

EPA's Proposed Responses to Section 126(b) Petitions from Delaware

Testimony of

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Thank you for the opportunity to present comments today. I am Kevin Stewart. I serve the American Lung Association as Director of Environmental Health in Advocacy and Public Policy. The American Lung Association's mission is to save lives by improving lung health and preventing lung disease.

I speak today to oppose the Environmental Protection Agency's proposed denial of Delaware's 126(b) petitions, and urge EPA to take action to help clean up air pollution that is transported into Delaware.

In the Clean Air Act, Congress recognized that air pollution crosses state lines and puts people in downwind states at risk. The 126 petition process is supposed to ensure that states like Delaware can adequately protect their citizens from harmful emissions when they come from beyond their borders.

These emissions cause real health harms. Nitrogen dioxide, the primary emission in this case, is harmful in and of itself. It also reacts in the atmosphere to create ozone and particulate matter. Ozone pollution can cause asthma attacks and other respiratory problems and even premature death. Emerging research also links ozone to cardiovascular, developmental and reproductive harm.

Anyone's health can be harmed by unhealthy levels of ozone, but certain groups are particularly at risk. This includes children, people with asthma and other lung diseases, seniors, outdoor workers and people living in poverty, all of whom have long been shown to be vulnerable to ozone. Delaware is home to 16,000 children and 63,000 adults with asthma, 47,000 adults with COPD, and 68,000 people with cardiovascular disease. And evidence even shows that otherwise healthy adults are especially can be harmed if they are exercising or working outdoors.

The state has worked tirelessly under the Clean Air Act to reduce its emissions that contribute to ozone, including under Governor John Carney: Between 2000 and 2015, Delaware's stringent controls on electric generating units have achieved more than an 80% reduction in nitrogen oxide emissions on peak days during the ozone season. Furthermore, Delaware has gone far beyond addressing low-hanging fruit, and has adopted model rules and imposed strict emission limits on industrial boilers, combustion turbines, maintenance coatings, commercial and consumer products. Delaware was one of the first states in the region that required ultra-low sulfur distillate fuel (15 ppm) for stationary sources. Delaware has adopted California low emission vehicle standards to reduce on-road vehicle emissions. I could go on...

Indeed, some of Delaware's control measures invest upward of \$5,000 to remove each ton of emissions, when EPA considers controls to be "highly effective" at only \$1,400 per ton. Delaware is doing its best to squeeze out every improvement it can make, yet poorly controlled upwind sources still overwhelm the state's air quality.

U.S. Senator Tom Carper has led efforts in Congress to defend the Clean Air Act from attempts to weaken its protections, and the whole Delaware congressional delegation – Senator Carper, Senator Coons and Representative Blunt Rochester – all called on EPA to reconsider its proposed denial.

With over 90 percent of Delaware's unhealthy levels of ozone originating from out of state, Delaware cannot address this problem alone. Yet EPA's actions have not only denied Delaware the opportunity for federal action that would clean up these emissions, they have even enacted rollbacks of existing protections that will make the problem worse. I will address each of these issues in turn.

First, EPA's proposed denial of Delaware's 126 petitions must be reversed. We at the Lung Association have several concerns with the rationale in EPA's proposed denial.

First, EPA argues Delaware has no counties with projected design values that violate the 2008 ozone standard in 2017, nor any that are likely to violate the 2015 ozone standard in 2023. However, the 2023 date is irrelevant, because under the Clean Air Act, Delaware will be required to bring areas into attainment by 2021. The 126 process is supposed to protect downwind states from transported emissions that contribute to nonattainment, so using a longer timeline than the one that EPA itself requires to achieve attainment makes no sense. Is EPA simply assuming that transported emissions will not lead to violations of the 2015 ozone standard in 2021 or 2022?

Further, this projection fails to consider the impact that climate change has had on ozone levels so far and will likely have in the future. For 2016, data for New Castle County shows a fourth highest daily maximum 8-hour average exceeding even the 75 ppb standard at the Brandywine monitor. Warmer temperatures are already enhancing conditions for the formation of ozone. The year 2016 was the second warmest on record, and 2017 was the third warmest. Delaware's [preliminary 2017 emissions data](#) show the continued impact of higher ozone that could trigger a violation.

We share Delaware's concerns about the weak limits on the emissions from the four upwind power plants that provide the greatest effect on Delaware's air quality. Delaware cites the common actions among the three plants that have SCR controls to reduce NOx emissions—Conemaugh, Harrison, and Homer City: all three regularly turn off or reduce the level of those controls, undercutting the effectiveness of those protections.

We at the Lung Association also have serious concerns about EPA's dismissal of Delaware's concerns over the fourth of those, the Brunner Island plant. EPA cites Brunner Island Plant's decision to use natural gas rather than coal in 2017, as evidence that the plant's change in fuel will not produce the emissions that contribute to ozone in Delaware. EPA argues that the owner, Talen Energy, has committed to using natural gas going forward in their settlement of a lawsuit with the Sierra Club. However, Talen Energy agreed to end ozone-season coal-burning at Brunner Island only by 2023, five years from now. That indicates that the plant could continue to use coal over the next five years and could switch back from natural gas to coal during ozone season at any time.

Not only do we object to the rationale that EPA has used to propose to deny Delaware's 126 petition, we also note that EPA has taken numerous federal actions that could ultimately lead to increases in harmful emissions, making it still harder for Delaware to protect its residents from harmful pollution. I will name a few of these harmful actions here:

- The Clean Power Plan would reduce emissions that contribute to ozone at the same time as it reduces carbon emissions, yet EPA has proposed to repeal it.
- News reports indicate that EPA is drafting a replacement to the Clean Power Plan that would not only be far weaker, but could actually lead to *more* premature deaths from co-pollutants than doing nothing, according to a study from Harvard, Syracuse and Boston Universities.
- Reports also indicate that EPA will weaken or roll back its New Source Performance Standards for oil and gas sources, standards which would reduce precursors to ozone in new facilities.
- EPA has just extended the loophole that allows a huge increase in super-polluting glider trucks on the road.
- EPA has proposed to censor the science the agency uses in its decision-making, as well as issued an advance notice of proposed rulemaking to alter cost-benefit analysis in a way that could tip the scales against clean air safeguards. Both would make it much harder to set future air pollution limits that protect health.
- EPA has announced an accelerated process for reviewing the ozone NAAQS that would include an incomplete review of the science, and signals that they may violate the Clean Air Act by taking pollution control cost considerations into account when setting what the law requires to be solely a health-based standard.

Everyone in Delaware, particularly those most vulnerable to air pollution, need protection from emissions that blow in from out of state – and yet even as EPA weakens nationwide pollution protections, they have also proposed to deny Delaware's petition to require cleanup of the sources contributing to ozone in the state. We urge EPA to reconsider. Thank you.