 77. The most likely affected public is any owner or operator of a manufacturing or storage facility containing a substance(s) on the designated list of extremely hazardous substances as listed on the *Accidental Release Prevention Regulation's* Tables 1, 2, 4, 5 or 6. Minor changes were also made to the "Delaware Only" section 6.0, which included minor changes to the list of toxic and flammable substances.

At the time of the hearing on December 5, 2005, Jay Brabson of the Emergency Prevention and Response Branch of DNREC, offered the Department's exhibits pertaining to this proposed amendment, and provided a brief explanation as to the reasons for the need to amend the existing Delaware regulation on Accidental Release Prevention. Again, no public comments were received by the Department either at the time of or subsequent to the hearing of December 5, 2005, so the proposed amendment as submitted to the Delaware Register of Regulations in November of 2005 stands unchanged. In order to provide a complete and thorough report concerning this promulgation (and for the Secretary's review), a clean copy of this proposed amendment is attached hereto as Exhibit "A".

III. Conclusions and Recommendations:

Based on the above discussion, I conclude that the Department has provided appropriate reasoning regarding the need for this proposed amendment, and addressed all public comment provided during the workshop phase of the record developed in this matter. Accordingly, I recommend promulgation of this proposed amendment in the customary manner provided by law.

Further, I recommend the following findings:

1. Proper notice was provided as required by law.
2. Promulgation of this proposed amendment will correct minor errors in the existing Delaware regulation, as well as bring it into agreement with the most recent Federal Rule changes by reflecting the amendments to the delegated Federal Rule CFR, Part 68, made by the EPA in January 1999, March 2000, and April 2004.
3. This rulemaking will further the policies and purposes of 7 Del.C. Ch. 77 by continuing to ensure safety of the public health and environment, while taking into account industry concerns.

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