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June 20, 2017

Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: State of Delaware;
Clean Air Act §126 Petition;
Conemaugh Power Station.

Dear Administrator Pruitt:

The Delaware petition pursuant to Section 126 of the federal Clean Air Act (CAA) regarding the Conemaugh Power Station includes several matters that are of significant concern to the Midwest Ozone Group (MOG). While MOG will defer to the owner of the Conemaugh Power Station on matters specific to that plant, we respectfully disagree with the position that the State of Delaware is entitled to pursue short term NOx emission limits from an upwind state.

MOG's concerns regarding the Delaware petition go to the fundamental premise behind CAA §126 – to provide a carefully crafted mechanism by which states can resolve disputes related to the interstate transport of air pollutants as they relate to significant contribution to a nonattainment or maintenance problem. The basic premise of CAA §126 as applied in this case is that Delaware must first demonstrate that it has any ozone non-attainment or maintenance problems before it can assert a claim against an upwind source. See CAA §§126(b) and 110(a)(2)(D)(ii). As we will point out in this letter, there is no legitimate basis for Delaware to make a claim under CAA §126 and, therefore, this petition, and others like it, filed on behalf of the State of Delaware, must fail.

The following are some, but certainly not all, of the deficiencies in Delaware's CAA §126 petition filed against the Conemaugh Power Station that render it fatally defective. Accordingly, we have requested that your agency deny the petition for all the reason stated in this letter.

1. Delaware's current ozone air quality is already measuring attainment of the 2008 (75 ppb) NAAQS.

On July 29, 2016, USEPA released its latest compilation of 8-hour ozone design values and the annual 4th highest maximum values for all monitors in the U.S. for recent years.¹

The most recent USEPA (2013-2015) design values for the Delaware monitoring stations when compared to the 2008 (75 ppb) ozone NAAQS, show that all design values are significantly below the 2008 ozone NAAQS. Of the seven monitors, two have indication of data completeness issues but still show attainment of both NAAQS. These two values are denoted with an asterisk (*) in the table below.

Specifically, the following are the 2013-2015 design values for all Delaware monitors compared to the 2008 ozone NAAQS:

Monitor	2013-2015 Design Values (ppb)	2008 NAAQS (ppb)
Kent (100010002)	65	75.9
New Castle (100031007)	66	75.9
New Castle (100031010)	69*	75.9
New Castle (100031013)	68	75.9
New Castle (100032004)	69*	75.9
Sussex (100051002)	64	75.9
Sussex (100051003)	69	75.9

Without exception the 2013-2015 design values for all monitors in Delaware are significantly lower than the 2008 (75 ppb) NAAQS standards.

2. EPA projects that in 2017 all Delaware monitors will also attain and maintain the 2008 75 ppb ozone NAAQS.

Data generated by EPA in support of its final CSAPR Update² projects the following design values for Delaware monitors in 2017:

¹ https://www.epa.gov/sites/production/files/2016-07/ozone_designvalues_20132015_final_07_29_16.xlsx

² https://www.epa.gov/sites/production/files/2017-05/final_csapr_update_ozone_design_values_contributions_all_sites.xlsx

Monitor	2017 final CSAPR Average Design Values (ppb)	2017 final CSAPR Maximum Design Values (ppb)
Kent (100010002)	63.7	66.8
New Castle (100031007)	63.7	66.8
New Castle (100031010)	66.2	66.2
New Castle (100031013)	65.9	67.8
Sussex (100051002)	65.5	68.6
Sussex (100051003)	68.4	71.3

Again, all of Delaware's monitors have predicted 2017 average and maximum design values that are well below the attainment levels for the 2008 (75 ppb) NAAQS.

3. EPA itself has determined that Delaware does not have any ozone nonattainment or maintenance areas.

EPA's CSAPR Update made specific determinations about those portions of the country that have either nonattainment or maintenance concerns that USEPA believes are entitled to be addressed under CAA §110(a)(2)(D)(ii) – which sets the criteria for relief under both transport rules and CAA §126 petitions.

EPA found that Delaware has neither nonattainment nor maintenance areas that would be sufficient to qualify it for relief under CAA§110(a)(2)(D)(ii). See 80 Fed. Reg. 75725 (December 3, 2015).

4. The 2015 70 ppb ozone NAAQS does not provide a basis for the petition.

The 2015 70 ppb ozone NAAQS was, of course, finally adopted by USEPA on October 1, 2015. A memorandum of Acting Assistant Administrator McCabe also dated October 1, 2015, specifically notes that:

“Formal attainment plans for the 2015 standards are not anticipated to be due until 2020 or 2021 ...³

The memorandum goes on to explain the plan for addressing interstate ozone transport as follows:

³ https://www.epa.gov/sites/production/files/2015-10/documents/implementation_memo.pdf, p. 2.

The “Good Neighbor” provision of the CAA, section 110(a)(2)(D)(i)(I), requires upwind states to develop SIPs that prohibit emissions of pollutants in amounts that will contribute significantly to non-attainment, or interfere with maintenance of, a NAAQS in another state. These Good Neighbor SIPs are due within 3 years of promulgation of a new or revised NAAQS, meaning that transport SIPs for the 2015 ozone NAAQS will be due by October 2018.

On June 6, 2017, EPA Administrator Pruitt formally extended the deadline for designations related to the 2015 ozone NAAQS.

A petition filed now under CAA §126 is clearly a premature action as it relates to the 2015 ozone NAAQS given the careful framework by which any new NAAQS is to be implemented as well as the circumstance that all measured ozone design values in Delaware show measured attainment of that standard.

5. Delaware’s air quality is improving and will continue to improve with nothing more than implementation of existing regulatory programs.

It is not an accident that Delaware’s air quality already measures attainment of the 2008 ozone NAAQS. Delaware’s ozone air quality has steadily improved over recent years. In a January 2017 report prepared at the request of MOG,⁴ Alpine Geophysics documented this trend for Delaware for the years 2001 through 2016.

In the July 2016 USEPA report previously discussed⁵ and in the final CSAPR Update modeling results presented above, all Delaware monitors are shown to be continuing this significant improvement in air quality between 2012 and 2017:

Monitor	2010-2012 Design Values (ppb)	2017 final CSAPR Average Design Values (ppb)
Kent (100010002)	78	63.7
New Castle (100031007)	80	63.7
New Castle (100031010)	78	66.2
New Castle (100031013)	80	65.9
Sussex (100051002)	81	65.5
Sussex (100051003)	81	68.4

⁴ http://midwestozonegroup.com/files/NOx_AQ_Trends_1990-2016.pdf

⁵ Table 6, https://www.epa.gov/sites/production/files/2016-07/ozone_designvalues_20132015_final_07_29_16.xlsx

Further, improvements in the ozone air quality in Delaware and other Ozone Transport Region states are also likely to occur as the result of regulatory programs that are already on-the-books, some of which became effective in 2017. These programs, both individually and collectively, are of sufficient magnitude to have a material effect on predicted air quality in Delaware and therefore are substantive to the merit of the subject petition. These include:

- CSAPR Update
- Pennsylvania RACT II;
- OTC Model Rules;
- High Energy Demand Day (HEDD) controls;
- Tier 3 gasoline; and
- Boiler MACT implementation.⁶

As part of its review of the merits of the petition, we urge that EPA conduct a full assessment of these reductions. Two of the additional control programs not yet considered in EPA's modeling that merit further discussion are:

a. Pennsylvania RACT II.

The final Pennsylvania Reasonably Available Control Technology II ("PA RACT II")⁷ requirements apply to major NO_x or VOC emitting facilities in existence on or before July 20, 2012. The applicability threshold for the RACT II rule is 100 tpy and 50 tpy for NO_x and VOC, respectively, including the five-county Philadelphia region (i.e., Bucks, Chester, Delaware, Montgomery, and Philadelphia counties). This regulation establishes "command and control" limits that restrict EGU emissions variability that may occur under the CSAPR Update ozone season NO_x allowance program.

The PA RACT II rule became effective on January 1, 2017. Consequently, the regulations limiting EGU NO_x emissions as well as emissions from all other major sources of NO_x and VOC began at that time and are now being implemented on a year – round basis. From a report prepared by Olympus Power, LLC entitled "Estimation of Pennsylvania RACT II Rule on Pennsylvania Ozone Season NO_x Emissions from Electric Generation Units"⁸, it is apparent that EGU NO_x emissions from EGUs in 2017 will be only 27,010 tons compared with 44,551 tons of actual CAMD ozone season emissions in 2014 – a 39% reduction. More significantly, when these 2017 NO_x emissions are compared with EPA IPM 5.14 data (which predicted ozone season EGU NO_x emissions to be 52,173 tons) – a 48% reduction is realized. The Olympus Power emission estimation is consistent with the Pennsylvania Department of Environmental Protection's (PADEP) estimation of EGU ozone season NO_x emissions which is a range of 20,588 to 29,540 tons of NO_x.

⁶ <http://midwestozonogroup.com/files/MOGCommentsonProposedCSAPRUpdate-Final.pdf>

⁷ 25 PA. Code §§129.91-129.95

⁸ <http://www.midwestozonogroup.com/files/PARACTNOx.pdf>

b. OTC Measures

The OTC has identified⁹ nine programs recommended for implementation by its member states to reduce both NO_x and VOC. These programs (set out below) have the potential to reduce a total of nearly 27,000 tons of ozone season NO_x and 22,000 tons of ozone season VOC emission reductions.

NO_x and VOC Reduction Programs

OTC Model Control Measures	Regional Reductions (tons per year)	Regional Reductions (tons per day)
Aftermarket Catalysts	14,983 (NO _x) 3,390 (VOC)	41 (NO _x) 9 (VOC)
On-Road Idling	19,716 (NO _x) 4,067 (VOC)	54 (NO _x) 11 (VOC)
Nonroad Idling	16,892 (NO _x) 2,460 (VOC)	46 (NO _x) 7 (VOC)
Heavy Duty I & M	9,326 (NO _x)	25 (NO _x)
Enhanced SMARTWAY	2.5%	
Ultra Low NOX Burners	3,669 (NO _x)	10 (NO _x)
Consumer Products	9,729 (VOC)	26 (VOC)
AIM	26,506 (VOC)	72 (VOC)
Auto Coatings	7,711 (VOC)	21 (VOC)

Here too, we urge EPA to determine the extent to which OTC states are following the recommendation of the OTC, and to assess the impact that these programs have on air quality in Delaware.

⁹ http://midwestozongroup.com/files/MOG_May_7_Final_050515.pptx

6. The CSAPR Update Rule legally and practically resolves the issues raised by the Delaware petition.

EPA's final CSAPR Update rule (adopted pursuant to CAA Section 110(a)(2)(D)(i)) has already resolved the responsibility of the state and source named in the Delaware's petition (filed pursuant to CAA Section 126) for addressing ozone impact on Delaware's air quality, because both sections of the CAA call for the application of the same legal standard.

CAA §126(b) provides -

Any state or political subdivision may petition the Administrator for a finding that any major source or group of stationary sources emit or would emit any air pollutant in violation of the prohibition of section 110(a)(2)(D)(ii) ... ¹⁰

CAA §110(a)(2)(D)(i) provides -

Each plan shall ... contain adequate provisions ... prohibiting ... any source ... from emitting any air pollutant in amounts which will ... contribute significantly to non-attainment in, or interfere with maintenance by, any other state

Thus, resolution of the question of interstate transport under CAA §110(a)(2)(D)(i) effectively and legally resolves any issues that might be raised in a petition filed under CAA §126(b).

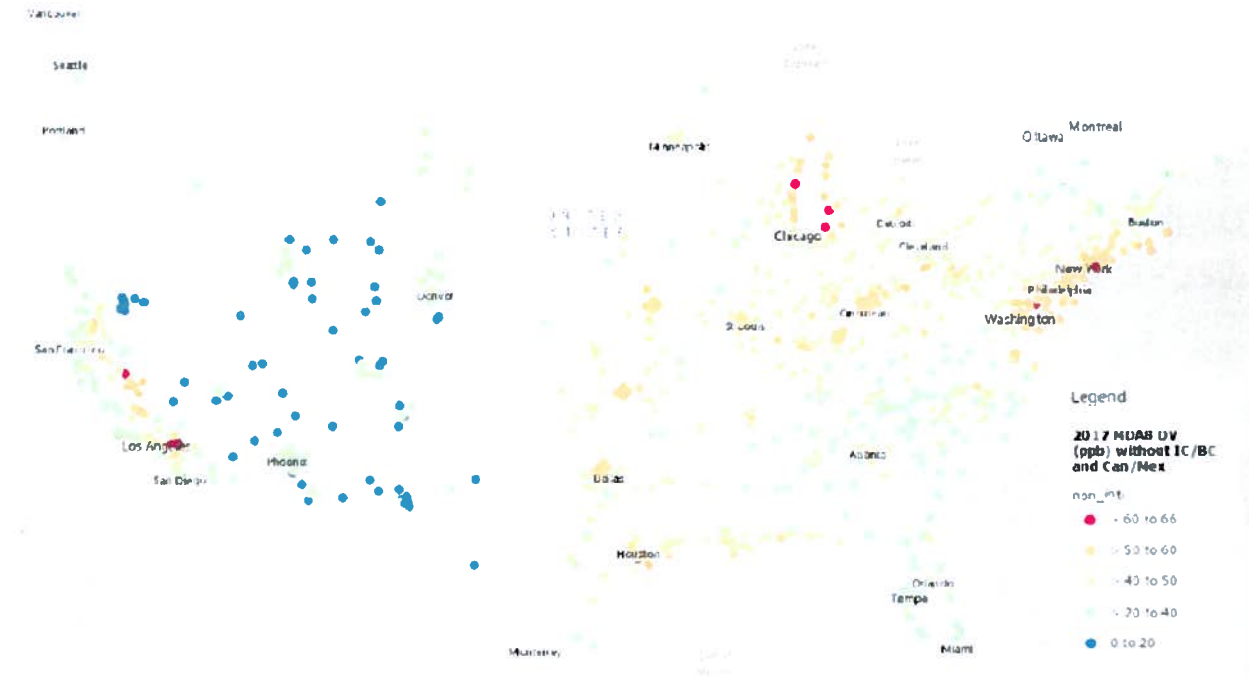
Significantly, during the course of the rulemaking on the CSAPR Update, EPA specifically solicited comment on whether to impose emission limits on the basis of the type of shorter time-frame that has been proposed by Delaware in this petition. After carefully considering the comments filed in response to that request for comment EPA made the final decision to establish a program for the regulation of NO_x emissions from EGUs including the one named in the Delaware petition. It is that CSAPR Update program that currently applies to the EGU named in the Delaware petition. Compliance with those requirements is all that is needed to satisfy any obligation that the named source and state have to the State of Delaware.

EPA has already considered the relief requested by Delaware in connection with its 126 petition and has rejected such a request. Accordingly, the Delaware petition should be rejected as being without legal or technical bases.

¹⁰ *Appalachian Power Co. v. EPA*, 249 F.3d 1032 (D.C. Cir.) held this to be a scrivener's error and that the reference here was intended to be to section 110(a)(2)(D)(i) rather than to section 110(a)(2)(D)(ii) as written.

7. Any remaining non-attainment or maintenance concerns by Delaware can be addressed under CAA §179B by accounting for international emissions.

There can be no question but that international emissions are an extraordinarily large contributor to ozone air quality across the nation. The following map geographically illustrates that “but for” international emissions there would be no monitor in the US with a design value greater than 66 ppb.¹¹



Should Delaware choose to recognize the significance of these international emissions, consideration should be given to the provisions of CAA §179B which reads as follows:

Notwithstanding any other provision of law, an implementation plan or plan revision required under this chapter shall be approved by the Administrator if –

- (1) such plan or revision meets all the requirements applicable to it under the chapter other than a requirement that such plan or revision demonstrate attainment and maintenance of the relevant national ambient air quality standards by the attainment date specified under the applicable provision of this chapter, or in a regulation promulgated under such provision, and
- (2) the submitting State establishes to the satisfaction of the Administrator that the implementation plan of such State would be adequate to attain and

¹¹ http://www.epa.gov/sites/production/files/2015-11/2017_ozone_contributions_transport_noda.xlsx

Honorable Scott Pruitt

Page 9

June 20, 2017

maintain the relevant national ambient air quality standards by the attainment date specified under the applicable provision of this chapter, or in a regulation promulgated under such provision, but for emissions emanating from outside of the United States. (Emphasis added)."

Significantly, Administrator Pruitt's letter of June 6, 2017 identified international transport as one the complex issues that will be further evaluated by the agency during the review process to be undertaken during the period during which the 2015 ozone NAAQS designation deadline has been extended.

Conclusion.

Inasmuch as Delaware's ozone air quality is currently achieving, and will continue to achieve, ambient concentrations of ozone sufficient to classify the entire state as attaining and maintaining the 2008 NAAQS, there is no legal or technical basis for this or any other CAA §126 petition seeking to address Delaware's ozone air quality.

Accordingly, the Midwest Ozone Group urges that the USEPA deny the discussed petition.

Very truly yours,



David M. Flannery
Legal Counsel for the Midwest Ozone Group

cc: Shawn M. Garvin, Secretary
Ali Mirzakhali, Director
State of Delaware
Department of Natural Resources and Environmental Control

Patrick McDonnell, Secretary
State of Pennsylvania
Department of Environmental Protection

Cecil A. Rodrigues, Acting Regional Administrator
United States Environmental Protection Agency
Region III