

U.S. Environmental Protection Agency Hearing on  
EPA Docket ID: EPA-HQ-OAR-2018-0295  
EPA's Proposed Responses to Section 126b Petitions from Maryland and Delaware

Testimony of  
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Thank you for the opportunity to present comments today. My name is Laura Kate Bender and I am the National Director of Advocacy for the Healthy Air Campaign at the American Lung Association. Our mission is to save lives by improving lung health and preventing lung disease.

For 114 years, the American Lung Association has fought against some of the nation's most dangerous challenges to public health. For more than fifty years, that has included the fight against harmful air pollution. We advocate on behalf of the 33.6 million Americans with chronic lung diseases who are especially vulnerable to health harms from air pollution.

I speak today to oppose EPA's proposed denial of the 126b petitions from Maryland and Delaware. We at the Lung Association also request that EPA take actions in support of the States, like Maryland and Delaware, that suffer from transported air pollution.

In the Clean Air Act, Congress recognized that air pollution fails to respect State boundaries. Emissions from smokestacks and tailpipes in one State all too frequently blow across state lines, adding dangerous pollution to the air inhaled by those living downwind. Congress gave the States the opportunity under Section 126 to request that EPA take steps to reduce emissions that contribute to unhealthy air pollution levels in their States that threaten the health and the lives of their residents.

And these are dangerous air pollutants. Nitrogen dioxide, the primary agent in this case, is harmful in and of itself, but it also reacts in the atmosphere to create ozone and particulate matter, both of which trigger asthma attacks and cause premature deaths.

The list of populations who risk demonstrated harm from ozone pollution includes millions of people in Maryland and Delaware. Children, people with asthma and other lung diseases, seniors, outdoor workers and people with low socioeconomic status have long been shown to be vulnerable to ozone. Newer evidence shows that some otherwise healthy adults are especially sensitive to ozone exposure. All deserve EPA's protection under the law.

In 2016, under Section 126 of the Clean Air Act, Delaware and Maryland petitioned EPA to require that several specific power plants located in Indiana, Ohio, Pennsylvania, and West Virginia take reasonably available actions to reduce NOx emissions. EPA failed to act, ultimately delaying any response for months. EPA is now proposing to deny the petitions for assorted reasons. Today I will respond to a few of EPA's more troubling rationales.

EPA claims 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, this projection fails to consider the impact that climate change has had on ozone levels so far and will likely have in the future. In the design values for 2016, data for New Castle County shows exceedance of the 75 ppb standard at multiple monitors. The year 2017 was the third warmest year on record. The year 2016 was the second warmest. With this in mind, the 2017 data may show continued impact of higher ozone that could trigger a violation.

Delaware and Maryland have both provided evidence that the power plants in question install the required equipment to reduce emissions, then fail to use it. In other cases, they can average the emissions over 30 days under the RACT program, an option that allows them to average away emissions that lead to 8-hour violations.

EPA argues that Maryland's request to have the power plants use their SNCR equipment continuously fails to meet one of EPA's key criteria: is it cost effective? If simply using existing pollution controls does not meet EPA's cost-effectiveness test, it is difficult to imagine how any meaningful cleanup action would. We have a different question that we'd pose: how should Maryland respond to polluted air coming into their state from these sources without EPA's help? They could not. Knowing that options are in place and readily available to reduce emissions not just transported interstate, but affecting air quality in the immediate region of the EGU, the fact that they are not being used is frustrating and wasteful.

Also, EPA's dismissal of the concerns raised by Delaware and Maryland over the Brunner Island Plant raises real concerns for us. EPA contends that the Brunner Island Plant's decision to use natural gas rather than coal in 2017 indicates that the owner, Talen Energy, has made the commitment to using natural gas going forward, and the Brunner Island likely will not produce the emissions that contribute to ozone in Delaware, Maryland and Connecticut. However, in their settlement of a lawsuit with the Sierra Club, Talen Energy agreed to end 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.

We at the Lung Association are pleased with the installation of SCR and SNCR equipment on these plants. However, those changes would not have occurred without state actions – including these petitions to EPA – and absent EPA action, that change is not enforceable.

We at the Lung Association have long supported EPA's efforts to reduce transported ozone, including in our legal support of the Cross-State Air Pollution Rule. EPA must plan to update CSAPR as soon as possible following the implementation of the 2015 ozone standard.

But that is years away. And CSAPR has clearly not been enough to meet some specific cases for the 2008 ozone standard. EPA needs to respond positively to Delaware, Maryland, Connecticut and other states that face these well-documented public health needs. EPA needs to help them by enforcing the law and protecting the health of the more than 1.28 million people with chronic lung disease who live in these three states alone.

Thank you.