

## DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**Amendments to Nuisance Odor Regulations**

The Director of the Department of Energy and Environment (“DOEE”), pursuant to the authority set forth in Sections 5 and 6 of the District of Columbia Air Pollution Control Act of 1984 (the “Air Pollution Control Act”), effective March 15, 1985 (D.C. Law 5-165; D.C. Official Code §§ 8-101.05 and 8-101.06); Section 107(4) of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.07(4)); and Mayor’s Order 2006-61, dated June 14, 2006; hereby gives notice of his adoption, on an emergency basis, of the following amendments to Chapter 9 (Air Quality – Motor Vehicular Pollutants, Lead, Odors, and Nuisance Pollutants) of Title 20 (Environment) of the District of Columbia Municipal Regulations (“DCMR”). The Director also gives notice of his intent to take final rulemaking action to adopt these amendments as final rules in not less than thirty (30) days after the date of publication of this notice in the *District of Columbia Register*.

**Background and Purpose**

The Air Pollution Control Act authorizes DOEE to “[a]dopt standards governing emission of nuisance air pollutants likely to injure public health or welfare or interfere with reasonable enjoyment of life and property.” D.C. Official Code § 8-101.05(b)(1)(F). Moreover, regulations adopted as part of the act prohibit emitting odorous or other air pollutants likely to injure public health or interfere with the reasonable enjoyment of life or property. Air Pollution Control Act § 3 (20 DCMR § 903).

In August 2023, DOEE adopted regulations to further implement the Air Pollution Control Act. *See* 70 DCR 010830. The 2023 rulemaking strengthened DOEE’s ability to enforce the nuisance-odor prohibition in the Air Pollution Control Act by including community complaints as a basis for enforcement action and by requiring stationary sources known to emit nuisance odors to adopt a DOEE approved Odor Control Plan (OCP).

Since the adoption of the regulations requiring the submission of OCPs to control nuisance odors, DOEE has become aware of two major issues that are hampering the ability of sources to implement controls for nuisance odors as expeditiously as practicable.

The purpose of this rulemaking, as described in greater detail below, is to streamline the planning and permitting process for installing odor controls as required under 20 DCMR § 903. This rulemaking provides that permitting is required only after installation of the equipment to ensure odors are reduced from a facility in expeditious fashion. Additionally, the rulemaking removes the need for a professional engineer to sign off on the odor controls because DOEE has experts in the field reviewing the proposed controls included in the OCP, and DOEE retains the authority to reopen an OCP if it is deemed insufficiently effective after implementation.

## Amendments

The first issue is that sources required to submit an OCP under 20 DCMR § 903 must include in their submitted plan a timeline for implementation of any proposed odor control practices after the OCP has been approved by DOEE. Currently under 20 DCMR § 200.1, sources installing odor control equipment that reduce air emissions as part of their OCP are also required to first obtain a permit to construct before the control equipment can be installed. The permitting requirement has served to significantly extend the timeline for the implementation of odor controls even though DOEE has approved an OCP. This means that sources that file OCPs, including those that would address concerns or impacts expressed by residents, cannot eliminate or mitigate the odors by operation of the emission control equipment as expeditiously as they could without the permit requirement.

Thus, this rulemaking amends the regulations to clarify the installation of controls or the alteration of processes that are primarily intended to reduce odors, but result in incidental changes for other air pollutants, is not a “modification” as defined in 20 DCMR § 199.1. This amendment will allow for the installation of odor controls under an approved OCP without first obtaining a permit to construct pursuant to 20 DCMR § 200.1. Instead, this rulemaking requires all sources that are installing controls or altering processes that are primarily intended to reduce odors to submit to DOEE an application for a permit to operate pursuant to 20 DCMR § 200.2 within sixty (60) days after approval of the OCP. If a source already has an approved OCP and is completing an alteration, the source must submit an update to its OCP thirty (30) days prior to the alteration. Together, the amendments clarify that sources that are installing controls or altering processes that are primarily intended to reduce odors, whether currently permitted or not, are required under 20 DCMR § 903 to obtain a permit to operate under 20 DCMR § 200.2.

The second issue relates to the requirement for a professional engineer licensed by the District’s Department of Licensing and Consumer Protection (“DLCP”) to certify engineering controls proposed in the OCP. This requirement has resulted in delays in the submission and approval of OCPs because there are very few professional engineers who are both licensed by DLCP and qualified to provide technical expertise on odor controls. Many sources that are required to submit an OCP are unable to find such professionals in a timely fashion or at all, which is, in turn, increasing the time necessary for compliance. DOEE has engineers on staff reviewing the OCPs to ascertain if the proposed odor control plan will reasonably reduce nuisance odors, so it has been determined that the requirement for certification by a PE is unnecessary. Further, DOEE has the authority to require sources to submit a new OCP if installed odor controls are ineffective. Thus, DOEE is removing the requirement found in 20 DCMR § 903.5(c)(2) that engineering controls be certified by a professional engineer prior to submittal.

Additionally, there were two errors found in 20 DCMR § 903.2 that are being corrected; one involves updating the definition of cannabis operations to reflect statutory amendments, and the second is correcting the language defining painting operations that are subject to OCPs. The definition of cannabis operations has also been updated to clarify that the odor regulations apply to cannabis operations *required to be* licensed under District law.

## Emergency Rulemaking

This emergency rulemaking action is necessary for the immediate preservation of the public health and welfare by allowing sources with an approved OCP to install necessary controls to eliminate prohibited nuisance odors as expeditiously as possible. The requirement to obtain a permit for the installation of the controls, even after the OCP has been approved by DOEE, has delayed the ability of sources to address the nuisance odors in an expeditious manner. Therefore, DOEE is clarifying that the installation of odor control equipment or change in the process identified in an approved OCP may not be considered a “modification” that requires a permit prior to installation and initial operation if DOEE grants that the installation or change results in incidental or no changes in non-odorous air pollution.

Further, DOEE is removing the requirement that odor plans be certified by a professional engineer, a requirement that has delayed the submission of OCPs due to the limited number and availability of professional engineers qualified to certify the OCPs. These changes will allow nuisance odors to be eliminated or mitigated more quickly by removing requirements that currently impede the submission and implementation of OCPs, thus protecting the health or welfare of residents who may be impacted by these odors and the emissions causing them.

This emergency rulemaking action was adopted by the Director on October 28, 2024, and became effective immediately. This emergency rule will expire one-hundred twenty (120) days from the date of adoption, on February 25, 2025, or upon the effective date of a final rulemaking, whichever occurs first.

**Chapter 9, AIR QUALITY – MOTOR VEHICULAR POLLUTANTS, LEAD, ODORS, AND NUISANCE POLLUTANTS, of Title 20, ENVIRONMENT, of the DMCR is amended as follows:**

**Section 903, ODOROUS OR OTHER NUISANCE AIR POLLUTANTS, is amended to read as follows:**

**Paragraphs (a) and (b) of Subsection 903.2 are amended to read as follows:**

- (a) Cannabis cultivation centers and manufacturers of cannabis products, as described in D.C. Official Code § 7-1671.01 *et seq.*, and any other cannabis cultivation, processing, or manufacturing operation required to be licensed under District law;
- (b) Painting operations subject to the requirements of 20 DCMR § 718 or 1409;

**The introductory language at subparagraph (2) of Paragraph 903.5(c) is amended to read as follows:**

- (2) A proposal concerning engineering controls sufficient to effectively mitigate odors for all odor sources, to address the following:

**Subsection 903.9 is amended to read as follows:**

- 903.9 When an alteration is proposed or made to a source, or to a process at the source, that has the potential to affect the nature or degree of odor or to control an odor, the following provisions shall apply:
- (a) If the alteration is not included in an approved OCP, but is located at a source subject to the OCP requirements of Subsection 903.2 or 903.3, the owner or operator of the source must submit an update to its OCP to DOEE thirty (30) days prior to the alteration; and
  - (b) If the alteration is included in an OCP submitted under Subsection 903.2 or 903.3:
    - (1) If DOEE finds that the alteration minimizes the danger to, and is not inimical to, public health and welfare and will not prevent attainment nor interfere with maintenance of any applicable national ambient air quality standard, then the alteration shall not be considered a modification as defined by 20 DCMR § 199.1, and DOEE will notify the source of this finding at the time of approval or disapproval of the OCP; and
    - (2) If DOEE approves the OCP with the alteration, the owner or operator shall submit an application for a permit to operate pursuant to 20 DCMR § 200.2 no later than sixty (60) days after DOEE's approval of the OCP.

Parties wishing to provide comment on the subject matter of the proposed rulemaking must submit their comments to the DOEE Air Quality Division within thirty (30) days of publication of this notice in the *District of Columbia Register* by email to Mr. Joseph Jakuta at [airqualityregulations@dc.gov](mailto:airqualityregulations@dc.gov) or by hand delivery or postal mail to the following address:

DOEE Air Quality Division  
ATTN: Joseph Jakuta: Odor Control Technical Corrections  
1200 First Street NE, Fifth Floor  
Washington, DC 20002

DOEE requests that each individual or entity submitting a comment provide their name, address, telephone number, and affiliation (if any).