

Delaware to Sue U.S. EPA for Failure to Curb Out-of-State Air Pollution

“Delawareans deserve clean air,” says Governor John Carney

WILMINGTON, Del. – Delaware announced today its intent to send four Notice of Intent to Sue letters to the U.S. Environmental Protection Agency (EPA) regarding air pollution that comes into Delaware from other states.

The NOI letters, as required by the federal Clean Air Act, inform the EPA that the Delaware Department of Justice – acting on behalf of the Department of Natural Resources and Environmental Control – will file suit against EPA for its failure to require power plants in Pennsylvania and West Virginia to reduce air pollution that significantly affects the quality of the air that Delawareans breathe.

Delaware has previously petitioned for relief to the EPA.

“The Clean Air Act entitles Delaware to relief from upwind pollution and the remedy we are seeking is reasonable and within EPA’s authority and responsibility to grant,” said Governor John Carney. “Delawareans deserve clean air, but our air quality is significantly impacted by pollution traveling downwind from other states. We are simply asking that the EPA require these power plants that pollute Delaware’s air to run their existing pollution control equipment when the plants are in operation.”

Four petitions filed between July and November 2016 by DNREC under Section 126 of the federal Clean Air Act, sought to have

EPA require certain power plant units in upwind states to use their air pollution controls to reduce emissions.

The lawsuits will contend that EPA's approval of the petitions is critical to protecting the health of Delawareans and helping contain the state's rising healthcare costs from treating respiratory and lung diseases. EPA approval is also important to Delaware's economy because fewer health-related absences from the workforce results in an increase in productivity.

Ground-level ozone, or smog, has been one of Delaware's most pervasive and challenging air pollution problems. More than 90 percent of the ozone in Delaware originates from emissions in upwind states.

The filing of the Section 126 petitions, as well as the related Notice of Intent to Sue letters, comes after decades of efforts by DNREC to influence reduction of air pollution transported into Delaware from upwind states.

Though Delaware has made dramatic progress on improving air quality in recent years, emissions from out-of-state power plants continue to prevent Delaware from attaining and maintaining federal health-based air quality standards.

*"The Department has pursued – and will continue to pursue – voluntary and collaborative efforts with partner states to ensure upwind power plants meet the same stringent standards which Delaware is required to meet," said **Shawn Garvin, Secretary of the Delaware Department of Natural Resources and Environmental Control.** "It is now time for EPA to hold upwind sources accountable for ozone emissions that are impacting downwind states."*

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