STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
OFFICE OF THE SECRETARY
89 KINGS HIGHWAY
DOVER, DELAWARE 19901
PHONE: (302) 739-9000
FAX: (302) 739-6242

TESTIMONY OF SHAWN M. GARVIN BEFORE THE

SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

SUBCOMMITTEE ON CLEAN AIR AND NUCLEAR SAFETY ON AN AMENDMENT TO

THE CLEAN AIR ACT REGARDING S.263 and S.452.

May 23, 2017

Chairperson Capito, Ranking Member Whitehouse, and Members of the Subcommittee, my name is Shawn Garvin and I serve as Delaware's Secretary of Department of Natural Resources and Environmental Control. Thank you for the opportunity to testify on "Making Implementation of the National Ambient Air Quality Standards for Ground-Level Ozone Attainable: Legislative Hearing on S.263 and S.452."

Since the Clean Air Act was last amended 27 years ago, it has prevented literally hundreds of thousands of premature deaths, as well as averted millions of incidences of morbidity, including, for example, heart disease, chronic bronchitis and asthma. The health benefits associated with this landmark legislation has far outweighed the costs of reducing pollution by more than 30 to 1. Moreover, we have accrued these health benefits over the same period as our nation's gross domestic product has grown. I think everyone can agree that the

Clean Air Act is one of our nation's most effective environmental statutes. Simply put, the Clean Air Act works.

Accordingly, it is crucial that any comprehensive amendments to the Act be deliberate and thoughtful, and ensures that the basic important tenets of the legislation -protection of public health and welfare - remain intact. Unfortunately, after reviewing S.263 and S.452, I have concluded that these bills significantly weaken the existing Clean Air Act by delaying important deadlines and substantially altering the process for setting health-based air quality standards. This results in undermining the health protections afforded by the Clean Air Act to our citizens, our environment, or our future. Delaware continues to struggle to bring healthy air to our citizens because we are downwind and subject to air pollution transport from facilities in other parts of the Country.

The Clean Air Act requires states to attain the ozone national ambient air quality standards (NAAQS) as expeditiously as practicable, a responsibility that would be unduly impeded by the Bills. Because the NAAQS are set to protect public health with an adequate margin of safety and are based on the best available science, any delay in implementing the NAAQS would prolong exposure by the public to unhealthy air. EPA's 2015 ozone NAAQS is expected to provide ample public health benefits across the United States, including preventing 230,000 asthma attacks in children; 630 asthma-related emergency room visits; and 320 to 660 premature deaths annually by 2025 (excluding California).

Arbitrarily delaying implementation of the 2015 ozone NAAQS to 2025 would leave the 2008 standard – which has been found to be outdated and not sufficiently protective of public health – as a prolonged inadequate target for protecting public health. This unnecessarily puts our citizens in greater peril of suffering from the pollution's adverse health and welfare impacts, including premature mortality. In addition, it does not accurately inform the public of the true quality of their air. The Bills' provisions to extend the review cycle for all NAAQS from five years to ten years further exacerbate this problem. Experience has shown that NAAQS reviews rarely occur within the current statutory five-year cycle, and an extension to ten years with additional analysis will likely result in a much longer review time, and additional work by EPA that will extend well beyond ten years. Thus, our states' ability to provide clean, healthy air "as expeditiously as practicable" becomes an unattainable goal. Indeed, the cumulative effect of delayed implementation and longer review cycle means that by the time EPA reviews the ozone standard again, the underlying science for the existing standard would be twenty years old. This is what Congress wanted to avoid when the Clean Air Act was amended.

Allowing technological feasibility to be considered when setting NAAQS runs counter to the original core principle of the Clean Air Act - NAAQS should be set solely on the basis of health. This is now well-settled law, including in a unanimous opinion from the Supreme Court in the Whitman v Trucking Association. Once health-based standards are established, the Clean Air Act appropriately allows states to consider other factors, such as costs and technological feasibility, as they develop strategies to attain the standards. Allowing the consideration of technological feasibility when setting NAAQS will defeat the critical purpose of health-based standards. The adverse harm from polluted air as a matter of science has nothing to do with

control technology costs. Furthermore, historical experience has shown that current considerations of technological feasibility are poor predictors of future innovation breakthroughs created by the technology-forcing nature of the Clean Air Act.

The Bills' provisions regarding permitting also imperil the health of our citizens. Allowing air pollution sources to obtain permits under an outdated standard – whether because of an arbitrary delay, as proposed for the 2015 ozone NAAQS, or because EPA has not issued rules or guidance – imprudently punishes people who reside and work in areas with poor air quality and prolongs the inequity that exists between upwind and downwind states. If Congress is truly concerned about the timeliness of EPA rules it should ensure that EPA has adequate resources to carry out its responsibilities.

The Bills also inappropriately address "exceptional events" by expanding the exceptional events criteria to include conditions occurring on the days during which the highest pollution episodes actually occur. This makes setting a health-based ozone NAAQS a meaningless exercise by absolving EPA and the states from taking efforts to achieve it under the prevalent conditions leading to the worst air quality days. The intent of the exceptional event criteria is to allow a state to discount NAAQS exceedances that result from a one-time, unpredictable, and uncontrollable event – for example, a volcanic eruption or a wildfire. This short-sightedness would result in the continuation of harmful exposure to polluted air while ignoring that a repeatable, predictable, and preventable high pollution day occurred.

Other provisions of the Act already address the issues that appear to be motivating this legislation. The Act's nonattainment area classifications provide areas with more difficult ozone

pollution problems with more time to comply. Other mechanisms allow states the flexibility to adjust the minimum pollution reduction requirements based on the showing of need, success in lowering ozone levels, and the adoption of certain other measures. In addition, the Act's good neighbor provisions require states with emissions that contribute significantly to other states' ozone nonattainment to take action to reduce their contribution.

In the last decade, we have made great progress in reducing pollution from our industrial sources and have significantly cleaned up our smokestacks. We have reduced our sulfur dioxide emissions by over 95%, reduced emissions of volatile organic compounds and nitrogen oxides which are precursors to ozone by 67 and 68 percent respectively. We have reduced primary particle pollution of PM10 size by 70 percent and reduced PM2.5 particle emissions by 90 percent. We have done all of this through adoption of various measures. We put in place a stringent multi-pollutant regulation which resulted in installation of advanced controls to reduce sulfur dioxide, nitrogen oxides and mercury from our coal fired power plant. Today, Indian River Power Plant in Sussex County, Delaware is one of the cleanest coal fired plants in the country.

Even with all the in-state emissions improvements, we continue to struggle to meet the ozone standard. The answer to solving our ozone problem lies outside of our borders and we need emissions reductions upwind. We have lodged four separate petitions with the EPA requesting controls to be installed at power plants or for EPA to compel the power plants to operate their installed pollution control equipment. We have tried to prompt our upwind neighbors through the State Collaborative On Ozone Transport to reduce emissions, but to no

avail. We need the provisions of the Clean Air Act which require states to fulfill their good neighbor provisions strengthened and not delayed or weakened.

In conclusion, the proposed legislation undercuts requirements of the Clean Air Act that are crucial to obtaining healthy air quality as expeditiously as practicable. Further, the proposed amendments change the intent of the Clean Air Act, which is the swift protection of public health, to one of delay and deprivation of public health protection. Delaware supports efficient and expeditious implementation of National Ambient Air Quality Standards, but opposes bills which would weaken public health protection. Revisions to the CAA may be warranted, such as provisions to directly address climate change, or strengthen the good neighbor provision to deal with air pollution transport, but the changes in S.263 and S.452 are problematic because they take us backwards in the protection of our citizens from the public health and economic harms of air pollution.

Thank you for the opportunity to testify. I am happy to answer any of your questions.