

## RECORD OF HEARING AND SUMMARY OF PUBLIC COMMENTS

### WASHINGTON DC-MD-VA 1997 PM<sub>2.5</sub> REDESIGNARION REQUEST & MAINTENANCE PLAN

As required by 40 CFR 51.102(e), the complete record of the hearing, along with a list of commenters and the text of the written presentations or summary of the oral presentations, is located at the Air Divisions of the Virginia Department of Environmental Quality, Maryland Department of the Environment, and the District of Columbia Department of the Environment. The department contacts to access this information are:

Virginia Department of Environmental Quality - Director, Air Division  
Maryland Department of the Environment - Director, Air and Radiation Management Administration  
District of Columbia Department of the Environment – Associate Director, Air Quality Division

The records of the public hearings are blank since no one attended the hearings.

As required by § 2.1(h) of Appendix V of 40 CFR Part 51, below is a summary of the comment received and responses thereto. Included is a brief statement of the subject, the identification of the commenter, the summary of the comment and the response (analysis and action taken). Each issue is discussed in light of all of the comments received that affect that issue. All comments have been reviewed and responses developed based on an evaluation of the issues raised in consideration of the overall goals and objectives of the air quality program and the intended purpose of the document under review.

1. **SUBJECT:** Recent litigation regarding PM<sub>2.5</sub>.

**COMMENTER:** United States Environmental Protection Agency, Region III

**TEXT:** On January 4, 2013, in *Natural Resoiurces Defense Council v. EPA*, the U.S. Court of Appeals for the District of Columbia circuit remanded to EPA the Final Clean Air Fine Particulate Implementation Rule (72 FR 20586, April 25, 2007) and the Implementation of the New Source Review (NSR) program for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>) (72 FR 2831, May 16, 2008). No. 08-1250 (D.C. Cir. January 4, 2013). The Court found that EPA erred in implementing the 1997 PM<sub>2.5</sub> NAAQS pursuant to the general implementation provisions of Subpart 1 of part D of Title I of the Act, rather than the particulate-matter-specific provisions of subpart 4 of part D of Title I. EPA is still interpreting this court decision and its potential implications for redesignation requests and maintenance plans, as well as for motor vehicle emisissions budgets.

**RESPONSE:** The proposed redesignation request and proposed maintenance plan fully conform to all current EPA guidance and regulatory requirements. Additionally, these documents provide data conclusively demonstrating that the Washington DC-MD-VA region has complied with the 1997 PM<sub>2.5</sub> NAAQS since 2005. For example, see Figures 5-2 and 5-3 of the proposed maintenance plan. Furthermore, the area's current design

value using 2009-2011 data is  $10.8 \mu\text{g}/\text{m}^3$ , which is  $4.2 \mu\text{g}/\text{m}^3$  less than the 1997  $\text{PM}_{2.5}$  NAAQS requirement of  $15.0 \mu\text{g}/\text{m}^3$  on an annual basis. Regardless of how EPA decides to implement the NAAQS requirements, both emissions and ambient air concentrations of relevant pollutants are expected to continue to improve. Given current mandates on a variety of  $\text{PM}_{2.5}$  and  $\text{PM}_{2.5}$  precursor emitting sources, it is improbable that the Metropolitan Washington D.C. area will ever violate the 1997  $\text{PM}_{2.5}$  NAAQS in the future. If this improbable event does come to pass, the proposed maintenance plan contains, in Section 8, contingency measures to further reduce  $\text{PM}_{2.5}$  emissions and  $\text{PM}_{2.5}$  precursor emissions. However, every indication is that  $\text{PM}_{2.5}$  air quality will continue the improvement trends depicted in Figures 5-2 and 5-3 of the proposed maintenance plan. The proposed maintenance plan notes in Table 5-1 that between the attainment year of 2007 and the out year of 2025, this region is expected to have reductions in  $\text{SO}_2$  emissions of more than 158,000 tons, reductions in  $\text{NO}_x$  emissions of more than 90,700 tons, and reductions in primary  $\text{PM}_{2.5}$  emissions of more than 2,700 tons. More information is simply not needed to provide assurances that the area will continue to maintain compliance with the 1997  $\text{PM}_{2.5}$  NAAQS through 2025. Should EPA decide to finalize a regulation requiring a different approach to the development of a 1997  $\text{PM}_{2.5}$  NAAQS maintenance plan, the Washington DC-MD-VA region will review those requirements at that time to determine if they warrant the creation and submittal of a subsequent state implementation plan revision.

No modification to the proposed documents was made based on this comment.

2. **SUBJECT:** CSAPR.

**COMMENTER:** United States Environmental Protection Agency, Region III

**TEXT:** On August 21, 2012, the Court of Appeals for the D.C. Circuit issued a decision to vacate the Cross State Air Pollution Rule (CSAPR). In that decision, the Court also ordered EPA to continue administering the Clean Air Interstate Rule (CAIR) “pending the promulgation of a valid replacement.” *EME Homer City Generation, L.P. v. EPA*, No. 11-1302 (D.C. Cir. Aug. 21, 2012), *reh’g denied* (per curiam) (Jan.24, 2013). While the D.C. Circuit has denied a rehearing of the decision to remand CSAPR, EPA is evaluating the ramifications of that decision and its potential implications for redesignation requests and maintenance plans.

**RESPONSE:** The proposed redesignation request and proposed maintenance plan does not rely on CSAPR or CAIR to facilitate the emission reductions from facilities located within the Washington DC-MD-VA nonattainment area that might have had either of these regulations as applicable requirements. Rather, these documents rely upon federally enforceable consent agreement requirements, federally enforceable permit requirements, permanent retirement of electrical generating units, and requirements contained within the Maryland Healthy Air Act to control the emissions of electrical generating units within the Washington DC-MD-VA region. More detail on these requirements may be found in Section 3.2.2 of the proposed redesignation request and in Section 5.2.2 of the proposed maintenance plan. No further requirements are needed to

ensure that the area complies with the 1997 PM<sub>2.5</sub> NAAQS until at least 2025.

No modification to the proposed documents was made based on this comment.

3. **SUBJECT:** Product Emissions

**COMMENTER:** United States Environmental Protection Agency, Region III

**TEXT:** The second paragraph in the proposed maintenance plan under **Section 5.2.2.4 Future Control Strategies** reads as follows:

The Washington DC-MD-VA area will work with jurisdictions and USEPA to demonstrate the feasibility of (and get SIP credit for) achieving reductions across the entire region from market forces that will result in cleaner products being distributed across the entire region even when the regulations driving the cleaner products have only been adopted in a part of the region.

Please clarify what is meant by “cleaner products.”

**RESPONSE:** In this context, “cleaner products” include consumer, commercial, institutional and industrial goods and technologies sold on the market (*e.g.*, paints, adhesives, sealants, fuels) that have a capacity to inherently emit less pollution as compared to other similar products.

No modification to the proposed documents was made based on this comment.

4. **SUBJECT:** SO<sub>2</sub> NAAQS Proposed Guidance

**COMMENTER:** Ms. Pamela F. Faggert, Vice President and Chief Environment Officer, Dominion

**TEXT:** The commenter requests that language in Section 5.2.2.1.4 of the proposed maintenance plan, which provides information on EPA’s proposed approach for implementing the 2010 SO<sub>2</sub> NAAQS, be either reworded or removed from the document.

**RESPONSE:** The commenter is correct that the language in the proposed maintenance plan regarding implementation of the 2010 SO<sub>2</sub> NAAQS is obsolete. Reference to EPA’s proposed guidance has been removed from the document.

5. **SUBJECT:** D.C. Circuit Court Case, *NRDC v. EPA*, Case No. 08-1250

**COMMENTER:** Mr. Joshua Berman, Associate Attorney, Sierra Club

**TEXT:** The Redesignation Request fails to appropriately address ammonia and volatile organic compounds (“VOCs”) as PM<sub>2.5</sub> precursors, as is required under the D.C. Circuit’s recent ruling in *NRDC v. EPA*, Case No. 08-1250 (D.C. Cir. Jan. 4, 2013);

On January 4, 2013, the D.C. Circuit struck down EPA's Implementation Rule for PM<sub>2.5</sub>. *NRDC v. EPA*, Case No. 08-1250 (D.C. Cir. Jan. 4, 2013). In holding that EPA impermissibly promulgated its PM<sub>2.5</sub> implementation rules pursuant to the general implementation provisions of Subpart I of Part D of Title I of the Clean Air Act rather than Subpart 4, the Court observed that under Subpart 4, precursor pollutants (such as ammonia) are presumptively regulated. *See id.*, slip op. at 14 n.7. Consequently, MDE's election to ignore both VOCs and ammonia, which it expressly acknowledged to be precursors of PM<sub>2.5</sub>, *see* Redesignation Request at 9-10, is impermissible in light of the D.C. Circuit's decision in *NRDC*. This deficiency must be remedied before EPA can approve MDE's redesignation request.

**RESPONSE:** The Washington DC-MD-VA proposed Redesignation Request and Maintenance Plan, in which Maryland is a regional contributor, fully complies with all requirements of the 1997 PM<sub>2.5</sub> NAAQS. Notwithstanding recent litigation and EPA's anticipated interpretation of the decision and its impacts on redesignation requests, the regional SIP demonstrates that air monitoring data in the Washington DC-MD-VA area has met the PM<sub>2.5</sub> NAAQS since 2005. Furthermore, the area's current design value using 2009-2011 data is 10.8 µg/m<sup>3</sup>, which is 4.2 µg/m<sup>3</sup> less than the 1997 PM<sub>2.5</sub> NAAQS requirement of 15.0 µg/m<sup>3</sup> on an annual basis. The monitoring and design value data reflects a measurement of all PM<sub>2.5</sub> precursors and conforms to all EPA guidance. The proposed maintenance plan notes in Table 5-1 that between the attainment year of 2007 and the out year of 2025, this region is expected to have reductions in SO<sub>2</sub> emissions of more than 158,000 tons, reductions in NO<sub>x</sub> emissions of more than 90,700 tons, and reductions in primary PM<sub>2.5</sub> emissions of more than 2,700 tons. The information supplied in the redesignation request provides all the assurances needed that the area will continue to maintain compliance with the 1997 PM<sub>2.5</sub> NAAQS through 2025.

As an ozone nonattainment area the Washington DC-MD-VA region has focused on VOC controls for some time. These controls have contributed to the downward trend of PM<sub>2.5</sub> concentrations. The selected SO<sub>2</sub> controls accomplish compliance with the 1997 PM<sub>2.5</sub> NAAQS in a more cost-effective manner than additional VOC controls.

The EPA is considering the ramifications of the court decision. EPA's interpretation of the court decision will be done via the federal register and therefore will be open to comment. Any decision on the Redesignation Request and Maintenance Plan will be done in accordance with the EPA interpretation of the decision. Should EPA decide to finalize a regulation requiring a different approach to the development of a 1997 PM<sub>2.5</sub> NAAQS maintenance plan, the Washington DC-MD-VA region will review those requirements at that time to determine if they warrant the creation and submittal of a subsequent state implementation plan revision.

No modification to the proposed documents was made based on this comment.

6. **SUBJECT:** D.C. Circuit Court Case, *NRDC v. EPA*, Case No. 08-1250

**COMMENTER:** Mr. Joshua Berman, Associate Attorney, Sierra Club

**TEXT:** The Redesignation Request fails to adequately analyze the effect that redesignation will have on Maryland's compliance with other NAAQS, including the 2006 24-hour PM<sub>2.5</sub> NAAQS and 2013 annual PM<sub>2.5</sub> NAAQS, and with regional haze;

**RESPONSE:** Section 107(d)(3)(E) of the Clean Air Act, as amended, states that an area can be redesignated to attainment if the following conditions are met:

1. The EPA has determined that the national ambient air quality standards (NAAQS) have been attained.
2. The applicable implementation plan has been fully approved by EPA under section 110(k).
3. The EPA has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions.
4. The State has met all applicable requirements for the area under section 110 and Part D.
5. The EPA has fully approved a maintenance plan, including a contingency plan, for the area under section 175A.

The Washington DC-MD-VA proposed Redesignation Request and Maintenance Plan, in which Maryland is a regional contributor, fully complies with all requirements of the 1997 PM<sub>2.5</sub> NAAQS. Maryland is not nonattainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS and will be recommending an attainment designation for the 2013 annual PM<sub>2.5</sub> NAAQS. The controls in the proposed Redesignation Request and Maintenance Plan will provide benefits toward these standards and toward regional haze.

No modification to the proposed documents was made based on this comment.

7. **SUBJECT:** EPA's Decision to Increase Ethanol Content in Gasoline

**COMMENTER:** Mr. Joshua Berman, Associate Attorney, Sierra Club

**TEXT:** The Redesignation Request's draft maintenance plan fails to consider recent EPA decisions regarding mobile source emissions. Maryland Should Revise Its Maintenance Plan to Include Consideration of EPA's Decision to Increase Ethanol Content in Gasoline.

**RESPONSE:** The region has prepared a Maintenance Plan based upon current requirements and standards as determined by the EPA. The Maintenance Plan ensures against changes and uncertainties in mobile source emissions by establishing motor vehicle emission budgets for several key years. Each new transportation plan or transportation improvement program is tested against these budgets. Regardless of changes in fuels, fleets or vehicle miles travelled, mobile source emissions must be equal to or less than these budgets.

The Maintenance Plan constitutes a SIP revision and must provide for maintenance of the relevant NAAQS in the area for at least 10 years after redesignation, including additional measures to ensure prompt correction of any violation of the NAAQS. The state must also submit a SIP revision 8 years after the original redesignation request is approved to provide for maintenance of the NAAQS for an additional 10 years following the first 10-year period.

The Maintenance Plan contains a commitment to enact and implement additional contingency measures expeditiously in the event that future violations of the NAAQS occur and a list of potential contingency measures that would be implemented in such an event.

As such, the Maintenance Plan has adequate provisions to address any future regulations, court decisions, or unexpected events. These future scenarios will be evaluated as needed.