

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

STATE OF MARYLAND \*  
Maryland Department of the \*  
Environment \*  
1800 Washington Blvd. \*  
Baltimore, Maryland 21230 \*

Plaintiff, \*

v. \*

SCOTT PRUITT, in his official capacity \*  
as Administrator of the United States \*  
Environmental Protection Agency; and the \*  
UNITED STATES ENVIRONMENTAL \*  
PROTECTION AGENCY \*  
Ariel Rios Building \*  
1200 Pennsylvania Avenue, NW \*  
Washington, DC 20460 \*

Civil Action No.

Defendants.

\* \* \* \* \*

**COMPLAINT FOR INJUNCTIVE RELIEF**

Plaintiff, the State of Maryland, by and through the Maryland Department of the Environment and its attorneys, files this Complaint for injunctive relief against Defendants, Scott Pruitt, in his official capacity as Administrator of the United States Environmental Protection Agency (“EPA”), and the EPA, and alleges as follows:

## **PRELIMINARY STATEMENT**

The State of Maryland, through the Maryland Department of the Environment, brings this civil action against Defendants to obtain an order requiring Defendants to perform their nondiscretionary duty under the federal Clean Air Act, 42 U.S.C. §§ 7401 through 7671q (the “Act”), to either approve or deny a petition submitted by Maryland to the EPA on November 16, 2016 pursuant to § 126 of the Act, 42 U.S.C. § 7426(b). The petition asks the EPA to issue a finding that 36 electric generating units located in Indiana, Kentucky, Ohio, Pennsylvania, and West Virginia are in violation of the prohibition of 42 U.S.C. § 7410(a)(2)(D)(i), commonly referred to as the “good neighbor provision.” The petition alleges that nitrogen oxides emitted by these units significantly contribute to Maryland’s nonattainment, or interfere with its maintenance of certain National Ambient Air Quality Standards (“NAAQS”). Section 126(b) of the Act requires the Administrator of the EPA to act on such petition within 60 days of receipt. Maryland hereby seeks an order requiring Defendants to provide for a public hearing with regard to Maryland’s § 126 petition, and to either make the requested finding or deny the § 126 petition within sixty (60) days.

## **JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action pursuant to § 304(a)(2) of the Act, 42 U.S.C § 7604(a)(2).

2. By letter dated July 20, 2017, Maryland gave notice of its intention to bring this action to the Administrator of the EPA, and the Attorney General of the United States, as required by § 304(a)(2) of the Act, 42 U.S.C. § 7604(b)(2). A copy of the July 20, 2017 letter is attached hereto as Exhibit 2.

3. Sixty days have passed since the notice was served, the violations complained of in the notice letter are continuing, and the Defendants remain in violation of the Act.

4. Venue in this District is proper pursuant to § 304(a) of the Act, 42 U.S.C. § 7604(a), and 28 U.S.C. § 1391(e).

### **PARTIES**

5. Plaintiff, the State of Maryland, is a sovereign entity that brings this action on behalf of its citizens and residents. The Plaintiff is also a “person” authorized to commence a civil action under the Act. 42 U.S.C. § 7602(e). The State of Maryland, through the Maryland Department of the Environment, has been working on the issue of transported pollution for over twenty years, and has consistently informed the EPA that the reduction of transported pollutants will be necessary for Maryland to attain and maintain the Ozone NAAQS and protect the health of its citizens.

6. Defendant Scott Pruitt is the Administrator of the EPA and is sued in his official capacity. The Administrator is charged with implementation and enforcement of

the Act, including the requirements to hold a public hearing on the § 126 petition and to make timely the requested finding or deny the petition. 42 U.S.C. § 7426(b).

7. Defendant, the EPA, is an executive agency of the federal government charged with implementing and enforcing the Act, in coordination with the States.

### **STATUTORY FRAMEWORK**

8. Section 108(a) of the Act, 42 U.S.C. § 7408(a), requires the Administrator of the EPA to identify and promulgate air quality criteria for each air pollutant which may endanger public health or welfare when emitted, and which results from numerous or diverse mobile or stationary sources. For each such “criteria pollutant”, the EPA must promulgate NAAQS to protect the public health and welfare. 42 U.S.C. § 7409. Pursuant to §§ 108 and 109 of the Act, the EPA has identified and promulgated NAAQS for carbon monoxide, particulate matter, sulfur dioxide, and ozone. *See generally* 40 C.F.R. §§ 50.8, 50.13, 50.15, & 50.17 – 50.19.

9. Under § 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is an “attainment” area. *Id.* An area that does not meet the NAAQS is a “non-attainment” area. *Id.* An area that does not meet the NAAQS for ozone may also be classified into

one of five categories: marginal, moderate, serious, severe, or extreme, based on the severity of the air quality problem. *See* 42 U.S.C. § 7511(a).

10. Areas are assigned dates, in accordance with their nonattainment classification, by which they must demonstrate attainment of the NAAQS. *Id.* Areas with “higher” nonattainment classifications are subject to more numerous and/or more stringent mandatory pollution control and planning requirements than areas with “lower” classifications. *Id.* Areas that fail to timely demonstrate attainment are “bumped up” to the next highest classification, requiring implementation of more stringent pollution control requirements. 42 U.S.C. § 7511(b)(2).

11. The Act requires Maryland to prepare and implement a State Implementation Plan (“SIP”), which must be approved by the EPA, to provide for the attainment and maintenance of the NAAQS through control programs directed at the sources of the relevant pollutants. 42 U.S.C. § 7410(a)(1).

12. Section 110(a)(2)(D) of the Act, commonly referred to as the “good neighbor provision,” provides that “[e]ach implementation plan submitted by a State under this chapter shall ... contain adequate provisions (i) prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will (I) 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,” and shall “contain adequate provisions ... (ii) insuring compliance with the applicable requirements of sections 7426 and 7415 of this title (relating to interstate and international pollution abatement).” 42 U.S.C. § 7410(a)(2)(D).

13. Pursuant to § 126 of the Act, “[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 7410(a)(2)(D)(ii) of this title or this section.” 42 U.S.C. § 7426(b).

14. Section 126(b) requires that “[w]ithin 60 days after receipt of any petition under this subsection and after public hearing, the Administrator *shall* make such a finding or deny the petition.” 42 U.S.C. § 7426(b) (emphasis added).

15. Section 126(c) provides that “it shall be a violation of this section and the applicable implementation plan in such State ... (2) for any major existing source to operate more than three months after such finding has been made with respect to it. The Administrator may permit the continued operation of a source referred to in paragraph (2) beyond the expiration of such three-month period if such source complies with such emission limitations and compliance schedules (containing increments of progress) as may be provided by the Administrator to bring about compliance with the requirements contained in section 7410(a)(2)(D)(ii) of this title or this section as expeditiously as

practicable, but in no case later than three years after the date of such finding.” 42 U.S.C. § 7426(c).

16. A person, including a State government, may commence a civil action against the Administrator of the EPA 60 days after giving notice of such action to the Administrator where there is an alleged failure of the Administrator to perform any act or duty under the Act which is not discretionary. 42 U.S.C. § 7604(a)(2) & (b)(2).

### **FACTUAL ALLEGATIONS**

17. Ozone is a colorless, odorless gas that forms when other atmospheric pollutants known as ozone “precursors,” such as volatile organic compounds and nitrogen oxide, react in the presence of heat and sunlight.

18. The EPA has found significant negative health effects in individuals exposed to elevated levels of ozone, including lung tissue damage and aggravation of existing conditions, such as asthma, bronchitis, heart disease, and emphysema. Exposure to ozone has also been linked to premature mortality and harm to vegetation and ecosystems, including commercial crops. 76 Fed. Reg. 48208, 48218 (Aug. 8, 2011).

19. Pursuant to its responsibilities under the Act, the EPA revised the ozone NAAQS on March 27, 2008 (“2008 Ozone NAAQS”) and again on October 26, 2015 (“2015 Ozone NAAQS”). 73 Fed. Reg. 16,436 (March 27, 2008); 80 Fed. Reg. 65292 (Oct. 26, 2015).

20. To reduce the harmful effects of ozone, Maryland has implemented a stringent set of local ozone controls, regulating power plants, factories, and motor vehicles within the State. The significant costs of compliance with these important controls have been borne by Maryland residents and businesses.

21. Despite significant emissions reductions achieved through Maryland's in-state controls, the EPA has designated three nonattainment areas within Maryland under the 2008 Ozone NAAQS, 40 C.F.R. § 81.321, and it is anticipated that the EPA will designate three nonattainment areas in Maryland under the 2015 Ozone NAAQS, once it completes its designations.



22. Nitrogen oxide emissions from out-of-state power plants react with other chemicals in the atmosphere to form ozone, and move on the prevailing winds into Maryland. The EPA has acknowledged that Maryland's ozone attainment problems are due in large part to transported pollution from other states.<sup>1</sup> Data from the EPA's own modeling tracking contributions of ozone from each state to each of Maryland's monitoring sites estimate that approximately 50% of Maryland's ozone problem is caused by the transport of pollutants from upwind states, including Indiana, Kentucky, Ohio, Pennsylvania, and West Virginia.<sup>2</sup> In addition, research by the Maryland Department of the Environment—utilizing actual air quality measurements from an aloft research monitor located in western Maryland, direct scientific aircraft measurements, and measurements from research balloons—shows that on certain days where ozone levels within Maryland exceed the NAAQS, approximately 70% of Maryland's ozone readings originate from upwind states.

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<sup>1</sup> *Response to Significant Comments on the State and Tribal Designation Recommendations for the 2008 Ozone National Ambient Air Quality Standards (NAAQS)*, Docket # EPA-HQ-OAR-2008-0476, p.12 (Apr. 2012) (“However, EPA acknowledges that a large part of the ozone problem for eastern states like Maryland, Delaware, and others is due to long range transport of ozone from upwind states in the mid-west and south.”).

<sup>2</sup> *Air Quality Modeling Final Rule Technical Support Document*, Docket # EPA-HQ-OAR-2009-0491, Table F-1c, Contribution metrics for 8-hour ozone 2012 maintenance receptors - part 1, Page F-3 (June 2011).

23. By the EPA's own projections, transported pollutants from Indiana, Kentucky, Ohio, Pennsylvania, and West Virginia will continue to significantly contribute to Maryland's inability to comply with the ozone NAAQS, even after full implementation of the Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS.<sup>3</sup> *See* 81 Fed. Reg. 74504 (Oct. 26, 2016); 80 Fed. Reg. 75706-1, 75725-26 (Dec. 3, 2015).

24. On November 16, 2016, Maryland served the EPA with a petition pursuant to § 126 of the Act, requesting that the EPA make a finding that 36 electric generating units located in Indiana, Kentucky, Ohio, Pennsylvania, and West Virginia are emitting nitrogen oxides in violation of the prohibition of 42 U.S.C. § 7410(a)(2)(D)(i),<sup>4</sup> by significantly contributing to nonattainment, or interfering with Maryland's maintenance, of the 2008 and the revised 2015 Ozone NAAQS. A copy of Maryland's § 126 petition is attached hereto as Exhibit 1.

25. Maryland's § 126 petition, including its technical support appendices,

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<sup>3</sup> The Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS is currently subject to judicial review in the United States Court of Appeals for the District of Columbia Circuit, Case No. 16-1406, consolidated.

<sup>4</sup> The text of 42 U.S.C. § 7426(b) cross references Clean Air Act section 7410(a)(2)(D)(ii) instead of § 7410(a)(2)(D)(i). The courts have confirmed that this is a scrivener's error and the correct cross reference is to § 7410(a)(2)(D)(i). *See* *Appalachian Power Co. v. EPA*, 249 F.3d 1032, 1040-44 (D.C. Cir. 2001).

demonstrates that interstate transport of air pollution from the 36 electric generating units is significantly contributing to Maryland's nonattainment, or interfering with Maryland's maintenance, of the 2008 and 2015 Ozone NAAQS in violation of §§ 126 and 110 of the Act.

26. The EPA failed to hold a public hearing on the petition, and similarly failed to either make the requested finding or deny Maryland's petition within 60 days of the petition's receipt.

27. Instead, on January 3, 2017, the EPA gave itself a 6-month extension of time to act on the petition pursuant to 42 U.S.C. § 7607(d)(10), and declared that its new deadline to act on the petition was no later than July 15, 2017. 82 Fed. Reg. 22-01 (Jan. 3, 2017).

28. The EPA failed to hold a public hearing on the petition, and similarly failed to act on Maryland's petition by July 15, 2017.

29. On July 20, 2017, Maryland sent a citizen suit notice letter, pursuant to 42 U.S.C. § 7604, by certified mail to defendant Administrator Pruitt, notifying him of Maryland's intention to commence a suit against him in his official capacity and against the EPA for their failure to timely perform their nondiscretionary duty to act on Maryland's petition. Ex. 1.

30. According to the United States Postal Service receipt, Administrator Pruitt

received the 60-day notice letter on July 24, 2017. A copy of the certified mail, return receipt is attached hereto as Exhibit 3.

31. Despite the passage of more than 283 days since the EPA's receipt of Maryland's § 126 petition, and more than 60 days since EPA's receipt of the notice letter, Defendants have failed to take action on the petition, and failed to hold the required public hearing, in contravention of their nondiscretionary duty to act pursuant to 42 U.S.C. § 7426.

**COUNT I**  
**Violation of 42 U.S.C. § 7426**  
**(Ongoing Failure to Perform a Nondiscretionary Duty**  
**to Timely Take Action on a § 126 Petition)**

32. The State of Maryland incorporates by reference the allegations set forth in paragraphs 1-31 as though fully set forth herein.

33. Defendants had a nondiscretionary legal duty to hold a public hearing on Maryland's § 126 petition and to either make the requested finding or to deny the petition within 60 days of its receipt. 42 U.S.C. § 7426(b).

34. Defendants' failure to hold a public hearing and to either make the requested finding or deny Maryland's § 126 petition within 60 days of receipt constitute violations of 42 U.S.C. § 7426(b), which continue each day Defendants fail to act on the petition.

35. These violations constitute a “failure of the Administrator to perform any act or duty under [42 U.S.C. §§ 7401 through 7671q] which is not discretionary with the Administrator,” pursuant to 42 U.S.C. § 7604(a)(2).

36. Pursuant to 42 U.S.C. § 7604(a), the Administrator is subject to an order issued by this Court requiring performance of the nondiscretionary duty.

37. The Administrator’s inaction on Maryland’s § 126 petition has harmed and continues to harm the State and its citizens and residents, by delaying action to address interstate transport of air pollution that significantly contributes to Maryland’s nonattainment, and interferes with its maintenance, of the 2008 and 2015 Ozone NAAQS.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, the State of Maryland, by and through undersigned counsel, respectfully requests that this Court enter judgment in its favor against Defendants granting the following relief:

A. Declare that Defendants are in violation of § 126 of the Act for failing to timely hold a public hearing with regard to Maryland’s § 126 petition, and for failing to timely make the requested finding or to deny the petition;

B. Order Defendants to (1) hold a public hearing on Maryland’s § 126 petition within thirty (30) days, and (2) make the requested finding or deny the § 126 petition,

after considering comments from the public hearing, within sixty (60) days;

C. Award the State the costs of litigation, including reasonable attorneys' fees, pursuant to § 304(d) of the Act, 42 U.S.C. § 7604(d);

D. Retain jurisdiction over this matter until such time as Defendants have made the finding requested by Maryland's § 126 petition or denied the petition; and

E. Award such other relief as the Court deems just and equitable.

Respectfully Submitted,

BRIAN E. FROSH  
Attorney General of Maryland

*/s/ Michael F. Strande*  
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**Maryland**  
Department of  
the Environment

Larry Hogan  
Governor

Boyd Rutherford  
Lieutenant Governor

Ben Grumbles  
Secretary

November 16, 2016

Gina McCarthy, Administrator  
United States Environmental Protection Agency  
Office of the Administrator - Mail Code 1101A  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

*Gina*  
Dear Administrator McCarthy:

The State of Maryland, through the Department of the Environment, hereby petitions the Administrator of the U.S. Environmental Protection Agency (EPA), under §126(b) of the Clean Air Act (CAA), to find that the 36 electric generating units (EGUs) listed in “ Table 1” are emitting air pollutants in violation of the provisions of Section 110(a)(2)(D)(i) of the CAA with respect to the 2008 ozone National Ambient Air Quality Standard (NAAQS). These EGUs are located in five upwind states that EPA has already determined are significantly contributing to Maryland’s ozone problem under the 2008 ozone NAAQS.

Section 110(a)(2)(D)(i) of the CAA prohibits any source or other type of emission activity within a state, “from emitting any air pollutant in amounts which will contribute significantly to nonattainment in, or interfere with maintenance by, any other State with response to any such national primary or secondary ambient air quality standard.” Section 126(b) of the CAA 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.”

Over the past forty years, the CAA has benefited hundreds of millions of Americans by reducing air pollution and improving public health while our nation’s economy prospered. This success story is largely due to the state-federal partnership embodied in this landmark environmental law by which states cooperatively work with the EPA to adopt cost-effective programs to reduce air pollution within their jurisdictions and to prevent adverse impacts of air pollution emanating from their states on downwind jurisdictions.

The CAA strives for clean air for everyone, every day but unlawful interstate air pollution threatens our progress. The State of Maryland has worked with our partners in the Ozone Transport Commission over many years to reduce harmful regional emissions. We have also collaborated with upwind states outside of the OTR to voluntarily reduce transport emissions. These efforts, however, have come up short.

Despite our best efforts, Maryland is still not meeting the 2008 ozone standard in all respects. Our options at this point are significantly constrained by the framework of the CAA.

Gina McCarthy, Administrator  
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Therefore, Maryland is asking EPA to require that existing control technology at 36 EGUs be run in a manner consistent with manufacturers' specifications during the ozone season. Because these 36 EGUs are no longer running their control technology efficiently, or sometimes not running the equipment at all, over 300 tons of nitrogen oxides (NO<sub>x</sub>) emissions are being released on many high ozone days. These significant releases of NO<sub>x</sub> would not occur if these controls were run consistent with best practices from earlier years.

The enclosed petition lays out the strong technical basis for this action. Maryland seeks a finding from EPA under CAA §126 on the enclosed petition, and requests that, pursuant to CAA Section 126, EPA order the 36 EGUs to discontinue the prohibited emissions by May 1, 2017.

CAA Section 126(b) requires that within 60 days after receipt of any petition and after public hearing, the Administrator shall make such a finding or deny the petition. We look forward to working with the Agency to protect the health and welfare of Maryland's citizens. Please do not hesitate contact me if you have any questions or need additional information regarding this petition.

Sincerely,

*Thanks*



Ben Grumbles  
Secretary

Enclosures

cc: Shawn Garvin, Regional Administrator, Region 3  
Janet McCabe, Acting Assistant Administrator, OAR



**Petition to the United States Environmental Protection Agency Pursuant to Section 126 of the Clean Air Act for Abatement of Emissions from 36 Coal-Fired Electric Generating Units at 19 Plants in Five States that Significantly Contribute to Nonattainment of, and Interfere with Maintenance of, the 2008 Ozone National Ambient Air Quality Standard in the State of Maryland**

**I. Introduction, Summary of Conclusion and Requested Remedy<sup>1</sup>**

The State of Maryland, through the Department of the Environment (“MDE” or “the Department”) hereby petitions the United States Environmental Protection Agency (“EPA”) pursuant to section 126(b) of the Clean Air Act, 42 U.S.C. § 7426(b), to abate the emissions from thirty-six coal fired electric generating units (“the 36 EGUs”) in five upwind states that significantly contribute to nonattainment in Maryland. The 36 EGUs are identified in Table 1. These 36 EGUs significantly contribute to ozone levels that exceed the 2008 8-hour ozone National Ambient Air Quality Standard (“NAAQS”) in Maryland, and therefore interfere with both attainment and maintenance of the NAAQS. In addition, by EPA’s own projections, Maryland ozone monitors will continue to be nonattainment or maintenance sites in 2017 even after full implementation of the proposed Cross-State Air Pollution Rule Update (CSAPR Update).<sup>2</sup>

This petition clearly demonstrates in a manner consistent with EPA’s own regulatory approach under Clean Air Act section 110(a)(2)(D)(i)(I), 42 U.S.C. § 7410(a)(2)(D)(i)(I), that emissions from the 36 EGUs are linked to downwind nonattainment and maintenance ozone receptor sites in Maryland and are located in states that EPA has already determined are significantly contributing to nonattainment in Maryland under the 2008 ozone NAAQS. Further, the emissions at the 36 EGUs can be reduced at reasonable cost. Because this petition simply asks for EPA to require these 36 EGUs to run existing control equipment in a manner consistent with manufacturers’ specifications on the days when ozone reductions are needed, there may actually be no new costs to the EGUs. Currently, these EGUs are not running existing controls effectively on days that the controls are needed most for ozone reductions. These controls have been run effectively in earlier years. It is illogical for EGU owners to purchase millions of dollars of control technology and then not plan to run those control technologies on days when

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<sup>1</sup> This petition focuses on emissions from coal-fired boilers at thirty-six coal fired electric generating units in upwind States indentified in Table 1. Maryland reserves its right to submit an additional petition or petitions under CAA Section 126 for other stationary sources or groups of stationary sources in these States and other States.

<sup>2</sup> 80 Fed. Reg. at 75725-75726, Tables V.C-1 and V.C-2.

they are needed. Again, based upon EPA's own regulatory approach under Clean Air Act section 110(a)(2)(D)(i)(I), 42 U.S.C. § 7410(a)(2)(D)(i)(I), the requested remedy in this petition is highly cost-effective.

**Table 1 – The 36 EGUs in States that Significantly Contribute to Maryland, are Clearly Not Running Controls Effectively, and are the Target of this Maryland 126 Petition**

Facility Name	State	Plant ID	Unit ID
Alcoa Allowance Management Inc	IN	6705	4
Clifty Creek	IN	983	1
Clifty Creek	IN	983	2
Clifty Creek	IN	983	3
Gibson	IN	6113	3
Gibson	IN	6113	5
Petersburg	IN	994	2
Petersburg	IN	994	3
East Bend	KY	6018	2
Elmer Smith	KY	1374	1
Paradise	KY	1378	3
Killen Station	OH	6031	2
Kyger Creek	OH	2876	1
Kyger Creek	OH	2876	2
Kyger Creek	OH	2876	3
Kyger Creek	OH	2876	4
Kyger Creek	OH	2876	5
W H Zimmer Generating Station	OH	6019	1
Bruce Mansfield	PA	6094	1
Cambria Cogen	PA	10641	1
Cambria Cogen	PA	10641	2
Cheswick	PA	8226	1
Homer City	PA	3122	1
Homer City	PA	3122	2
Homer City	PA	3122	3
Keystone	PA	3136	1
Keystone	PA	3136	2
Montour	PA	3149	1
Montour	PA	3149	2
Grant Town Power Plant	WV	10151	1A
Grant Town Power Plant	WV	10151	1B
Harrison Power Station	WV	3944	1
Harrison Power Station	WV	3944	2
Harrison Power Station	WV	3944	3
Pleasants Power Station	WV	6004	1
Pleasants Power Station	WV	6004	2

A unique feature of this petition is that it focuses on ensuring that controls are run every day of the ozone season. The CSAPR Update, earlier federal cap-and-trade programs, and many state regulations allow for longer term averaging, where controls do not necessarily need to be run effectively every day. As shown in Appendix A, this has led to situations where sources in the five upwind, significantly contributing states, have not needed to run their controls efficiently on many bad ozone days. On some of those days, over 300 tons of nitrogen oxides (NO<sub>x</sub>) emissions were released, that would not have been released, if the 36 EGUs in these states had simply run their control technologies efficiently. These days are often the same days where ozone levels are likely to be highest because of hot, ozone conducive weather.

Over the entire ozone season, the potential for reductions from this petition can become very large. In 2015, approximately 39,000 tons of NO<sub>x</sub> reductions could have been achieved in the ozone season if the 36 targeted EGUs had simply run their control technologies efficiently.

Therefore, based on EPA's past approaches in establishing significant contributions and highly cost-effective controls<sup>3</sup>, the NO<sub>x</sub> emissions from these 36 EGUs located in five states that significantly contribute to nonattainment and interfere with maintenance of the 2008 ozone NAAQS in Maryland, must be abated on each day of the ozone season starting in May of 2017.

As these 36 EGUs are physically located in Indiana, Kentucky, Ohio, Pennsylvania, and West Virginia, the State of Maryland is without other recourse to limit or otherwise address the ozone pollution that results from the NO<sub>x</sub> emissions at the 36 EGUs. In light of this, the State of Maryland petitions EPA for a finding pursuant to section 126 of the Clean Air Act that these 36 EGUs are operated in a manner that directly significantly contributes to nonattainment and interferes with maintenance of the 2008 ozone NAAQS in Maryland, despite the existence of cost-effective and readily available control strategies to eliminate the significant contribution.

Maryland further seeks federally enforceable orders from EPA directing the operators of the 36 EGUs to reduce NO<sub>x</sub> emissions that are significantly contributing to nonattainment and interfering with maintenance of the 2008 NAAQS in Maryland. Consistent with the law, these reductions must occur as expeditiously as practicable and in this case, because the controls are already installed, can be required almost immediately through a federal order. Maryland is

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<sup>3</sup> See, e.g., 63 Fed. Reg. 57356-57538 ("NO<sub>x</sub> SIP Call"); 76 Fed. Reg. 48208-48483 ("Cross-State Air Pollution Rule" (CSAPR)); 80 Fed. Reg. 75706-75778 ("CSAPR Update").

asking EPA to move quickly and require the 36 targeted EGUs to run their controls in an optimal manner, every day of the ozone season, starting on May 1, 2017.

## **II. Maryland's Ask: The Proposed Remedy**

The State of Maryland, acting through the Department, hereby petitions the Administrator of the EPA pursuant to § 126(b) of the federal Clean Air Act, to find that the EGUs, identified in Table 1, are emitting air pollutants in violation of the prohibitions of § 110(a)(2)(D) of the Act. Further, the Department requests that EPA order the EGUs to reduce NO<sub>x</sub> emissions sufficiently such that the EGUs no longer contribute to nonattainment of and interfere with maintenance of the 2008 ozone NAAQS in Maryland.

The remedy that Maryland is asking EPA to implement by May 1, 2017 is very simple. The State is petitioning EPA to require the 36 targeted EGUs to run their existing NO<sub>x</sub> control technology effectively on each day of the ozone season. In 2015, after observing that EGUs in Maryland were not running their controls effectively during each day of the ozone season, Maryland adopted regulations to fix this problem. Therefore, the remedy being requested by Maryland at the 36 EGUs has already been adopted in Maryland.

In Maryland regulations, the requirement to run controls effectively every day of the ozone season can be found in the Code of Maryland Regulations, Title 26, Subtitle 11, Chapter 38 Control of NO<sub>x</sub> Emissions from Coal-Fired Electric Generating Units at COMAR 26.11.38.03.A(2). This language is provided below and the full text of these regulations is included as Appendix B:

“Beginning on May 1, 2015, for each operating day during the ozone season, the owner or operator of an affected electric generating unit shall minimize NO<sub>x</sub> emissions by operating and optimizing the use of all installed pollution control technology and combustion controls consistent with the technological limitations, manufacturers' specifications, good engineering and maintenance practices, and good air pollution control practices for minimizing emissions (as defined in 40 C.F.R. § 60.11(d)) for such equipment and the unit at all times the unit is in operation while burning any coal.”

Similar language or other similar requirements are already in place in many states. The analyses included in Appendix A shows that for the 29 eastern states analyzed, only nine states did not

routinely require that controls be run effectively during the ozone season. Five of those states have been identified by EPA as significantly contributing to Maryland under the 2008 ozone NAAQS.

Maryland is also asking EPA to establish emission limits to ensure a minimum level of control, consistent with optimization of existing control equipment, for each of the 36 targeted EGUs. Table 2 identifies the specific limit for each of the 36 EGUs that Maryland is asking EPA to make federally enforceable by May 1, 2017. Appendix A also describes how these limits were calculated and why they represent a reasonable rate that has been achieved in the past, when controls were being run effectively, by each of the 36 targeted EGUs.

Appendix E provides specific language for each of the 36 EGUs that Maryland would like to see EPA include in federal orders to ensure that the proposed remedy is in place and enforceable by May 1, 2017.

**Table 2 – Specific Maximum Allowable Rates that Must Be Required by EPA to Insure a Minimum level of NO<sub>x</sub> Control at the 36 Targeted EGUs**

State	Facility Name	Plant ID	Unit ID	Maximum 30-Day Rolling Average NO <sub>x</sub> Emission Rate (lb/mmBtu)
IN	Alcoa Allowance Management Inc	6705	4	0.104
IN	Clifty Creek	983	1	0.090
IN	Clifty Creek	983	2	0.090
IN	Clifty Creek	983	3	0.084
IN	Gibson	6113	3	0.088
IN	Gibson	6113	5	0.084
IN	Petersburg	994	2	0.062
IN	Petersburg	994	3	0.061
KY	East Bend	6018	2	0.067
KY	Elmer Smith	1374	1	0.159
KY	Paradise	1378	3	0.120
OH	Killen Station	6031	2	0.097
OH	Kyger Creek	2876	1	0.085
OH	Kyger Creek	2876	2	0.084
OH	Kyger Creek	2876	3	0.084
OH	Kyger Creek	2876	4	0.084
OH	Kyger Creek	2876	5	0.084
OH	W H Zimmer Generating Station	6019	1	0.094
PA	Bruce Mansfield	6094	1	0.089
PA	Cambria Cogen	10641	1	0.115
PA	Cambria Cogen	10641	2	0.115
PA	Cheswick	8226	1	0.097
PA	Homer City	3122	1	0.072
PA	Homer City	3122	2	0.093
PA	Homer City	3122	3	0.105
PA	Keystone	3136	1	0.048
PA	Keystone	3136	2	0.046
PA	Montour	3149	1	0.100
PA	Montour	3149	2	0.088
WV	Grant Town Power Plant	10151	1A	0.077
WV	Grant Town Power Plant	10151	1B	0.077
WV	Harrison Power Station	3944	1	0.066
WV	Harrison Power Station	3944	2	0.085
WV	Harrison Power Station	3944	3	0.083
WV	Pleasants Power Station	6004	1	0.046
WV	Pleasants Power Station	6004	2	0.045

Table 3 shows how the proposed rates compare to rates in 2015 and 2016 and how they compare to rates achieved in the past by the targeted EGUs when controls were being run

effectively. Table 3 highlights some of the data analysis that MDE has conducted using 2005 to 2015 EGU emissions data managed by EPA's Clean Air Markets Division (CAMD). Appendix A provides much more detail on the MDE control technology optimization analyses.

This data analysis has shown that many EGUs in the East have stopped using NO<sub>x</sub> control technologies in an efficient manner consistent with past practices. It appears that in some cases, the controls are not being used at all. This petition focuses on 36 of the worst EGUs (out of approximately 350 EGUs) analyzed. All of the 36 EGUs covered in this petition have measured average summertime NO<sub>x</sub> rates in 2015 and 2016 that are more than double measured average summertime NO<sub>x</sub> rates from earlier years, when control technologies were being run efficiently. Some EGUs, like the Keystone (PA) units 1 and 2, the Montour (PA) units 1 and 2, the Homer City 1 (PA) unit and the Harrison (WV) units 1, 2 and 3 measured average summertime NO<sub>x</sub> rates in 2015 and 2016 that were more than four times greater than measured average summertime NO<sub>x</sub> rates from earlier years when control technologies were being run efficiently.

The data analysis also shows that many states actually do a very good job of requiring EGUs in their state to run controls effectively. The MDE analyses focused on 29 Eastern states. 20 of the 29 states appear to be doing a very good job of requiring EGUs in their states to run controls effectively. Many EGUs in nine states are not running controls effectively or at all. EGUs in five of those states are covered by this petition. The EGUs that are not running controls effectively in the other four states are not included in this petition, as EPA has not determined that those four states significantly contribute to Maryland under the 2008 ozone NAAQS.

In working with the 36 EGUs and the five states covered in this petition, MDE has heard arguments that it has been difficult to run NO<sub>x</sub> controls effectively in recent years because of market shifts that require coal-fired EGUs to operate differently. As shown in Appendix A, many other states with significant numbers of coal-fired EGUs that face similar market changes do not see their EGUs operating control technologies inefficiently. These states include Texas, Tennessee, Michigan, Illinois, Nebraska, Virginia and Maryland. These states generally have requirements in place that require NO<sub>x</sub> controls to be run effectively every day of the ozone season. The proposed Maryland remedy would ask EPA to mandate similar requirements at the 36 EGUs that are located in states that do not have a specific requirement that NO<sub>x</sub> controls be run effectively every day of the ozone season.

**Table 3 – Proposed Rates Compared to 2015 Rates, 2016 Rates,  
and Best Rates from a Previous Year**

State	Facility Name	Unit ID	Maryland Proposed Maximum 30-Day Rolling Average NO <sub>x</sub> Emission Rate (lb/mmBtu)	Best Ozone Season Average Rate from the Past (lb/mmBtu and Year)	2015 Ozone Season Average Rate (lb/mmBtu)	2016 Ozone Season Average Rate (lb/mmBtu)	Maximum Percent Increase from Best Rate from the Past
IN	Alcoa Allowance Management Inc	4	0.104	0.095 (2007)	0.283	0.304	220%
IN	Clifty Creek	1	0.090	0.074 (2005)	0.228	0.361	391%
IN	Clifty Creek	2	0.090	0.075 (2005)	0.229	0.369	391%
IN	Clifty Creek	3	0.084	0.074 (2005)	0.229	0.353	376%
IN	Gibson	3	0.088	0.066 (2005)	0.201	0.175	204%
IN	Gibson	5	0.084	0.060 (2007)	0.341	0.111	471%
IN	Petersburg	2	0.062	0.051 (2005)	0.205	0.175	301%
IN	Petersburg	3	0.061	0.047 (2005)	0.269	0.201	478%
KY	East Bend	2	0.067	0.052 (2006)	0.216	0.131	316%
KY	Elmer Smith	1	0.159	0.123 (2006)	0.356	0.254	190%
KY	Paradise	3	0.120	0.100 (2005)	0.154	0.249	148%
OH	Killen Station	2	0.097	0.089 (2005)	0.241	0.238	172%
OH	Kyger Creek	1	0.085	0.079 (2005)	0.213	0.205	170%
OH	Kyger Creek	2	0.084	0.079 (2005)	0.202	0.231	192%
OH	Kyger Creek	3	0.084	0.079 (2005)	0.256	0.243	225%
OH	Kyger Creek	4	0.084	0.079 (2005)	0.282	0.207	258%
OH	Kyger Creek	5	0.084	0.079 (2005)	0.295	0.226	276%
OH	W H Zimmer Generating Station	1	0.094	0.056 (2006)	0.228	0.211	306%
PA	Bruce Mansfield	1	0.089	0.082 (2008)	0.242	0.154	195%
PA	Cambria Cogen	1	0.115	0.095 (2005)	0.170	0.228	141%
PA	Cambria Cogen	2	0.115	0.095 (2006)	0.166	0.216	128%
PA	Cheswick	1	0.097	0.090 (2006)	0.254	0.349	287%
PA	Homer City	1	0.072	0.067 (2006)	0.351	0.268	425%
PA	Homer City	2	0.093	0.083 (2006)	0.351	0.334	325%
PA	Homer City	3	0.105	0.087 (2005)	0.282	0.226	223%
PA	Keystone	1	0.048	0.043 (2006)	0.232	0.220	438%
PA	Keystone	2	0.046	0.043 (2008)	0.243	0.218	460%
PA	Montour	1	0.100	0.058 (2006)	0.309	0.355	512%
PA	Montour	2	0.088	0.058 (2006)	0.336	0.369	538%
WV	Grant Town Power Plant	1A	0.077	0.072 (2005)	0.343	0.315	375%
WV	Grant Town Power Plant	1B	0.077	0.072 (2005)	0.340	0.314	370%
WV	Harrison Power Station	1	0.066	0.063 (2005)	0.318	0.101	401%
WV	Harrison Power Station	2	0.085	0.066 (2005)	0.364	0.235	450%
WV	Harrison Power Station	3	0.083	0.066 (2005)	0.342	0.163	420%
WV	Pleasants Power Station	1	0.046	0.039 (2005)	0.219	0.209	455%
WV	Pleasants Power Station	2	0.045	0.039 (2005)	0.371	0.199	850%



### III. Urgency of Timely EPA Response to This Petition

Section 126 establishes clear deadlines for action by the Administrator in response to a petition under that section. 42 U.S.C. § 7426; *GenOn Rema, LLC v. EPA*, 722 F.3d 513, 521-22 (3rd Cir. 2013). The Administrator must make the requested finding or deny the petition within 60 days after receipt of the petition, and after a public hearing. 42 U.S.C. § 7426(b).

Once EPA makes a finding under section 126(b), section 126(c) requires that the violating source(s) shall not operate three months after the finding regardless of whether the source has been operating under a duly issued state operating permit. 42 U.S.C. § 7426(c). The Administrator may allow the source(s) to operate beyond such time only if the source(s) comply with emission limitations and compliance schedules as the Administrator may direct to bring about compliance. *Id.* Such compliance must be brought about “as expeditiously as practicable,” and in no case later than three years after the date of the Administrator’s finding. *Id.* Consistent with the law, these reductions must occur as expeditiously as practicable and in this case, because the controls are already installed, can be required almost immediately through a federal order.

In this petition, Maryland further asks EPA to require that the remedy be in place and effective by May 1, 2017. This is critical to Maryland’s efforts to attain and maintain the 2008 ozone NAAQS and may be the difference between an attainment and nonattainment designation for areas in Maryland under the 2015 ozone NAAQS. Maryland’s three historical ozone nonattainment areas have design values of 71 parts per billion (ppb), 73 ppb and 76 ppb. Modeling included in Appendix D indicates that if the proposed Maryland remedy is implemented by May 1, 2017, the Philadelphia area could attain the 2008 ozone NAAQS. The modeling also shows that the Baltimore area and the Washington, DC multi-state area could be designated attainment for the 2015 ozone NAAQS if the remedy is in place for the 2017 ozone season.

To expedite the EPA action, Maryland has provided specific language in Appendix E to be included in federal orders for each of the 36 EGUs covered by this petition. MDE believes this expedited timeframe is possible and mandated by the Clean Air Act as no new controls need to be added and EGU operators have already demonstrated that compliance with the Maryland remedy is achievable. EPA simply needs to require that the 36 targeted EGUs run their existing

controls in a manner consistent with manufacturers' specifications and good engineering, maintenance and air pollution control practices.

#### **IV. MDE Efforts to Work Collaboratively with the Five Significantly Contributing Upwind States, EGU Owners and Operators and EPA**

For the past five years, Maryland has been trying to work collaboratively with the five upwind states in which the 36 EGUs are located. This collaboration also involved approximately 20 additional states. In 2013 and 2014, there were Commissioner level discussions that focused on the issue of coal-fired EGUs that are no longer running their NO<sub>x</sub> controls effectively.

There was general agreement amongst the Commissioners that the data showed that NO<sub>x</sub> emission rates had increased over recent years and that efforts should be made to analyze and when necessary work with EGU operators to fix the problem. Many of the collaborating states conducted their own independent research and many states, including the five states where the 36 EGUs are located, reached out to EGU operators and asked them to voluntarily work to improve the performance of existing NO<sub>x</sub> control technologies for the 2015 ozone season. Some states, like Pennsylvania, wrote letters to EGU operators. Other states, like Ohio, worked more directly with EGU operators in their state.

Maryland also worked directly with some of the operators of coal-fired EGUs in the East. In 2013, 2014 and 2015, Maryland attended many meetings to discuss this issue directly with EGU operators.

These efforts to work collaboratively with upwind states and coal-fired EGU operators resulted in some progress, but that progress was very limited. Although some EGU operators did work voluntarily to improve the performance of existing NO<sub>x</sub> control technologies, overall, the problem actually got worse in 2015 and 2016. Appendix A shows how the performance of existing NO<sub>x</sub> control technologies at many coal-fired EGUs in the East has become an even greater problem in 2015 and 2016.

Maryland has also worked collaboratively with EPA on this issue. Most importantly, Maryland had many discussions with EPA on the CSAPR Update and asked that EPA include the remedy proposed in this petition as part of Maryland's comments on the CSAPR Update. Specifically, Maryland asked EPA to include the control technology optimization and the 30-day rolling average NO<sub>x</sub> limit requirements (described above in Section II of the petition) for all

EGUs covered in the CSAPR Update. Maryland included recommendations on specific rates for about 350 EGUs as part of those comments.

Equally important, Maryland has asked EPA Region III to conduct an investigation over whether or not the failure of Pennsylvania EGUs to run NO<sub>x</sub> control technologies effectively, sometimes not at all, is a violation of the Clean Air Act's Reasonably Available Control Technology (RACT) requirement that Pennsylvania must comply with statewide. Logically, it appears to be impossible to interpret the Clean Air Act's RACT requirement to allow for sources to purchase controls, but then not run those controls on the days where the air pollutant they were required for in the first place (ozone) is at its worst.

#### **V. Overwhelming Transport - The Maryland Ozone Transport Research Program**

For over thirty years, Maryland has struggled with meeting the federal ozone standard. During that period, MDE has partnered with the University of Maryland at College Park and other researchers to study how air pollution transport, meteorology, photochemistry and geography combine to make the ozone problem in the Mid-Atlantic so challenging. Appendix C provides a more detailed summary of the Maryland ozone transport research program.

Processes on both the local and regional scale influence ozone formation and transport. Maryland's research has played a significant role in the progress the State has made in reducing exposure to ozone (and other pollutants) and provides a clear path forward for continuing to reduce ozone levels in the eastern half of the Country. In the East, field experiments and numerical models have shown that NO<sub>x</sub> emissions combined with biogenic hydrocarbons are sufficient to generate ozone events.

Ozone in the Mid-Atlantic is complicated, but not that complicated. There are two separate pieces of the problem. A regional transport piece, that comes from upwind sources, primarily power plants and mobile sources, across a large portion of the East and a local piece. In very general terms, on bad ozone days in Baltimore, Maryland, about 70% of the problem is regional transport, about 30% is local. As part of the States research efforts, we measure "incoming" ozone levels with ozone-sondes, airplanes and mountain-top monitors that routinely approach or exceed the 2008, 75 ppb, ozone NAAQS.

The regional transport component of Maryland's problem, builds up and collects in an "elevated reservoir" of ozone and ozone precursors that sits about 1000 meters above the Mid-Atlantic and much of the East from May to September. Ozone levels in the elevated reservoir can routinely be 70 ppb or greater on episode days.

The influence of the elevated reservoir can best be seen by analyzing the morning "surge" of ozone seen in the ground level monitoring data between 8:00 and 11:00 a.m. At night, ground level monitors measure low ozone concentrations while monitors aloft measure much higher levels. At night, the elevated reservoir is separated from the surface by the nocturnal inversion. As the next day begins, temperatures increase, the inversion begins to collapse and the elevated ozone reservoir begins mixing down to the surface. In general, the ozone levels measured aloft at night mix down and create a regional transport contribution that is seen in ground level monitors across the region. This "regional transport signal" can often approach or exceed 75 ppb. Local emissions begin to contribute to ozone production in the morning as well. By afternoon, regional transport and local emissions combine to drive daily peak ozone levels in the late afternoon.

The Maryland ozone transport research program has shown that reducing NO<sub>x</sub> emissions from upwind power plants is a proven strategy for reducing ground-level ozone in Maryland and in other downwind nonattainment areas. The 2004 "NO<sub>x</sub> SIP Call" dramatically reduced NO<sub>x</sub> emissions from EGUs across the East. As described in more detail in Appendix C, these measured NO<sub>x</sub> reductions at EGUs lead to significant reductions in measured ozone in the aloft elevated reservoir, which resulted in large decreases in measured ground-level ozone in Maryland and across much of the East.

## **VI. Ozone Benefits From the Maryland 126 Petition**

EPA has already determined that the five states where the 36 targeted EGUs operate are significantly contributing to nonattainment of and interference with maintenance of the 2008 ozone NAAQS in the State of Maryland. On page 22 of the modeling technical support document of the CSAPR Update, EPA identifies Pennsylvania, West Virginia, Ohio, Kentucky, Indiana, Illinois, Michigan, Texas, Virginia and the District of Columbia as significant contributors to Maryland's ozone problem. As part of the analyses described in Appendix A,

Maryland found that the EGUs in Illinois, Michigan, Texas, Virginia and the District of Columbia were already operating their existing controls in an optimal manner and therefore are not included in this petition.

As demonstrated in Appendix A, on many days the proposed Maryland remedy could result in up to 304 tons of NO<sub>x</sub> reductions in a single day. This reduction, which is a huge reduction compared to other remaining NO<sub>x</sub> reduction strategies (as an example the 2017 NO<sub>x</sub> reductions in the East from the clean fuel provisions of the Tier 3 Vehicle and Fuel Standards are estimated to be just slightly greater than 300 tons per day), can be achieved by simply requiring the 36 targeted EGUs to run their control technology in an optimal manner consistent with manufacturers specifications and best practices from earlier years. Ozone is measured over an eight hour average to ensure public health protection from short term exposures. This means that achieving emission reductions on every single day of the ozone season is critical. Having higher emissions on some days and lower emissions on others may allow EGUs to meet federal requirements, but it will not be sufficient to insure that ozone levels comply with the standard every single day and that public health is protected.

Modeling conducted by Maryland and Sonoma Technology Incorporated shows that the proposed Maryland remedy will allow existing monitors in Maryland that are not complying with the 2008 NAAQS to attain, or come very close to attaining that standard. A more detailed summary of the modeling used to support this petition is included in Appendix D.

The proposed Maryland remedy will also be very important to how areas in Maryland and other Mid-Atlantic states are designated under the new 2015 ozone, 70 ppb, NAAQS. The proposed remedy, if implemented in 2017, would most likely allow the Washington, DC, multi-state area, that Maryland is part of, and the Baltimore area to both be designated attainment for the 2015 ozone NAAQS.

The modeling analyses also show that if the proposed Maryland remedy was required by EPA in a timeframe consistent with Good Neighbor State Implementation Plans (SIPs) under the 2008 NAAQS (2011) and implemented in a timeframe to support attainment for marginal and moderate areas under the 2008 ozone NAAQS, that it is almost certain that the Philadelphia multi-state nonattainment area, which Maryland is a part of, would be attaining the 2008 NAAQS and the Washington, DC and Baltimore areas would have data to support being designated attainment under the 2015 ozone NAAQS. The Philadelphia area would also have

much cleaner data and may have also been able to support an attainment designation for the 2015 ozone NAAQS.

Tables 4 and 5 show, based upon the modeling described in Appendix D, how the remedy proposed by Maryland would have affected the Baltimore nonattainment area and the Washington, DC and Philadelphia multi-state nonattainment areas for the 2008 and 2015 ozone NAAQS if the remedy was required in the timeframe required under the Act.

**Table 4 – Projected Ozone Levels if the Proposed Maryland Remedy Was Already in Place - For the 2008 NAAQS**

Key Monitors	2014-2016 Design Value	2014-2016 Design Value With Remedy	Comment/Conclusion
Baltimore Nonattainment Area			
Edgewood	73 ppb	71 ppb	Attainment of the 2008 ozone NAAQS with controls run effectively at 36 targeted EGUs
Aldino	73 ppb	71 ppb	Attainment of the 2008 ozone NAAQS with controls run effectively at 36 targeted EGUs
Washington, DC Multi-State Nonattainment Area			
Arlington, VA	72 ppb	69 ppb	Attainment of the 2008 ozone NAAQS with controls run effectively at 36 targeted EGUs
PG Equestrian Center	71 ppb	68 ppb	Attainment of the 2008 ozone NAAQS with controls run effectively at 36 targeted EGUs
Philadelphia Multi-State Nonattainment Area			
Fair Hill, MD	76ppb	74 ppb	Attainment of the 2008 ozone NAAQS with controls run effectively at 36 targeted EGUs
Bristol, PA	77 ppb	74 ppb	Attainment of the 2008 ozone NAAQS with controls run effectively at 36 targeted EGUs
Camden, NJ	75 ppb	73 ppb	Attainment of the 2008 ozone NAAQS with controls run effectively at 36 targeted EGUs

**Table 5 – Projected Ozone Levels if the Proposed Maryland Remedy Was Already in Place - For the 2015 Ozone NAAQS**

Key Monitors	2014-2016 Design Value	2014-2016 Design Value With Remedy	Comment/Conclusion
<b>Baltimore Nonattainment Area</b>			
Edgewood, MD	73 ppb	71 ppb	Very Close to Attainment of the 2015 ozone NAAQS with controls run effectively at 36 targeted EGUs
Aldino, MD	73 ppb	71 ppb	Very Close to Attainment of the 2015 ozone NAAQS with controls run effectively at 36 targeted EGUs
<b>Washington, DC Multi-State Nonattainment Area</b>			
Arlington, VA	72 ppb	69 ppb	Attainment of the 2015 ozone NAAQS with controls run effectively at 36 targeted EGUs
PG Equestrian Center, MD	71 ppb	68 ppb	Attainment of the 2015 ozone NAAQS with controls run effectively at 36 targeted EGUs

Table 6 shows, based upon the modeling described in Appendix D, what the modeled maximum daily contribution for a subset of the 19 plants where the 36 targeted EGUs are located was estimated to be in 2011.

**Table 6 – Maximum Daily Ozone Contribution in Maryland in 2011 For a Subset of the 19 Plants Where the 36 EGUs are Located**

Facility Name	State	Plant ID	Maximum Daily Contribution in ppb
Clifty Creek (Units 1, 2 & 3)	IN	983	0.28 ppb
Elmer Smith	KY	1374	0.10 ppb
Kyger Creek (Units 1, 2, 3, 4 & 5)	OH	2876	0.26 ppb
Bruce Mansfield	PA	6094	0.31 ppb
Cheswick	PA	8226	0.22 ppb
Homer City (Units 1, 2 & 3)	PA	3122	0.38 ppb
Keystone (Units 1 & 2)	PA	3136	1.24 ppb
Montour (Units 1 & 2)	PA	3149	1.98 ppb
Harrison Power Station (Units 1, 2 & 3)	WV	3944	0.62 ppb
Pleasants Power Station (Units 1 & 2)	WV	6004	0.25 ppb

Table 7 shows the average ozone benefit and the daily maximum ozone benefit for the most critical Maryland monitors in the Baltimore, Philadelphia and Washington, DC nonattainment areas.

**Table 7 – Average Summertime and Daily Maximum Ozone Benefits at Key Maryland Monitors After the Proposed Maryland Remedy is Implemented**

Key Monitors	2014-2016 Design Value	Average Summertime Ozone Reduction With Remedy	Maximum Daily Ozone Reduction With Remedy
Baltimore Nonattainment Area			
Edgewood	73 ppb	0.6 ppb	1.7 ppb
Washington, DC Multi-State Nonattainment Area			
PG Equestrian Center	71 ppb	0.7 ppb	2.5 ppb
Philadelphia Multi-State Nonattainment Area			
Fair Hill, MD	76ppb	1.0 ppb	1.9 ppb

## VII. Environmental and Economic Equity

This petition is also intended to help address environmental and economic inequities, caused by the upwind states' significant contribution to ozone nonattainment in Maryland. The proposed Maryland remedy should have been required as part of Good Neighbor SIPs that were due in 2011. This would have provided cleaner air and greater public health protection to Maryland citizens.

Because of the continued failure to implement the Clean Air Act's provisions designed to reduce transport in a timely manner (section 110(a)(2)(D)(i)), Maryland has also been placed at an economic disadvantage. The State has been forced to adopt some less effective and more expensive "inside Maryland" control measures to try and comply with the federal ozone NAAQS. Over the past five years, these regulatory initiatives have become more difficult to implement and routinely have an impact on small businesses. One of Maryland's most recent actions to adopt regulations was to require a third round of volatile organic compound emission reductions from architectural and industrial maintenance (AIM) coatings. This regulation is estimated to cost approximately \$2,240 for each ton of emissions removed. In contrast, the proposed Maryland remedy, under this petition, costs about \$670 to \$800 for each ton of



emissions removed and results in a much larger ozone reductions. Appendix F provides additional information on cost and cost-effectiveness.

Maryland's ozone research now clearly shows that local control measures alone are unlikely to reduce ozone levels in a meaningful way. The progress in reducing ozone over the past 10 years that has been achieved in Maryland and many other Eastern states was driven by strong regional NO<sub>x</sub> reductions across the Eastern United States combined with additional local controls in many areas.

There is also a significant inequity created when sources in upwind states do not effectively control their emissions, and these emissions are significant enough to push the downwind areas from attainment to nonattainment for a new NAAQS. That is exactly what is happening because the 36 targeted EGUs are not running their control equipment effectively. Both the Baltimore area and the Washington, DC multi-state area are very close to attaining the new 2015, 70 ppb, ozone NAAQS and would likely be designated attainment if the controls from the five upwind states were run in an optimal way on each day of the ozone season.

The 36 EGUs have also experienced windfall profits from not running controls effectively. Because of cost savings associated with reduced reagent use and other operational savings from not running controls or running controls less effectively, in 2014, the owners of the 36 EGUs saved approximately \$24 Million. Appendix F also provides additional analysis of cost savings at the 36 EGUs.

### **VIII. Conclusion**

The State of Maryland has demonstrated that the 36 EGUs are causing and significantly contributing to exceedances of the 2008 ozone NAAQS in Maryland, as evaluated according to best practices and all available EPA guidance. As such, EPA should grant Maryland's petition and quickly issue a finding that the 36 EGUs are significantly contributing to nonattainment and interfering with maintenance of the 2008 ozone NAAQS in the State. Per that finding, EPA should immediately, through a federal order, require the owners of the 36 EGUs to implement the remedy described above, and in Appendix E, to ensure that controls are run effectively by May 1, 2017.

More importantly, the action requested in this petition is too simple and too important to delay. The controls at the 36 EGUs are already in place. Past performance shows that the proposed remedy can easily be achieved by simply optimizing the performance of existing control technology. Millions of citizens in the East are breathing air that is unhealthier because the operators of the 36 EGUs are not running existing control technologies effectively.

EPA must move quickly and take action to require the owners of the 36 EGUs to run existing NO<sub>x</sub> control equipment in an optimal manner during the ozone season.



**Maryland**  
Department of  
the Environment

Larry Hogan  
Governor

Boyd Rutherford  
Lieutenant Governor

Ben Grumbles  
Secretary

July 20, 2017

**CERTIFIED MAIL**

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

**Re: Notice of Intent to Sue Pursuant to the Clean Air Act for Failure to Perform a Non-Discretionary Duty to Approve or Disapprove a Section 126 Petition**

Dear Administrator Pruitt:

The State of Maryland, by and through the Maryland Department of the Environment, hereby gives notice that it intends to bring suit under section 304 of the Clean Air Act, 42 U.S.C. § 7604, against the Administrator of the United States Environmental Protection Agency (“EPA”), for failure to perform a non-discretionary duty under the Clean Air Act, 42 U.S.C. §§ 7401 through 7671q.

Section 126(b) of the Clean Air Act, 42 U.S.C. § 7426(b), authorizes any state to petition the EPA for a finding that a major source or group of stationary sources in upwind states emits air pollutants in violation of the prohibition of Clean Air Act section 110(a)(2)(D)(i)<sup>1</sup> by contributing significantly to nonattainment or maintenance problems in downwind states. On November 16, 2016, Maryland served the EPA with a petition pursuant to section 126 of the Clean Air Act, seeking a finding that 36 power plant units located in Indiana, Kentucky, Ohio, Pennsylvania, and West Virginia are emitting nitrogen oxides (“NOx”) in violation of the prohibition of 42 U.S.C. § 7410(a)(2)(D)(i), commonly referred to as the “good neighbor provision”, by significantly contributing to Maryland’s nonattainment or interfering with its maintenance of the 2008 and the revised 2015 8-hour ozone National Ambient Air Quality Standards.

<sup>1</sup> The text of 42 U.S.C. § 7426(b) cross references Clean Air Act section 7410(a)(2)(D)(ii) instead of 7410(a)(2)(D)(i). The courts have confirmed that this is a scrivener’s error and the correct cross reference is to section 7410(a)(2)(D)(i). See *Appalachian Power Co. v. EPA*, 249 F.3d 1032, 1040-44 (D.C. Cir. 2001).

The Honorable Scott Pruitt  
Page Two  
July 20, 2017

Pursuant to 42 U.S.C. § 7426(b), “[w]ithin 60 days after receipt of any petition under this subsection and after public hearing, the Administrator shall make such a finding or deny the petition.” On January 3, 2017, the EPA issued itself a six-month extension of time to act on the petition pursuant to 42 U.S.C. § 7607(d)(10). *See* 82 Fed. Reg. 22-01 (January 3, 2017). In accordance with that extension, the EPA was required to act on Maryland’s petition no later than July 15, 2017. *Id.* at 23. As of the date of this notice, that deadline has expired.

To date, the EPA has not taken action on Maryland’s section 126 petition, nor has the EPA held or scheduled a public hearing on the matter, despite its legal obligation to do so pursuant to 42 U.S.C. § 7426. Consequently, the State of Maryland is writing to provide notice that it intends to file suit against the Administrator and the EPA for failing to timely perform a nondiscretionary duty under the Clean Air Act to act on Maryland’s petition. This letter provides notice under section 304 of the Clean Air Act, 42 U.S.C. § 7604(b), and 40 C.F.R. Part 54. Pursuant to 40 C.F.R. § 54.3, the Administrator is hereby notified that the name and address of the person giving the notice on behalf of the State of Maryland is shown below. Unless the EPA takes the required actions before the end of the applicable notice period, the State of Maryland intends to bring suit in the United States District Court for the District of Maryland under section 304 of the Clean Air Act, 42 U.S.C. § 7604(a)(2).

Sincerely,



Ben Grumbles  
Secretary

cc: The Honorable Larry Hogan, Governor of Maryland  
The Honorable Brian E. Frosh, Attorney General of Maryland  
The Honorable Jeff Sessions, Attorney General of the United States

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to: **MAD -1101A**  
**Scott Pruitt**  
**USEPA Headquarters**  
**William Jefferson Clinton Bldg**  
**200 Pennsylvania Ave N.W.**  
**Washington DC 20460**



9590 9402 1815 6074 2801 56

2. Article Number (Transfer from service label)

**7016 2070 0000 5179 0021**

PS Form 3811, July 2015 PSN 7530-02-000-9053

A. Signature  
**X**  Agent  Address

B. Received by (Printed Name)  C. Date of Delivery  
**JUL 24 2017**

D. Is delivery address different from item 1?  Yes  No  
 If YES, enter delivery address below:

3. Service Type

<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express
<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™
<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery
<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation
<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery
<input type="checkbox"/> Insured Mail™	
<input type="checkbox"/> Insured Mail Restricted Delivery	



# USPS Tracking® Results

FAQs > (<http://faq.usps.com/?articleId=220900>)

Track Another Package +

Remove X

Tracking Number: 70162070000051790021

## Delivered

Expected Delivery On: Monday, July 24, 2017 ⓘ  
**Product & Tracking Information**

See Available Actions

Postal Product:

Features:  
Certified Mail™

9/22/2017

DATE & TIME

STATUS OF ITEM

LOCATION

July 24, 2017, 7:58 am

Delivered, Left with Individual

WASHINGTON, DC 20460

Your item was delivered to an individual at the address at 7:58 am on July 24, 2017 in WASHINGTON, DC 20460.

July 24, 2017, 6:16 am

Arrived at Unit

WASHINGTON, DC 20018

See More ▾

### Available Actions

See Less ▲

### Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs (<http://faq.usps.com/?articleId=220900>)

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