State of Delaware
Office of the Governor

Ruth Ann Minner
Governor

July 14, 2003

Mr. Donald S. Welsh (3RA00)
Regional Administrator
U. S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA, 19103-2029

Dear Mr. Welsh:

The purpose of this letter is to fulfill Delaware's obligations under Section 107 of the Clean Air Act Amendments of 1990 that require states to recommend attainment status designations for its counties under the 8-hour national ambient air quality standard (NAAQS) for ozone, and to recommend placement of any counties not attaining the standard in a non-attainment area.

Area Description

Delaware's three counties, listed from north to south, are New Castle, Kent and Sussex. The northern portion of New Castle County lies above the Chesapeake and Delaware Canal, a waterway that connects the Chesapeake Bay with the Delaware Bay. This part of New Castle County is much more metropolitan and industrialized than the remainder of Delaware. The remainder of Delaware lies south of the Chesapeake and Delaware Canal. This area comprises the southern portion of New Castle County, and all of Kent and Sussex Counties. This area is part of the Delmarva Peninsula, a strip of land extending below the Chesapeake and Delaware Canal, bordered on the east by the Delaware Bay and Atlantic Ocean, and bordered on the west and south by the Chesapeake Bay. In addition to Delaware, the Delmarva Peninsula contains all or portions of eight Maryland counties (lower Cecil, Kent, Queen Anne's, Caroline, Dorchester, Wicomico, Worcester and Somerset) and two Virginia counties (Accomack and Northampton). Except for a few small pockets of relatively high growth, the entire Delmarva Peninsula, including Delaware's portion, is generally rural, with agriculture as the predominant business. The counties on the Delmarva Peninsula share similar emissions profiles, population densities, traffic patterns, topography and meteorology. The Peninsula counties also share similar air quality problems. Although only a few of these counties have ozone monitors, all those that do are showing numerous violations of the 8-hour standard. In addition, photochemical modeling runs performed by the EPA have projected that all of the counties on the Delmarva Peninsula (except for Wicomico Co., MD) experience episodes similar to Delaware's in exceeding the 8-hour NAAQS.

Tatnall Building, Dover, Delaware 19901 (302) 744-4101 (302) 739-2775 fax
Carvel State Office Building, Wilmington, Delaware 19801 (302) 577-3210 (302) 577-3118 fax

Attainment Status

The 8-hour ozone NAAQS is established at 80 parts per billion (ppb). 8-hour monitored values of 85 ppb or greater constitute exceedance of the NAAQS. Based on the most recent three years of ozone monitoring data (2000 through 2002), the design values for New Castle, Kent and Sussex counties are 97 ppb, 93 ppb, and 94 ppb, respectively. Therefore, all three of Delaware's counties are clearly in non-attainment of the 8-hour ozone NAAQS.

Non-attainment Area

The EPA is recommending that the Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area (C/MSA) serve as the presumptive boundary for the 8-hour NAAQS non-attainment area. Although the C/MSA approach was used under the 1-hour ozone NAAQS, Delaware believes that it should not be used under the 8-hour NAAQS. Reasons for this belief include:

- The C/MSA approach is based on census data rather than airshed analysis data. Census data, in comparison to airshed analysis data, represents a poor surrogate for determining non-attainment boundaries.
- The science of photochemical modeling and airshed analysis has progressed significantly since the passage of the Clean Air Act Amendments of 1990. Detailed regional airshed studies have been completed, such as the Regional Oxidant Modeling (ROM) project covering most of the Ozone Transport Region (OTR) states, the Ozone Transport Assessment Group (OTAG) project and the NO_X SIP Call analysis covering most of the Eastern U.S. These studies have demonstrated that the ozone problem is transport-driven and regional in scope, rather than localized or confined to relatively small C/MSA's. These studies have further demonstrated that individual C/MSA's have minimal control over their ability to demonstrate or achieve attainment. Delaware believes that this conclusion should become the cornerstone of good air quality planning and policy, starting with the crucial boundary determinations.
- In many areas, including Delaware, the air coming into a county is often with ozone concentration greater than 85 ppb (i.e., non-attainment), so under the C/MSA approach such an area may be required to solve a problem that is not possible to solve under its own authority. Non-attainment counties outside of a C/MSA, either upwind or downwind of the CMSA, may be put in a similar, impossible position. Should the EPA fail to address transport completely and in a timely manner, this could lead to a need to install ineffective and costly controls, sanctions under the CAA, and likely delay protecting public health in those areas.
- The C/MSA-based approach has had, at best, minimal success toward achieving attainment of the 1-hour NAAQS. From Delaware's experience, most of the success on the east coast to date is attributable to national measures taken by the EPA, and regional measures developed and adopted by the Ozone Transport Commission (OTC) member

states. Given that 8-hour non-attainment is more regional in nature than 1-hour non-attainment, a C/MSA-based approach is not appropriate.

The only indication of an EPA deviation from the presumptive C/MSA boundaries to date is the establishment of eleven criteria in EPA's March 28, 2000 guidance memorandum from John S. Seitz entitled, *Boundary Guidance on Air Quality Designations for the 8-Hour Ozone National Ambient Air Quality Standard.* This guidance suggests that these criteria, which include population density, monitoring data, traffic patterns, emission sources, topography and meteorology, should be used to draw the boundaries of the non-attainment area when an area larger or smaller than a C/MSA is being considered. Delaware believes that these criteria are more applicable to devising and applying the proper control strategies for specific counties or zones within the non-attainment area **after** the non-attainment area is established. These criteria should be considered as secondary to the regional airshed studies when designating non-attainment area boundaries.

Given the above, Delaware believes that the EPA should designate non-attainment area boundaries consistent with the regional nature of the problem. Delaware believes that one way of doing this is by designating as a single non-attainment area, within an area that is as regional as possible, all counties that are "non-attainment" with the 8-hour ozone NAAQS. Practically speaking, this recommendation would likely establish a single non-attainment area that encompasses all counties that are monitoring non-attainment, or that are part of a non-attainment CMSA, within the NO_X SIP Call domain.

Delaware believes that a regional approach will:

- Include in the non-attainment area all or most of the counties necessary to solve this regional problem. It will give all involved a vested interest in solving this regional problem. It will also foster cooperative development and implementation of control strategies that will best serve the designated areas.
- Remove political barriers, and level the playing field by setting the consistent, proven baseline control requirements of Subpart 2 of Title I, Part D of the CAA within the region, which include New Source Review (NSR), vehicle Inspection and Maintenance, and Reasonably Available Control Technology (RACT) requirements.
- Compliment national and regional rules that address regional transport.
- Recognize that 8-hour ozone non-attainment is a "regional problem" and not a "local problem with a transport component," and that it is necessary to go beyond the C/MSA approach that has largely failed for nearly three decades under the 1-hour ozone NAAQs.
- Simplify and provide equity to the process of implementing the 8-hour NAAQS. In short, demonstrate that we have learned that a continuation of the existing process does not work.

In addition, Delaware believes that the EPA must formally develop alternate means to address the attainment status of counties without ozone monitors. Given the <u>proven</u> regional nature of ozone problems, Delaware believes that the EPA's current process of designating these counties as

"attainment/unclassifiable" is wholly inappropriate. If legal constraints prevent this change in designation, then legislative relief must be sought. Further, the EPA should develop and implement specific criteria to implement the CAA Section 107(d)(1) requirement that any "nearby" area, with or without an ozone monitor, that contributes to downwind non-attainment be designated as non-attainment. EPA's current process of applying this requirement only to areas within a C/MSA is also wholly inappropriate.

Delaware fully acknowledges that the progress we have made to date in the control of ozone has only been possible because of the collaborative process between EPA and the states. EPA's continuing efforts to establish stringent federal mobile source emission standards, develop improved modeling and other analytical techniques, and develop policies that facilitate the development and implementation of large-scale attainment strategies are greatly appreciated. An intensified level of effort will be imperative to our continued success. I hope that EPA will be open to policy and perhaps legislative changes that will support the technically sound and equitable ozone attainment process being recommended by Delaware.

Thank you for your consideration of these recommendations. If you feel you cannot support the approach being recommended, we would like an opportunity to continue this discussion before you propose a solution to the ozone problem inconsistent with this approach. If you have any questions concerning this submittal or would like to discuss it further, please contact Mr. Ali Mirzakhalili, Administrator of the Air Quality Management Section at (302) 739-4791.

Sincerely,

Ruth Ann Minner

Ruth Ann Minner
Governor

pc: John A. Hughes
John B. Blevins
Ali Mirzakhalili
Judith Katz
David Arnold
Kate Finnerty