

## **Testimony on EPA's Proposed Denial of Delaware's 126(b) Petitions**

**By David Fees**

**State of Delaware - DNREC**

**June 22, 2018**

Good morning, my name is David Fees, Acting Director, Division of Air Quality for the Delaware Department of Natural Resources and Environmental Control. Thank you for the opportunity to comment today. Over 90% of Delaware's unhealthy levels of ozone originate beyond Delaware's borders. Delaware relies on upwind states to do their part in addressing emissions from sources within their jurisdictions, but sometimes their actions are not enough. Two years ago Delaware submitted to EPA four Clean Air Act 126(b) petitions to address the impacts to Delaware's air quality from upwind sources located in Pennsylvania and West Virginia. I am here today to defend those petitions in the face of EPA's proposal.

EPA relied on a four step framework for evaluating the Delaware petitions and Delaware has concerns in the way EPA comes to its conclusions with each step. The first of the four steps is to determine if there is an air quality problem in Delaware as it relates to the 2008 and 2015 ozone standards. Delaware currently meets the 2008 standard but Delaware monitors still record exceedances of that standard, and the trend in the past few years has shown an increase in exceedances. Regarding the 2015 ozone standard, New Castle County, Delaware was designated nonattainment as part of the greater Philadelphia nonattainment area. Astonishingly, EPA argues that there is no air quality problem in Delaware for the 2015 standard. EPA bases their determination on modeled 2023 data, claiming that good neighbor obligations with respect to

Delaware only pertain to the attainment date of a moderate nonattainment area. Yet 2023 is two years beyond the 2021 attainment date for New Castle County; therefore EPA's reliance on the 2023 modeling cannot be used as justification that there is no air quality problem in Delaware.

Step two of the framework is to determine the upwind states that significantly impact Delaware. EPA's Cross State Air Pollution Rule Update identified Pennsylvania and West Virginia among the states that significantly contribute to Delaware's ozone nonattainment based on one percent of the standard or greater. Pennsylvania and West Virginia are clearly linked to the air quality problem in Delaware.

In step three, Delaware's 126 petitions provided the results of computer modeling using EPA-approved methodologies that identified the named sources as emitting NO<sub>x</sub> at levels sufficient to significantly impact Delaware's air quality. While EPA disparages Delaware's modeling as using unrepresentative 2011 emissions data, Delaware has reviewed the 2017 Air Markets Program Data and found two of the named sources operating at emission rates similar to 2011.

The final step in the four-step framework is to implement necessary emission reductions at the named sources. EPA states that all identified highly cost-effective emission reductions have been implemented by three of the four sources when they installed NO<sub>x</sub> controls such that the sources are no longer in violation of the good neighbor provision. Delaware disagrees for the following reasons.

EPA's 2017 ozone season data indicates that SCR-equipped coal-fired units subject to the CSAPR Update emission budgets, three of which were named sources, operated thousands of unit-hours with hourly NOx emission rates of 0.3 lbs/ MMBtu or higher, an indication that controls were not being used. This is not surprising since EPA focuses on ozone season average emission rates. EPA claims the named sources consistently operate their controls throughout the ozone season. Even if that were true, there are no enforceable permit conditions requiring the operation and optimization of controls during the ozone season, and as such, Delaware's air quality future remains uncertain under EPA's solution.

The fourth named source by Delaware has no post-combustion controls. This facility began to use natural gas in 2017 which has reduced annual emissions, however the facility has the permit flexibility to return to burning coal. EPA expects the facility will continue to use natural gas, but as with the other named sources, there are no guarantees. EPA has established a solution based on hope and not based on good air quality management.

In summary, Delaware does not agree with EPA's reasons for denying Delaware's petitions. EPA has not shown valid modeling or justification that Delaware will attain the 2015 ozone standard by its 2021 Marginal nonattainment deadline. Delaware's petitions are technically sound and correctly identify sources contributing to nonattainment in Delaware. Delaware seeks EPA to make a finding for each 126 petition to ensure Delaware citizens are not burdened with poor air quality. Delaware seeks effective remedies by requiring the use and optimization of controls throughout the ozone season, and enforceable fuel restrictions.

Delaware continue to suffer from upwind emissions, and it is past time that EPA takes action to provide Delaware the relief that the Clean Air Act prescribes. Since EPA will not be holding a hearing in New Castle County as requested, Delaware plans to conduct its own hearing and will submit the results to the docket.

Thank you.