

Congress of the United States
Washington, DC 20515

June 27, 2018

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Pruitt,

We write to ask you to reconsider the Environmental Protection Agency's (EPA) proposed rejection of the four petitions submitted by the State of Delaware under Section 126(b) of the Clean Air Act. These petitions asked EPA to make a finding that air pollutants originating outside our state significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone national ambient air quality standards (NAAQS) and the 2015 ozone NAAQS in Delaware. The fundamental mission of the Environmental Protection Agency (EPA) is to protect the health of the American people and our environment. By denying our state the ability to reduce harmful air pollution from upwind states, we believe this EPA is shirking one of its primary responsibilities, ignoring the needs of states and, most importantly, putting the health of Delawareans at risk.

Ground-level ozone pollution, commonly known as smog, is a real environmental health threat to many Americans, especially those living in the Northeast. Ozone pollution inflames peoples' airways, and is particularly dangerous for children, the elderly, and people with lung diseases like asthma. Left unchecked, ozone pollution can impose billions of dollars in healthcare costs, cause missed work days and result in lives lost.¹

Unlike other common air pollutants, ozone is not directly emitted from a source, but rather is formed in the atmosphere by a chemical reaction between nitrogen oxides (NOx) and volatile organic compounds (VOC) in the presence of sunlight. This unique nature of ozone pollution means it is frequently found downwind from major contributing sources, such as fossil-fuel power plants, motor vehicles and industrial facilities. Once formed, ozone knows no state boundaries and can travel hundreds, sometimes thousands, of miles.²

Downwind states like our home state of Delaware cannot clean up ozone pollution alone. In order for our constituents to breathe healthy air, upwind states must do their fair share to reduce

¹ Health Effects of Ozone Pollution." EPA, Environmental Protection Agency, 21, June. 2018, www.epa.gov/ozone-pollution/health-effects-ozone-pollution

² "Basic Information about Ozone." EPA, Environmental Protection Agency, 15 June 2018, www.epa.gov/ozone-pollution/basic-information-about-ozone

ozone pollution. Fortunately, our nation has federal clean air protections established by the Clean Air Act that require EPA to forge partnerships with states to address pollutants that are dangerous and cross state borders, such as ozone. These clean air protections were created through a strong commitment by Democrats and Republicans alike, who believed all states must be good neighbors when it comes to cleaning up America's air.

The Clean Air Act requires EPA to establish National Ambient Air Quality Standards (NAAQS) for ozone based on the best science available. EPA, in consultation with the states, also designates which areas of the country are not attaining the ozone health standards and/or contributing to nearby air quality problems. This initial process is vital for states to effectively plan and reduce pollution crossing state borders.

In addition, as part of the NAAQS implementation process, Congress inserted several "good neighbor" provisions to help protect downwind states. Section 110(a)(2)(D)(i) of the Clean Air Act requires state implementation plans to "provide adequate provisions" to prohibit any in-state emissions that "will contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard."³ If upwind states are not meeting their Section 110(a)(2)(D)(i) responsibilities, one remedy is for downwind states to hold upwind states accountable for specific highly-polluting stationary sources through Section 126(b), which provides that, "[a]ny State or political subdivision may petition the Administrator for a finding that any major source or group of stationary sources emits or would emit any air pollutant in violation of the prohibition of Section 110(a)(2)(D)(i) or this section."⁴ Both of these Clean Air Act provisions reflect Congress' intent that, among other features, an "effective program must not rely on prevention or abatement action by the State in which the source of the pollution is located, but rather by the State (or residents of the State) which receives the pollution and the harm, and thus which has the incentive and need to act[.]"⁵ Congress' recognition of "a Federal mechanism for resolving disputes" between states is essential to addressing this human health issue.⁶

These good neighbor provisions in the Clean Air Act are critical for Delaware, because despite regulating at home, over 90 percent of Delaware's air pollution comes from sources outside the state. In the past decade, Delaware has implemented and enforced numerous regulations that have made great strides in cleaning up the state's own ozone pollution.⁷ At the same time, Delaware has worked with its neighbors on regional efforts to reduce ozone pollution and has fully participated in federal cross-state air programs. Despite these efforts, Delaware continues to have days when the ozone pollution exceeds the 2008 NAAQS ozone standard. And most recently, EPA designated New Castle County as being nonattainment for the 2015 NAAQS

³ 42 U.S.C. 7410

⁴ 42 U.S.C. 7426(b)

⁵ H. Rep. No. 95-294, p.330 (1977)

⁶ H. Rep. No. 95-294, p.330 (1977)

⁷ See generally Petition from Del. Dept. of Natural Res. & Env'tl. Control to U.S. EPA (July 7, 2016), Docket No. EPA-HQ-OAR-2018-0295-0019 (Brunner Island); Petition from Del. Dept. of Natural Res. & Env'tl. Control to U.S. EPA (Aug. 8, 2017), Docket No. EPA-HQ-OAR-2018-0295-0020 (Harrison Power Station); Petition from Del. Dept. of Natural Res. & Env'tl. Control to U.S. EPA (Nov. 10, 2017), Docket No. EPA-HQ-OAR-2018-0295-0018 (Homer City Generating Station); Petition from Del. Dept. of Natural Res. & Env'tl. Control to U.S. EPA (Nov. 28, 2016), Docket No. EPA-HQ-OAR-2018-0295-0017 (Conemaugh Generating Station).

ozone standard, illustrating the persistence of this interstate pollution problem.⁸ Delaware has gone above and beyond its obligations under the Clean Air Act to reduce ozone pollution within its own borders. Unfortunately, upwind states are not following the requirements of Section 110(a)(2)(D)(i) of the Clean Air Act and are significantly contributing to Delaware's unhealthy ozone days and nonattainment status.⁹

EPA's own modeling has found that in the last decade at least thirteen states have contributed to Delaware's ozone pollution. Four states individually contributed more ozone pollution to Delaware than all of the sources within Delaware combined.¹⁰ This cross-state ozone pollution that cannot be controlled by Delaware costs the people of our state a great deal in medical bills and in the quality of their lives. EPA has attempted to address this cross-state ozone pollution for decades, in part through a cap-and-trade program for fossil-fuel power plants.¹¹ We applaud these efforts and strongly support EPA's actions to address cross-state pollution. However, there continue to be gaps in federal actions and therefore cross-state ozone pollution continues to be a problem for Delaware.

EPA admitted that federal cross-state regulations likely do not go far enough, stating in the latest 2016 update to the Cross State Air Pollution Rule that "the EPA acknowledges that they may not be sufficient to fully address these states' good neighbor obligations to address transported emissions."¹² After independent analysis and modeling, the State of Delaware has confirmed that federal regulations alone are insufficient to address cross-state ozone pollution and that upwind neighbors and EPA need to do more. Delaware identified four out of state fossil-fuel power plants that continue to significantly contribute to Delaware's ozone problems. This resulted in Delaware filing four 126(b) petitions with EPA for out-of-state facilities in violation of the provisions of Section 110(a)(2)(D)(i) of the Clean Air Act in respects to the 2008 and 2015 ozone NAAQS, including:

1. Brunner Island facility's electric generating units located near York, Pennsylvania;¹³
2. Homer City Generating Station's electric generating units located in Indiana County, Pennsylvania;¹⁴

⁸ 82 FR 54232

⁹ See, e.g., Petition from Del. Dept. of Natural Res. & Env'tl. Control to U.S. EPA (July 7, 2016), Docket No. EPA-HQ-OAR-2018-0295-0019 (Brunner Island); Petition from Del. Dept. of Natural Res. & Env'tl. Control to U.S. EPA (Aug. 8, 2017), Docket No. EPA-HQ-GAR-2018-0295-0020 (Harrison Power Station); Petition from Del. Dept. of Natural Res. & Env'tl. Control to U.S. EPA (Nov. 10, 2017), Docket No. EPA-HQ-OAR-2018-0295-0018 (Homer City Generating Station); Petition from Del. Dept. of Natural Res. & Env'tl. Control to U.S. EPA (Nov. 28, 2016), Docket No. EPA-HQ-OAR-2018-0295-0017 (Conemaugh Generating Station).

¹⁰ U.S. Environmental Protection Agency. "Technical Support Document (TSD) for the Transport Rule, Docket ID No. EPA-HQOAR-2009-0491, Analysis to Quantify Significant Contribution" (2010)

¹¹ 83 FR 26666

¹² 81 FR 74521

¹³ Petition from Del. Dept. of Natural Res. & Env'tl. Control to U.S. EPA (July 7, 2016), Docket No. EPA-HQ-OAR-2018-0295-0019.

¹⁴ Petition from Del. Dept. of Natural Res. & Env'tl. Control to U.S. EPA (Nov. 10, 2017), Docket No. EPA-HQ-OAR-2018-0295-0018.

3. Harrison Power Station's electric generating units located near Haywood, Harrison County, West Virginia;¹⁵ and
4. Conemaugh Generating Station's electric generating units located in Indiana County, Pennsylvania.¹⁶

On June 8, 2018, EPA proposed to reject all four of Delaware's petitions, claiming the state did not provide enough information and any remedy would be too costly. We urge you to take a closer look and grant Delaware's petitions instead of finalizing the proposed denials.¹⁷

In all four 126(b) petitions, the State of Delaware provided detailed results from independent modeling that clearly show there is a link between the four upwind power plants and Delaware's ozone problems. At the same time, the solutions our state suggests are easy actions that can be taken by each facility. For the Brunner Island facility, the State of Delaware is simply requesting the power plant not be able to revert back to burning coal. For the Homer City, Harrison and Conemaugh power plants, the State of Delaware is simply requesting the power plants fully operate air control technology that is already installed at the facilities and already paid for by ratepayers.

We believe each of these sources significantly contributes to Delaware's ozone problem, and that the actions requested by Delaware of its upwind neighbors are "adequate provisions" to control those emissions as mandated by Congress in Section 110(a)(2)(D)(i) of the Clean Air Act.¹⁸ Rejecting all four of Delaware's 126(b) petitions runs contrary to how Congress believed EPA should consider and review 126(b) petitions. Instead of worrying solely about the costs and burden of the upwind states, EPA must prioritize the "residents of the State which receives the pollution and the harm" when considering any 126(b) petition.¹⁹ EPA has failed to meet these criteria. The requested actions laid out by Delaware's 126(b) petitions are *de minimis* for upwind states compared to the continued costs our state and its residents will incur if these long overdue actions are not taken.

At the same time, instead of working with states to create solutions, this EPA has made it harder for states, especially downwind states, to meet clean air goals. Under this Administration, EPA is cutting state air program funding, weakening enforcement and rolling back critical clean air protections that will further exacerbate the ongoing ozone cross-state pollution problems. EPA cannot assume Delaware and other states in the Northeast will be in ozone attainment for the 2008 or 2015 NAAQS in the outer years without any air quality modeling of the effects of current policy changes. What we do know is that Delaware is currently in nonattainment, these four facilities are significantly contributing to nonattainment, and EPA must act now.

The four Delaware 126(b) petitions were filed during a five-month time period, starting July 7, 2016 through November 28, 2016. Under the law, EPA has sixty days to respond to 126(b)

¹⁵ Petition from Del. Dept. of Natural Res. & Env'tl. Control to U.S. EPA (Aug. 8, 2017), Docket No. EPA-HQ-OAR-2018-0295-0020.

¹⁶ Petition from Del. Dept. of Natural Res. & Env'tl. Control to U.S. EPA (Nov. 28, 2016), Docket No. EPA-HQ-OAR-2018-0295-0017.

¹⁷ 83 FR 26666

¹⁸ 42 U.S.C. 7410

¹⁹ H. Rep. No. 95-294, p.330 (1977)

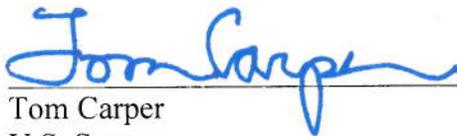
petitions. It took almost two years and legal actions by the State of Delaware to prompt any response from EPA. We are disappointed it took the agency so long to respond, and believe it is at odds with your proclaimed "Rule of Law" approach to handling actions at EPA. We are even more disappointed that, after taking 704 days to respond to Delaware's first petition (664 days longer than the law allows), the agency has decided to keep the public comment period open for only 30 days and is so far refusing to hold a hearing in the state. This is a critical decision that affects the health of Delawareans and the state's economy. That is why we echo Governor Carney's requests (1) to keep the comment period open longer to allow the agency to hear from our constituents, and (2) to hold a hearing on this matter in Delaware, the affected state.

In closing, much of our country's ongoing effort to clean up air pollution hinges on the partnership between states and EPA. It is even more critical for downwind states like Delaware that depend on EPA to ensure every state is a good neighbor when it comes to reducing air pollution. You claim you are committed to cooperative federalism and that your agency, "needs to work together with the states to achieve better outcomes." We ask that you live up to your rhetoric and work with the states in the Northeast to achieve better outcomes. Require Delaware's upwind neighbors to do their fair share when it comes to ozone pollution and help Delawareans have clean, safe air to breathe.

As we continue to hear from our constituents and local and state officials on this matter, we will likely have additional comments for you in the future on this issue. If you or your staff have questions about this letter, your staff is encouraged to contact [REDACTED] of Senator Carper's Environment and Public Works Committee staff at [REDACTED]. We request that this letter be added to the public docket under the docket ID number, EPA-HQ- OAR- 2018-0295.

Your prompt attention to our requests is appreciated.

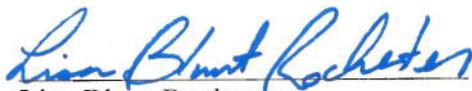
Sincerely,



Tom Carper
U.S. Senate



Christopher A. Coons
U.S. Senate



Lisa Blunt Rochester
U.S. House of Representatives