



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

September 9, 2008

Ms. Eureka Durr
Clerk of the Board
U.S. Environmental Protection Agency
1341 G Street NW, Suite 600
Washington, DC 20005

Re: Deseret Power Electric Cooperative, PSD Appeal No. 07-03

Dear Ms. Durr:

In consideration of the information and argument submitted in this case by the EPA Office of General Counsel (OGC) on behalf of the EPA Office of Air Radiation (OAR) and EPA Region 8, these offices believe that it is incumbent on them, in recognition of a duty of candor, to inform the Board of a recent action by the Agency that the Board may find relevant in its deliberations over the issue on which the Board granted review in this matter. OAR, Region 8, and OGC have recently learned that on April 29, 2008, EPA Region 3 issued a final approval of a Delaware State Implementation Plan (SIP) revision incorporating state regulations which include specific limitations on the rate of several pollutants, including carbon dioxide, that may be emitted by stationary generators in that state. *See* 73 Fed. Reg. 23101 (April 29, 2008); DNREC Regulation No. 1144 (January 11, 2006) (enclosed). Consistent with the arguments submitted on behalf of OAR and Region 8 in this case, these offices do not believe such action should influence the Board's decision in this case concerning a PSD permit issued prior to April 29, 2008 in another jurisdiction. *See* Response of EPA Office of Air and Radiation and Region VIII (filed March 21, 2008) at 53 n.21. Moreover, OAR is considering whether Region 3's approval of this aspect of the SIP submission was appropriate. Nevertheless, given the Board's careful review of the important issue before it in this matter, we wish to ensure that the Board is aware of this intervening activity by the Agency that the Board might consider relevant in its deliberations.

Sincerely,

A handwritten signature in cursive script that reads "Brian L. Doster".

Brian L. Doster
Air and Radiation Law Office

Enclosures
cc: Counsel of Record

CERTIFICATE OF SERVICE

I hereby certify that copies of the attached letter were served on the following persons:

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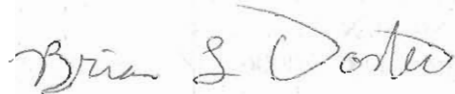
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Brian L. Doster

benefits to tribal members and members of the surrounding communities.

K. Congressional Review Act

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 rule 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). Therefore, this rule will be effective May 29, 2008.

VII. Statutory Authority

The statutory authority for this final action is provided by sections 110, 301 and 164 of the CAA as amended (42 U.S.C. 7410, 7601, and 7474) and 40 CFR part 52.

List of Subjects in 40 CFR Part 52

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

Dated: April 18, 2008.

Stephen L. Johnson,
Administrator.

■ For the reasons stated in the preamble, part 52, chapter I, of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart YY—Wisconsin

■ 2. Section 52.2581 is amended by adding paragraph (f) to read as follows:

§ 52.2581 Significant deterioration of air quality.

* * * * *

(f) Forest County Potawatomi Community Reservation.

(1) The provisions for prevention of significant deterioration of air quality at 40 CFR 52.21 are applicable to the

Forest County Potawatomi Community Reservation, pursuant to § 52.21(a).

(2) In accordance with section 164 of the Clean Air Act and the provisions of 40 CFR 52.21(g), those parcels of the Forest County Potawatomi Community's land 80 acres and over in size which are located in Forest County are designated as a Class I area for the purposes of prevention of significant deterioration of air quality. For clarity, the individual parcels are described below, all consisting of a description from the Fourth Principal Meridian, with a baseline that is the Illinois-Wisconsin border:

(i) Section 14 of Township 36 north (T36N), range 13 east (R13E).

(ii) Section 26 of T36N R13E.

(iii) The west half (W^{1/2}) of the east half (E^{1/2}) of Section 27 of T36N R13E.

(iv) E^{1/2} of SW^{1/4} of Section 27 of T36N R13E.

(v) N^{1/2} of N^{1/2} of Section 34 of T36N R13E.

(vi) S^{1/2} of NW^{1/4} of Section 35 of T36N R13E.

(vii) Section 36 of T36N R13E.

(viii) Section 2 of T35N R13E.

(ix) W^{1/2} of Section 2 of T34N R15E.

(x) Section 10 of T34N R15E.

(xi) S^{1/2} of NW^{1/4} of Section 16 of T34N R15E.

(xii) N^{1/2} of SE^{1/4} of Section 20 of T34N R15E.

(xiii) NW^{1/4} of Section 28 of T34N R15E.

(xiv) W^{1/2} of NE^{1/4} of Section 28 of T34N R15E.

(xv) W^{1/2} of SW^{1/4} of Section 28 of T34N R15E.

(xvi) W^{1/2} of NE^{1/4} of Section 30 of T34N R15E.

(xvii) SW^{1/4} of Section 2 of T34N R16E.

(xviii) W^{1/2} of NE^{1/4} of Section 12 of T34N R16E.

(xix) SE^{1/4} of Section 12 of T34N R16E.

(xx) E^{1/2} of SW^{1/4} of Section 12 of T34N R16E.

(xxi) N^{1/2} of Section 14 of T34N R16E.

(xxii) SE^{1/4} of Section 14 of T34N R16E.

(xxiii) E^{1/2} of Section 16 of T34N R16E.

(xxiv) NE^{1/4} of Section 20 of T34N R16E.

(xxv) NE^{1/4} of Section 24 of T34N R16E.

(xxvi) N^{1/2} of Section 22 of T35N R15E.

(xxvii) SE^{1/4} of Section 22 of T35N R15E.

(xxviii) N^{1/2} of SW^{1/4} of Section 24 of T35N R15E.

(xxix) NW^{1/4} of Section 26 of T35N R15E.

(xxx) E^{1/2} of Section 28 of T35N R15E.

(xxxi) E^{1/2} of NW^{1/4} of Section 28 of T35N R15E.

(xxxii) SW^{1/4} of Section 32 of T35N R15E.

(xxxiii) E^{1/2} of NW^{1/4} of Section 32 of T35N R15E.

(xxxiv) W^{1/2} of NE^{1/4} of Section 32 of T35N R15E.

(xxxv) NW^{1/4} of Section 34 of T35N R15E.

(xxxvi) N^{1/2} of SW^{1/4} of Section 34 of T35N R15E.

(xxxvii) W^{1/2} of NE^{1/4} of Section 34 of T35N R15E.

(xxxviii) E^{1/2} of Section 36 of T35N R15E.

(xxix) SW^{1/4} of Section 36 of T35N R15E.

(xl) S^{1/2} of NW^{1/4} of Section 36 of T35N R15E.

(xli) S^{1/2} of Section 24 of T35N R16E.

(xlii) N^{1/2} of Section 26 of T35N R16E.

(xliii) SW^{1/4} of Section 26 of T35N R16E.

(xliv) W^{1/2} of SE^{1/4} of Section 26 of T35N R16E.

(xlv) E^{1/2} of SW^{1/4} of Section 30 of T35N R16E.

(xlvi) W^{1/2} of SE^{1/4} of Section 30 of T35N R16E.

(xlvii) N^{1/2} of Section 34 of T35N R16E.

[FR Doc. E8-8946 Filed 4-28-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2007-1188; FRL-8559-5]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Control of Stationary Generator Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware. This SIP revision contains provisions to control emissions from stationary generators. EPA is approving this SIP revision in accordance with the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on May 29, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2007-1188. All documents in the docket are listed in the <http://www.regulations.gov> Web site. Although listed in the electronic docket, some information is not publicly

available, i.e., 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 either electronically through <http://www.regulations.gov> or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814-2182, or by e-mail at quinto.rose@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 5, 2008 (73 FR 11845), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. The NPR proposed approval of the provisions to control emissions from stationary generators. The formal SIP revision was submitted by the State of Delaware on November 1, 2007. Specific requirements of Delaware's regulation to control emissions from stationary generators and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

II. Final Action

EPA is approving Regulation No. 1144—Control of Stationary Generator Emissions, as a revision to the Delaware SIP. This regulation will help ensure that the air emissions from new and existing generators do not cause or contribute to the existing air quality problems with regard to ground-level ozone and fine particulate matter, thereby adversely impacting public health, safety, and welfare.

III. 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 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);
- 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 CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 June 30, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, pertaining to Delaware's regulation to control emissions from stationary generators, 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 15, 2008.

William T. Wisniewski,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

- 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, the table in paragraph (c) is amended by adding entries for Regulation No. 1144—Control of Stationary Generators Emissions at the end of the table to read as follows:

§ 52.420 Identification of plan.

* * * * *
(c) * * *

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
* * * * *				
Regulation No. 1144 Control of Stationary Generator Emissions				
Section 1.0	General	01/11/06	4/29/08	[Insert page number where the document begins].
Section 2.0	Definitions	01/11/06	4/29/08	[Insert page number where the document begins].
Section 3.0	Emissions	01/11/06	4/29/08	[Insert page number where the document begins].
Section 4.0	Operating Requirements	01/11/06	4/29/08	[Insert page number where the document begins].
Section 5.0	Fuel Requirements	01/11/06	4/29/08	[Insert page number where the document begins].
Section 6.0	Record Keeping and Reporting	01/11/06	4/29/08	[Insert page number where the document begins].
Section 7.0	Emissions Certification, Compliance, and Enforcement	01/11/06	4/29/08	[Insert page number where the document begins].
Section 8.0	Credit for Concurrent Emissions Reductions	01/11/06	4/29/08	[Insert page number where the document begins].
Section 9.0	DVFA Member Companies	01/11/06	4/29/08	[Insert page number where the document begins].

* * * * *
 [FR Doc. E8-9262 Filed 4-28-08; 8:45 am]
 BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2007-1068; FRL-8559-6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Section 110(a)(1) 8-Hour Ozone Maintenance Plan for the White Top Mountain, Smyth County, VA 1-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision pertains to a 10-year maintenance plan for the White Top Mountain 1-hour ozone nonattainment area located in Smyth County, Virginia. This action is being taken under the Clean Air Act (CAA).
DATES: *Effective Date:* This final rule is effective on May 29, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2007-1068. All documents in the docket are listed in the <http://www.regulations.gov> Web site. Although listed in the electronic docket, some information is not publicly available, i.e., 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 either electronically through <http://www.regulations.gov> or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814-2166, or by e-mail at shandruk.irene@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 110(a)(1) of the CAA requires that states submit to EPA plans to maintain the NAAQS promulgated by EPA. EPA interprets this provision to require that areas that were maintenance areas for the 1-hour ozone NAAQS, but attainment for the 8-hour ozone NAAQS, submit a plan to demonstrate the continued maintenance of the 8-hour ozone NAAQS.

On May 20, 2005, EPA issued guidance that applies to areas that are designated unclassifiable/attainment for the 8-hour ozone standard. The purpose of this guidance is to address the maintenance requirements in section 110(a)(1) of the CAA, and to assist the States in the development of a SIP. The components from EPA's guidance include: (1) An attainment emissions inventory, which is based on actual "typical summer day" emissions of volatile organic compounds (VOCs) and nitrogen oxides (NO_x) for the 10-year maintenance period, from a base-year chosen by the State; (2) a maintenance demonstration, which demonstrates how the area will remain in compliance with the 8-hour ozone standard for a period of 10 years following the effective date of designation unclassifiable/attainment (June 15,

Regulation No. 1144: Control of *Stationary Generator* Emissions

1.0 General.

1.1 Purpose. The purpose of this regulation is to ensure that emissions of nitrogen oxides (NO_x), nonmethane hydrocarbons (NMHC), particulate matter (PM), sulfur dioxide (SO₂), carbon monoxide (CO), and carbon dioxide (CO₂) from *stationary generators* in the State of Delaware do not adversely impact public health, safety, and welfare.

1.2 Applicability.

1.2.1 This regulation applies to *new* and *existing, emergency* and *distributed, stationary generators*, except for:

1.2.1.1 a *generator* covered by a permit which imposes a NO_x emission limitation established to meet Best Available Control Technology (BACT) or Lowest Achievable Emission Rate (LAER);

1.2.1.2 an *emergency generator* located on a residential property where no commercial or industrial activity is carried on, and operated solely to provide *emergency* electric power to the domestic residence and structures on that property housing no more than three (3) families;

1.2.1.3 a *generator* which is *mobile*;

1.2.1.4 a *generator* with a *standby power rating* of 10 kW or less; or

1.2.1.5 *existing, emergency, stationary generators* installed at the stations of the member companies of the Delaware Volunteer Firemen's Association, listed in 9.0 of this regulation. However, the provision of 1.2.2 of this regulation applies to the *generators* at the stations listed in 9.0 of this regulation.

1.2.2 On or after January 11, 2006, a *new* or *existing, stationary generator* installed at any of the stations of the member companies of the Delaware Volunteer Firemen's Association, listed in 9.0 of this regulation, shall only operate as an *emergency generator*.

1.2.3 The requirements of this regulation are in addition to all other applicable State and Federal requirements.

1.3 Dates.

1.3.1 The *owner* of a *new stationary generator* shall submit the information required in 1.4 of this regulation and comply with the requirements of this

regulation by the date of installation.

1.3.2 The *owner* of an *existing stationary generator* shall submit the information required in 1.4 of this regulation no later than April 11, 2006.

1.3.2.1 If the *generator* is to be classified as an *emergency generator*, the *owner* shall comply with the requirements of this regulation by April 11, 2006.

1.3.2.2 If the *generator* is to be classified as a *distributed generator*, and is subject to 3.2.1.1 of this regulation, the *owner* shall comply with the requirements of this regulation by April 1, 2007. The *owner* may request an extension of this compliance date, up to one (1) year, if the owner demonstrates to the *Department* that the additional compliance time is needed, based upon the requirements of 1.3.4 of this regulation.

1.3.2.3 If the *generator* is to be classified as a *distributed generator*, and is subject to 3.2.1.2 of this regulation, the *owner* shall comply with the requirements of this regulation by April 11, 2006.

1.3.3 If a *generator* is to be reclassified from an *emergency generator* to a *distributed generator*, or vice versa, the *owner* of a *stationary generator* shall submit to the *Department* a letter stating that the generator is to be reclassified, and the *owner* shall comply with the requirements of this regulation before this reclassification.

1.3.4 The owner of an *existing, distributed generator* may request, and the *Department* may grant, an extension of the April 1, 2007 compliance date, up to one (1) year, if the owner demonstrates to the *Department's* satisfaction that additional compliance time is necessary by providing an analysis to the *Department* which:

1.3.4.1 details the economical or technological reasons, or both, for the extension request; and

1.3.4.2 demonstrates that Delaware's attainment of the National Ambient Air Quality Standards for 8-hour ozone, or fine particulate matter, will not be delayed due to the *generator's* delayed compliance.

1.4 Initial Notification.

1.4.1 The *owner* of a *stationary generator* shall submit to the *Department* the following information:

1.4.1.1 the *generator owner's* name and telephone number;

1.4.1.2 the physical address where the *generator* is installed, or will be installed;

1.4.1.3 a description of the *generator* including the make, model number, and serial number;

1.4.1.4 the year of manufacture for the *generator*;

1.4.1.5 the *standby power rating* or the *prime power rating* for the *generator*, or both power ratings if both are known; and

1.4.1.6 the date of *installation* for *existing generators*, or the expected date of *installation* for *new generators*.

1.4.2 The owner of a *stationary generator* shall submit to the *Department* a letter stating whether the *generator* is to be classified as an *emergency generator* or a *distributed generator*.

2.0 Definitions. The following words and terms, when used in this regulation, shall have the following meanings:

“*Biodiesel*” means a renewable fuel for diesel engines derived from natural oils like soybean oil, and which meets the specifications of ASTM D 6751-03a, “Standard Specification for *Biodiesel* Fuel (B100) Blend Stock for Distillate Fuels,” ASTM International, hereby incorporated by reference.

“*Biodiesel Blend*” means a blend of *biodiesel* and *diesel fuel*, designated BXX, where XX represents the volume percentage of *biodiesel* fuel in the blend. Pure *biodiesel* is designated as B100.

“*Combined heat and power*” and “*CHP*” means a *generator* that sequentially produces both electric power and thermal energy from a single source, where the thermal energy is wholly or partly used for either industrial processes or other heating or cooling purposes.

“*Combustion turbine*” means an internal combustion engine in which expanding gases from the combustion chamber drive the blades of a turbine to generate mechanical energy in the form of a rotating shaft.

“*Commercial poultry producing premises*” means any location in the State of Delaware where live, commercial poultry (*i.e.*, poultry wholly owned by a corporate enterprise that controls the entire growing cycle of the birds, from the breeder flock to the processing plant) is kept.

“*Department*” means Department of Natural Resources and Environmental Control as defined in 29 Del. C., Chapter 80, as amended.

“*Design system efficiency*” means for *CHP*, the sum of the full load design thermal output and electric output divided by the heat input.

“*Diesel fuel*” means any fuel sold in any state or Territory of the United States and suitable for use in diesel motor vehicles, diesel motor vehicle engines, or diesel nonroad engines, and which is commonly or commercially known or sold as *diesel fuel*.

“*Digester gas*” means gas generated by the anaerobic digestion of organic wastes, which include, but are not limited to, livestock manure, industrial wastewater, or food processing waste.

“*Distributed generator*” means a *stationary generator* that may be used during an *emergency*, during *testing*, and for *maintenance* purposes, as well as for any other purpose at times other than during an *emergency*.

“*Emergency*” means:

- an electric power outage due to: a failure of the electrical grid; on-site disaster; local equipment failure; or public service emergencies such as flood, fire, natural disaster, or severe weather conditions (*e.g.*, hurricane, tornado, blizzard, etc.); or
- when there is a deviation of voltage or frequency from the electrical provider to the premises of three percent (3%) or greater above, or five percent (5%) or greater below, standard voltage or frequency.

“*Emergency generator*” means a *stationary generator* used only during an *emergency*, during *testing*, and for *maintenance* purposes. An *emergency generator* may not be operated in conjunction with a voluntary demand-reduction program or any other interruptible power supply arrangement with a utility, other market participant, or system operator (*e.g.*, Delmarva Power, Delaware Electric Cooperative, PJM, etc.).

“*Existing*” means a *generator* which is not *new*. An *existing generator* shall not be considered *new* if it is relocated and reinstalled on the same property, nor if it is reclassified from an *emergency generator* to a *distributed generator* or vice versa.

“*Gaseous fuel*” means a fuel which is neither solid nor liquid, and includes but is not limited to natural gas, propane, *landfill gas*, *waste gas*, and anaerobic *digester gas*.

“*Generator*” means an internal combustion engine, except for a combustion turbine, and associated equipment that converts primary fuel (including fossil fuels and renewable fuels) into electricity, or electricity and thermal energy. Use of the term “*generator*” in this regulation shall refer to any and all generators subject to the requirements of this regulation unless the type of generator being referred to is otherwise specified.

“*Installation*” and “*install*” mean:

- for generators which are not required to obtain a permit, the date upon which the emplacement of a generator is commenced; or
- for generators which are required to obtain a permit, the date upon which the owner has all necessary preconstruction approvals or permits and either has:
 - begun, or caused to begin, a continuous program of actual on-site emplacement of the generator, to be completed within a reasonable time; or
 - entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual emplacement of the generator to be completed within a reasonable time.

“*Landfill gas*” means gas generated by the decomposition of organic waste deposited in a landfill (including municipal solid waste landfills) or derived from the evolution of organic compounds in the waste.

“*Maintenance*” means the recurrent, periodic, or scheduled work necessary to repair, prevent damage, or sustain *existing* components of a *generator* or any ancillary equipment associated with its use.

“*Mobile*” means a *generator* powered by an internal combustion engine that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as converting primary fuel into electricity, or electricity and thermal energy); is intended to be propelled while performing its function; or that, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another (*i.e.*, a *generator* which is not *stationary*).

“*New*” means a *generator* which is installed or *repowered* on or after January 11, 2006.

“*Owner*” means the *owner* of, or person responsible for, a *generator*.

“*Power to heat ratio*” means for a *CHP* unit, the design electrical output divided by the design recovered thermal output in consistent units.

“*Prime power rating*” means the maximum amount of power a *generator* is capable of supplying during continuous duty, as specified by the manufacturer.

“*Repower*” means the replacement of the internal combustion engine of a *generator* with another internal combustion engine.

“*Standby power rating*” means the amount of power a *generator* is capable of supplying during a power outage for the duration of the interruption, as specified by the manufacturer.

“*Stationary*” means a *generator* powered by an internal combustion engine which is not propelled or intended to be propelled while performing its function, that is used either in a fixed application, or in a portable (or transportable) application in which the engine will stay at a single location on a property (which includes the land, the buildings, and all improvements thereon) for more than 12 consecutive months (*i.e.*, a *generator* which is not *mobile*). Any *stationary generator* which is moved from one location to another in a deliberate attempt to circumvent the residence time requirement of 12 consecutive months shall be deemed *stationary*.

“*Supplier*” means a person or firm that manufactures, assembles, or otherwise supplies *generators*.

“*Testing*” means determining the capability of a *generator* to meet the specified requirements of this regulation or determining if the *generator* and any ancillary equipment associated with its use are functioning correctly.

“*US EPA*” means the United States Environmental Protection Agency.

“*Waste gas*” means manufacturing or mining byproduct gases that are not used and are otherwise flared or incinerated. A manufacturing or mining byproduct is a material that is not one of the primary products of a particular manufacturing or mining operation, is a secondary and incidental product of the particular operation, and would not be solely and separately manufactured or mined by the particular manufacturing or mining operation. The term does not include an intermediate manufacturing or mining product which results from one of the steps in a manufacturing or mining process and is typically processed through the next step of the process within a short time.

3.0 Emissions. A *generator* shall not exceed the following standards (in pounds per megawatt-hour (lbs/MWh) of electricity output) under full load design conditions or at the load conditions specified by the applicable *testing* methods.

3.1 *Emergency generator.*

3.1.1 *Existing emergency generator.* The *owner* or operator of an *existing emergency generator* shall operate the *generator* in conformance with the *generator* manufacturer’s instructions, such as following *maintenance* and operating requirements to help minimize emissions.

3.1.2 *New emergency generator.* A *new emergency generator* shall meet the applicable emissions standards set by the *US EPA* for non-road engines (40 CFR 89, 90, 91, 92, 94, 1039, or 1048 July 1, 2004 Edition).

3.2 *Distributed generator.* The following standards do not apply to *distributed generators* while operating to provide *emergency* electric power during an *emergency*.

3.2.1 *Existing distributed generator.*

3.2.1.1 Except as provided for in 3.2.1.2 of this regulation, an *existing distributed generator* shall meet the following emission standards:

Pollutant	Emission Standard (lbs/MWh)
Nitrogen Oxides	4.0
Nonmethane Hydrocarbons	1.9
Particulate Matter (liquid-fueled reciprocating engines only)	0.7
Carbon Monoxide	10.0
Carbon Dioxide	1,900

3.2.1.2 As an alternative to the *owner* of an *existing distributed generator* installed on *commercial poultry producing premises*, to generate electricity to those premises, the *generator* shall be exempt from the emission standards of 3.2.1.1 of this regulation if one of the following requirements are met:

3.2.1.2.1 the *owner* of such a *generator* is participating or is signed up to participate in a *Department* approved, emission control strategy cost-share program for *generators* offered by either the Kent Conservation District or the Sussex Conservation District; or

3.2.1.2.2 the *generator* is *gaseous fueled*.

3.2.2 *New distributed generator.*

3.2.2.1 Except as provided for in 3.2.2.2 of this regulation, a *new distributed generator* shall meet the following emission standards:

Pollutant	Emission Standards (lbs/MWh)		
	Installed On or After [Effective Date]	Installed On or After January 1, 2008	Installed On or After January 1, 2012
Nitrogen Oxides	2.2	1.0	0.6
Nonmethane Hydrocarbons	0.5	0.5	0.3
Particulate Matter (liquid-fueled reciprocating engines only)	0.7	0.7	0.07
Carbon Monoxide	10.0	10.0	2.0
Carbon Dioxide	1,900	1,900	1,650

3.2.2.2 A new distributed generator that uses waste, landfill, or digester gases shall be exempt from the emission standards of 3.2.2.1 of this regulation and shall meet the following emission standards:

Pollutant	Emission Standards (lbs/MWh)
	Installed on or After [Effective Date]
Nitrogen Oxides	2.2
Nonmethane Hydrocarbons	0.7
Carbon Monoxide	10.0
Carbon Dioxide	1,900

3.3 By January 11, 2010 the *Department* shall complete a review of the state of, and expected changes in, technology and emissions rates; as well as a review of *generators* operating within the State of Delaware, and their emissions. This review shall be used by the *Department* in considering whether these standards in 3.1 or 3.2 of this regulation should be amended, or new standards adopted, to ensure the continued improvement of the ambient air quality of the State of Delaware. Any amendment to these standards shall be in accordance with the requirements of 7 Del. C., Chapter 60 and 29 Del. C., Chapter 101.

4.0 Operating Requirements

- 4.1** An *emergency generator* may operate for an unlimited number of hours during an *emergency*.
- 4.2** An *emergency generator* may operate for an unlimited number of hours during *testing* or for *maintenance* purposes, pursuant to the definition of an *emergency generator*, except as restricted by 4.4 of this regulation.
- 4.3** A *distributed generator* may operate at any time, except as restricted by 4.4 of this regulation.

- 4.4** No *emergency* or *distributed generator* shall be used during *testing* or for *maintenance* purposes before 5 p.m. on a day which has a Ground Level Ozone Pollution Forecast or Particle Pollution Forecast of “Code Red” or “Code Orange” as announced by the *Department*.
- 4.5** Despite 4.4 of this regulation, an *emergency generator* may be tested on any day that such *testing* is required to meet National Fire Protection Association (NFPA) or Joint Commission on Accreditation of Healthcare Organizations (JCAHO) standards.

5.0 Fuel Requirements.

- 5.1** Each shipment of *diesel fuel* or a *biodiesel blend*, received for use in a *generator* on or after April 11, 2006, shall have a sulfur content equal to or less than 0.05% by weight.
- 5.2** *Gaseous fuels*, except for *waste, landfill, or digester gases*, combusted in a *generator* on or after April 11, 2006 shall contain no more than ten grains total sulfur per 100 dry standard cubic feet (170 ppmv total sulfur) on a daily average.
- 5.3** *Waste, landfill, or digester gases* combusted in a *generator* on or after April 11, 2006 shall contain no more than ten grains total sulfur per 100 dry standard cubic feet (170 ppmv total sulfur) on a daily average. An alternative total sulfur limit for *waste, landfill, or digester gases* shall be allowed based upon a case-by-case determination.

6.0 Record Keeping and Reporting.

- 6.1 Record-Keeping Requirements.** The *owner* of a *generator* shall maintain the following records on the property where the *generator* is installed, or at such other readily accessible location that the *Department* approves in writing:
- 6.1.1** An *owner* shall monitor the monthly and yearly amounts of fuel, or fuels, consumed by their *generators*. Yearly fuel consumption shall be calculated and recorded each calendar month by recording (for each fuel) the current calendar month’s fuel consumption and adding it to those of the previous eleven consecutive months.
- 6.1.2** A non-resettable hour metering device shall be used by an *owner* to continuously monitor the monthly and yearly operating hours for each of their *generators*. Yearly operating hours shall be calculated and recorded each calendar month by recording the current calendar month’s operating hours and adding them to those of the previous eleven consecutive months.

6.1.3 Monthly and yearly operating hours for an *emergency generator*. Yearly operating hours during which *testing* or *maintenance* occurred shall be calculated and recorded each calendar month by recording the current calendar month's *testing* or *maintenance* hours and adding them to those of the previous eleven consecutive months. A brief description of each *testing* or *maintenance* performed shall also be recorded.

6.1.4 Except as provided for in 6.1.5 of this regulation, for each shipment of liquid fuel (other than liquefied petroleum gas), received for use in a *generator*, a shipping receipt and certification shall be obtained from the fuel distributor which identifies:

6.1.4.1 the type of fuel delivered; and

6.1.4.2 the percentage of sulfur in the fuel (by weight dry basis), and the method used to determine the sulfur content.

6.1.5 As an alternative to 6.1.4 of this regulation, the *owner* may have the fuel in the *generator's* fuel tank certified by a third party laboratory, after each shipment of liquid fuel. This certification shall identify:

6.1.5.1 the type of fuel delivered; and

6.1.5.2 the percentage of sulfur in the fuel (by weight dry basis), and the method used to determine the sulfur content.

6.2 **Availability of Records.** The *owner* shall maintain each record required by 6.1 of this regulation for a minimum of five years after the date the record is made. The *owner* may retain hard copies (e.g., paper) or electronic copies (e.g., compact discs, computer disks, magnetic tape, etc.) of the records. An *owner* shall promptly provide the original or a copy of a record or records to the *Department* upon request.

7.0 Emissions Certification, Compliance, and Enforcement.

7.1 Emissions Certification of New Distributed Generators by a Supplier. A *supplier* may seek to certify that its *generators*, which are meant to be installed as *new distributed generators*, meet the provisions of this regulation.

7.1.1 Certification Process. Emissions of nitrogen oxides, nonmethane hydrocarbons, particulate matter, carbon monoxide, and carbon dioxide from the *generator* shall be certified in pounds of emissions per megawatt hour (lb/MWh) at International Organization for Standardization (ISO) conditions or at the load conditions specified by the applicable *testing* methods in 7.5.1 of this regulation. If the design of a certified *generator* is modified, the *generator* will need to be re-certified. Certification means

that a *generator* meets the required emissions standards of this regulation and can be installed, as supplied, for use as a *distributed generator*. With respect to nitrogen oxides, nonmethane hydrocarbons, carbon monoxide, and carbon dioxide, test results from EPA Reference Methods, California Air Resources Board methods, or equivalent *testing* may be used to verify this certification. When *testing* the output of particulate matter from liquid-fuel reciprocating engines, ISO Method 8178 shall be used. Test results shall be provided upon request to the *Department*. A statement attesting to certification shall be displayed on the nameplate of the unit or on a label attached to the unit with the following text:

This *generator* has met the standards defined by the State of Delaware's Regulation No. 1144 and is certified as meeting applicable emission levels when it is maintained and operated in accordance with the *supplier's* instructions.

7.1.2 Responsibility of Supplier. Certification will apply to a specific make and model of *generator*. For a make and model of a *generator* to be certified, the *supplier* shall certify that the *generator* is capable of meeting the requirements of this regulation for the lesser of 3,000 hours of operation or five years.

7.2 Emissions Certification of New Emergency Generators by a Supplier. An engine that has been certified to meet the currently applicable *US EPA* non-road emissions standards shall be deemed to be certified for use in *new emergency generators*.

7.3 Emissions Verification by an Owner. An *owner* shall verify, by each generator's respective compliance date as detailed in 1.3 of this regulation, that a *generator* complies with its respective emission requirements of 3.0 of this regulation by submitting any or all of the following types of data to the *Department* for review:

7.3.1 any emissions certification of a *new distributed generator* as detailed in 7.1 of this regulation;

7.3.2 any emissions certification of a *new emergency generator* as detailed in 7.2 of this regulation;

7.3.3 any *maintenance* or operating requirements/instructions provided by the *generator* manufacturer;

7.3.4 the type, or a description, of any emission control equipment used; or

7.3.5 emissions test data for the *generator* (such as a manufacturer's technical data sheet), any supporting documentation for any emission control

equipment used, any supporting calculations, any quality control or assurance information, and any other information needed to demonstrate compliance with the requirements.

7.4 Reverification. To ensure continuing compliance with the emissions limitations, the *owner* or operator shall verify a *distributed generator's* compliance with the emission standards every five years. This verification may be accomplished by following a *maintenance* schedule that the manufacturer certifies will ensure continued compliance with the required standards, by third party *testing* of the *distributed generator* using appropriate test methods to demonstrate that the *distributed generator* still meets the required emission standards, or by some other means as proven to the *Department*.

7.5 Testing.

7.5.1 Emissions. Compliance with this regulation shall be demonstrated through *testing* using the applicable EPA Reference Methods, California Air Resources Board methods, or equivalent test methods approved by the *Department* if:

7.5.1.1 a *supplier* is seeking to certify that one of its *generators* meets the provisions of this regulation, pursuant to 7.1 of this regulation;

7.5.1.2 an *owner* owns a *generator* that is not certified or verified under the terms of 3.1.2, 7.1, 7.2, or 7.3 of this regulation; or

7.5.1.3 an *owner* of a *generator* is seeking to reverify the *generator* via third party *testing* pursuant to 7.4 of this regulation.

7.5.2 Sulfur Content.

7.5.2.1 Sulfur limits pursuant to 5.1 of this regulation shall be determined using the applicable sampling and *testing* methodologies set forth in 40 CFR 80.580 (July 1, 2004).

7.5.2.2 Sulfur limits pursuant to 5.2 of this regulation shall be determined using the applicable sampling and testing methodologies set forth in Appendix D of 40 CFR 75 (July 1, 2004) or in the South Coast Air Quality Management District's Rule 431.1 "Sulfur Content of Gaseous Fuels" (June 12, 1998).

7.6 Duty to Comply. An *owner* shall comply with the requirements of this regulation. Neither certification nor compliance with this regulation relieves *owners* from compliance with any other applicable state and federal regulations or permitting requirements.

7.7 Enforceability. This regulation is enforceable by the *Department* as provided by law.

8.0 Credit for Concurrent Emissions Reductions.

8.1 Flared Fuels. If a *generator* uses fuel that would otherwise be flared (*i.e.*, not used for generation or other energy related purpose), the emissions that were or would have been produced through the flaring can be deducted from the actual emissions of the *generator*, for the purposes of calculating compliance with the requirements of this regulation. If the actual emissions from flaring can be documented, they may be used as the basis for calculating the credit, subject to the approval of the *Department*. If the actual emissions from flaring cannot be documented, then the following default values shall be used:

Emissions	Waste, Landfill, Digester Gases
Nitrogen Oxides	0.1 lbs/MMBtu
Particulate Matter	N/A
Carbon Monoxide	0.7 lb/MMBtu
Carbon Dioxide	117 lb/MMBtu

8.2 Combined Heat and Power.

8.2.1 *CHP* installations shall meet the following requirements to be eligible for emissions credits related to thermal output:

8.2.1.1 At least 20% of the fuel's total recovered energy shall be thermal and at least 13% shall be electric. This corresponds to an allowed power-to-heat ratio range of between 4.0 and 0.15.

8.2.1.2 The *design system efficiency* shall be at least 55%.

8.2.2 A *CHP* system that meets the requirements of 8.2.1 of this regulation may receive a compliance credit against its actual emissions based on the emissions that would have been created by a conventional separate system used to generate the same thermal output. The credit shall be subtracted from the actual *generator* emissions for purposes of calculating compliance with the limits in 3.1 or 3.2 of this regulation. The credit will be calculated according to the following assumptions and procedures:

8.2.2.1 The emission rates for *CHP* facilities that replace *existing* thermal systems (*e.g.*, boiler) for which historic emission rates can be documented shall be the historic emission rates in lbs/MMBtu, but not more than the emission rates for *new* facilities that displace a thermal system, which are:

Emissions	Maximum Rate
Nitrogen Oxides	0.2 lbs/MMBtu
Particulate Matter	N/A
Carbon Monoxide	0.08 lbs/MMBtu
Carbon Dioxide	117 lbs/MMBtu

8.2.2.2 The emissions rate of the thermal system in lbs/MMBtu will be converted to an output-based rate by dividing by the thermal system efficiency. For *new* systems the efficiency of the avoided thermal system will be assumed to be 80% for boilers or the design efficiency of other process heat systems. If the design efficiency of the other process heat system cannot be documented, an efficiency of 80% will be assumed. For retrofit systems, the historic efficiency of the displaced thermal system can be used if that efficiency can be documented and if the displaced thermal system is either enforceably shut down and replaced by the *CHP* system, or if its operation is measurably and enforceably reduced by the operation of the *CHP* system.

8.2.2.3 The emissions per MMBtu of thermal energy output will be converted to emissions per MWh of thermal energy by multiplying by 3.413 MMBtu/MWh_{thermal}.

8.2.2.4 The emissions credits in lbs/MWh_{thermal}, as calculated in 8.2.2.3 of this regulation, will be converted to emissions in lbs/MWh_{emissions} by dividing by the *CHP* system power-to-heat ratio.

8.2.2.5 The credit, as calculated in 8.2.2.4 of this regulation, will be subtracted from the actual emission rate of the *CHP* unit to produce the emission rate used for compliance purposes.

8.2.2.6 The mathematical calculations set out in 8.2.2.1 through 8.2.2.4 of this regulation are expressed in the following formula:

$$\text{Credit lbs/MWh}_{\text{emissions}} = \frac{(\text{boiler limit lbs/MMBtu})}{(\text{boiler efficiency})} \times \frac{3.413}{(\text{power to heat ratio})}$$

8.3 Non-Emitting Resources. When electricity generation that does not produce any of the emissions regulated herein is installed and operated simultaneously at the facility where the *generator* is installed and operated, then the electricity savings supplied by the non-emitting electricity source shall be added to the electricity supplied by the *generator* for the purposes of calculating compliance with the requirements of this regulation, subject to the approval of the *Department* and in accordance with the following formula for determining such savings:

$$\text{Rate}_{\text{EF}} = (\text{Rate}_{\text{A}}) * [(\text{Size}_{\text{A}})/(\text{Size}_{\text{A}} + \text{Size}_{\text{NER}})]$$

Rate_{EF} = effective emission rate of *generator*, accounting for non-emitting resource(s) (lb/MWh)

Rate_{A} = actual emission rate of *generator* alone (lb/MWh)

Size_{A} = actual *prime power rating* of *generator* (MW)

Size_{NER} = total generating capacity of non-emitting resource(s) (MW)

9.0 DVFA Member Companies. The provisions of 1.2.1.5 and 1.2.2 of this regulation apply to the following stations:

- 9.1 Aetna Hose, Hook & Ladder Company, Inc., Stations 7, 8, and 9
- 9.2 Belvedere Volunteer Fire Company, Station 30
- 9.3 Bethany Beach Volunteer Fire Company, Station 70
- 9.4 Blades Volunteer Fire Company, Station 71
- 9.5 Bowers Fire Company, Inc., Station 40
- 9.6 Brandywine Hundred Volunteer Fire Company No. 1, Station 11
- 9.7 Bridgeville Volunteer Fire Company, Station 72
- 9.8 Camden-Wyoming Volunteer Fire Company, Station 41
- 9.9 Carlisle Fire Company, Station 42
- 9.10 Cheswold Volunteer Fire Company, Station 43
- 9.11 Christiana Fire Company, Stations 3, 6, and 12
- 9.12 Citizens' Hose Company, No. 1, Station 44
- 9.13 Claymont Fire Company, Station 13
- 9.14 Clayton Fire Company, No. 1, Station 45
- 9.15 Cranston Heights Fire Company, Station 14
- 9.16 Dagsboro Volunteer Fire Company, Station 73
- 9.17 Delaware City Fire Company, No. 1, Station 15
- 9.18 Delmar Volunteer Fire Company, Station 74
- 9.19 Dover Air Force Base Fire Department, Station 58
- 9.20 Ellendale Volunteer Fire Company, Station 75
- 9.21 Elsmere Fire Company, No. 1, Station 16
- 9.22 Farmington Volunteer Fire Company, Station 47
- 9.23 Felton Community Fire Company, Station 48
- 9.24 Five Points Fire Company, Station 17
- 9.25 Frankford Volunteer Fire Company, Station 76
- 9.26 Frederica Volunteer Fire Company, Station 49
- 9.27 Georgetown American Legion Ambulance Service, Station 93
- 9.28 Georgetown Volunteer Fire Company, Station 77
- 9.29 Good-will Fire Company, No. 1, Station 18
- 9.30 Greenwood Fire Company, No. 1, Station 78
- 9.31 Gumboro Volunteer Fire Company, Station 79
- 9.32 Harrington Fire Company, Station 50
- 9.33 Hartly Volunteer Fire Company, Station 51
- 9.34 Hockessin Volunteer Fire Company, Station 19

- 9.35 Holloway Terrace Volunteer Fire Company, No. 1, Station 20
- 9.36 Houston Volunteer Fire Company, Station 52
- 9.37 Indian River Volunteer Fire Company, Station 80
- 9.38 Laurel Fire Department, Station 81
- 9.39 Leipsic Volunteer Fire Company, Station 53
- 9.40 Lewes Volunteer Fire Company, Station 82
- 9.41 Little Creek Volunteer Fire Company, Station 54
- 9.42 Magnolia Volunteer Fire Company, Station 55
- 9.43 Marydel Volunteer Fire Company, Station 56
- 9.44 Memorial Volunteer Fire Company, Station 89
- 9.45 Mid Sussex Rescue Squad, Station 91
- 9.46 Mill Creek Fire Company, Stations 2 and 21
- 9.47 Millsboro Volunteer Fire Company, Station 83
- 9.48 Millville Volunteer Fire Company, Station 84
- 9.49 Milton Volunteer Fire Company, Station 85
- 9.50 Minquadale Fire Company, Station 22
- 9.51 Minquas Fire Company, No.1, Station 23
- 9.52 Odessa Fire Company, Stations 4 and 24
- 9.53 Port Penn Fire Company, Station 29
- 9.54 Rehoboth Beach Volunteer Fire Company, Station 86
- 9.55 Robbins Hose Company, No. 1, Station 46
- 9.56 Roxana Volunteer Fire Company, Station 90
- 9.57 Seaford Volunteer Fire Company, Station 87
- 9.58 Selbyville Volunteer Fire Company, Station 88
- 9.59 Smyrna-Clayton American Legion Ambulance, Station 64
- 9.60 South Bowers Beach Volunteer Fire Company, Station 57
- 9.61 Talleyville Volunteer Fire Company, Station 25
- 9.62 Townsend Fire Company, Inc., Station 26
- 9.63 Volunteer Hose Company, Station 27
- 9.64 Wilmington Fire Department
- 9.65 Wilmington Manor Volunteer Fire Company, Stations 28 and 32.