

## **Appendix E**

### **Notices and Public Comments and Responses**

#### **(Washington DC-MD-VA PM<sub>2.5</sub> Redesignation Request & Maintenance Plan)**

## NOTICE OF PUBLIC HEARING AND PUBLIC COMMENT PERIOD ON AIR QUALITY ISSUES

Notice is hereby given that a public hearing will be held on Wednesday, February 20, 2013, at 5:30 p.m. in Room 555 at 1200 First Street NE, 5<sup>th</sup> Floor, in Washington, D.C. 20002. This hearing provides interested parties an opportunity to comment on the District of Columbia's (District) proposed redesignation request and maintenance plan for the fine particulate matter (PM<sub>2.5</sub>) 1997 annual national ambient air quality standards (NAAQS). Once the District has completed its procedures, the documents will be submitted to the United States Environmental Protection Agency (EPA) for approval as a revision to its State Implementation Plan (SIP) at 40 CFR Part 52 Subpart J, pursuant to the provisions of § 107 of the federal Clean Air Act (CAA).

PM<sub>2.5</sub> ambient air quality has improved in the Washington DC-MD-VA nonattainment area since the area was designated as being in nonattainment of the 1997 annual PM<sub>2.5</sub> NAAQS. The area is currently operating under a clean data determination (74 Fed. Reg. 1146, January 12, 2009). The District, the State of Maryland, and the Commonwealth of Virginia are requesting that EPA concurrently approve, as a SIP revision for each state, the related CAA § 175A maintenance plan. The maintenance plan ensures that good PM<sub>2.5</sub> air quality will be maintained through 2025. The plan also demonstrates that PM<sub>2.5</sub> air quality in the Washington DC-MD-VA area will remain compliant with the 1997 PM<sub>2.5</sub> NAAQS, as measured by a monitoring network that meets all federal requirements.

Copies of the proposed redesignation request and maintenance plan are available for public review during normal business hours at the offices of the District Department of the Environment (DDOE), 1200 First Street NE, 5<sup>th</sup> Floor, Washington, DC 20002.

Interested parties wishing to testify at this hearing must submit in writing their names, addresses, telephone numbers and affiliation, if any, to Mr. William Bolden at the DDOE address above or at [william.bolden@dc.gov](mailto:william.bolden@dc.gov) by 4:00 p.m. on February 20, 2013. Interested parties may also submit written comments to Ms. Jessica Daniels, Monitoring and Assessment Branch, Air Quality Division, DDOE, at the same address or by email at [jessica.daniels@dc.gov](mailto:jessica.daniels@dc.gov). Questions about this SIP revision should be directed to Mr. Rama S. Tangirala by phone at (202) 535-2989 or email [rama.tangirala@dc.gov](mailto:rama.tangirala@dc.gov), or Ms. Daniels at (202) 741-0862 or [jessica.daniels@dc.gov](mailto:jessica.daniels@dc.gov). No comments will be accepted after February 20, 2013

**MARYLAND DEPARTMENT OF THE ENVIRONMENT**

1800 Washington Boulevard • Baltimore MD 21230  
410-537-3000 • 1-800-633-6101 • www.mde.state.md.us

Martin O'Malley  
Governor

Robert M. Summers, Ph.D.  
Secretary

Anthony G. Brown  
Lieutenant Governor

Kathy M. Kinsey  
Deputy Secretary

**Maryland Department of the Environment  
Notice of Public Hearing on Air Quality Plan**

**The Maryland Department of the Environment (MDE) gives notice of a Public Hearing concerning the proposed Maryland Redesignation Request & Maintenance Plan State Implementation Plan (SIP).**

**A public hearing will be held on:**

**February 19, 2013, at 10:00 AM at the Maryland-National Capital Park & Planning Commission  
Montgomery County Park and Planning Headquarters  
8787 Georgia Ave  
Silver Spring, Maryland 20910  
Room location: 1<sup>st</sup> Floor Auditorium  
10:00 AM**

The hearing will focus on the request by Maryland that the Environmental Protection Agency (USEPA) redesignate the Washington DC-MD-VA 1997 fine particulate (PM<sub>2.5</sub>) nonattainment area to attainment for this PM<sub>2.5</sub> standard pursuant to the provisions under §107 of the federal Clean Air Act (CAA). Air quality in the area is significantly improved due to permanent and enforceable emission reductions. Owing to the improvement in PM<sub>2.5</sub> air quality, the Washington DC-MD-VA nonattainment area is currently operating under a federally approved clean data determination (74 FR, 1146, 1/12/2009). Thus Maryland is also requesting that USEPA concurrently approve, as a revision to the state implementation plan (SIP), the related §175A Maintenance Plan. This plan ensures that good PM<sub>2.5</sub> air quality will be maintained through 2025.

The Public Hearing will be held as required by federal law (Clean Air Act at 42 U.S.C. 7410 (a) and 40 CFR 51.102). Interested persons are invited to attend and express their views. After the Department considers the comments received, and revises the proposal if necessary, all related items will be submitted to the U.S. Environmental Protection Agency.

An electronic copy of the proposed SIP may be accessed from the Maryland Department of the Environment's website at:

[http://www.mde.state.md.us/programs/Air/AirQualityPlanning/Pages/programs/airprograms/air\\_planning/index.aspx](http://www.mde.state.md.us/programs/Air/AirQualityPlanning/Pages/programs/airprograms/air_planning/index.aspx)

or upon the web page of the Metropolitan Washington Council of Governments

<http://www.mwcog.org/environment/air/downloads/PM/default.asp>

Note: the public library systems in Maryland can be used for Internet access to view the document. An electronic copy of the document can also be obtained writing to Randall Carroll at [rcarroll@mde.state.md.us](mailto:rcarroll@mde.state.md.us).

Copies of the document can also be viewed at the Maryland Department of the Environment Main Office, Air and Radiation Management Administration, 1800 Washington Boulevard, Baltimore, Maryland –Contact: Randall Carroll.

Written comments may be presented at the hearing, faxed to 410-537-4223, emailed to [rcarroll@mde.state.md.us](mailto:rcarroll@mde.state.md.us), or mailed to Randall Carroll, MDE ARMA, 1800 Washington Boulevard, Ste. 730, Baltimore, MD, 21230. Comments must be received before the close of business on **February 19, 2013**.

Anyone needing special accommodations at the public hearing should contact the Department's Fair Practices Office at (410) 537-3964. TTY users may contact the Department through the Maryland Relay Service at 1-800-735-2258.

For more information contact Randall Carroll, Natural Resources Planner, at (410) 537-3252. Toll free in Maryland call 1-(800) 633-6101 ext. 3252.

Maryland Department of the Environment  
Air and Radiation Management Administration  
1800 Washington Boulevard, Ste. 730  
Baltimore, Maryland 21230

**DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**Public Notice – Air Quality Plan**

**Notice of action:** The Department of Environmental Quality (DEQ) is seeking comments and announcing a public hearing on a proposed plan to maintain compliance with the 1997 fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standard (NAAQS) in the Northern Virginia PM<sub>2.5</sub> Nonattainment Area. The Commonwealth intends to submit the plan as a revision to the Commonwealth of Virginia State Implementation Plan (SIP) in accordance with the requirements of § 110(a) of the federal Clean Air Act. The SIP is the plan developed by the Commonwealth in order to fulfill its responsibilities under the Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act.

**Purpose of notice:** DEQ is seeking comments on the overall plan, and on the issue of whether the plan enables the Northern Virginia PM<sub>2.5</sub> Nonattainment Area to maintain compliance with the 1997 PM<sub>2.5</sub> NAAQS until at least 2025.

**Public comment period:** January 28, 2013 to February 26, 2013.

**Public hearing:** A public hearing will be conducted at the Fairfax County Government Center, in conference room 2/3, at 7:00 pm on February 25, 2013. The Fairfax County Government Center is located at 12000 Government Center Parkway, Fairfax, Virginia 22035. A map and directions may be found at <http://www.fairfaxcounty.gov/maps/county/government-center.htm>.

**Description of proposal:** The proposal consists of the following.

1. Air quality maintenance plan in support of a concurrent request to redesignate the Northern Virginia PM<sub>2.5</sub> Nonattainment Area (Counties of Arlington, Fairfax, Loudoun, and Prince William; Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park) to attainment: The purpose of the plan is to ensure that emissions of PM<sub>2.5</sub>, sulfur dioxide (SO<sub>2</sub>), and nitrogen oxides (NO<sub>x</sub>) do not exceed the 2007 attainment year levels through 2025, enabling the area to continue meeting the 1997 NAAQS for PM<sub>2.5</sub>. The plan contains control measures that are currently in place and will be continued in order to maintain the PM<sub>2.5</sub>, SO<sub>2</sub>, and NO<sub>x</sub> emissions at or below the 2007 levels. These measures include, but are not limited to, federal control programs for on-road and non-road engines as well as limitations on local power plants. The plan also contains a program of contingency measures to be implemented if the air quality monitoring stations in the area record a violation of the 1997 PM<sub>2.5</sub> NAAQS or if emissions in the area increase above the 2007 levels, as well as information concerning emissions estimates, growth assumptions, emission factors, and reduction assumptions.
2. Motor vehicle emissions budgets for the years 2007, 2017, and 2025: The purpose of the motor vehicle emissions budgets is to ensure that transportation emissions conform

to the requirements of the proposed plan for maintaining compliance with the 1997 PM<sub>2.5</sub> NAAQS (transportation conformity).

The proposed PM<sub>2.5</sub> redesignation request and maintenance plan were prepared by the Metropolitan Washington Air Quality Committee (MWAQC), which consists of elected officials from the affected localities and representatives of state transportation and air quality planning agencies.

The maintenance plan, which contains the motor vehicle emissions budgets, will be submitted as a SIP revision in conjunction with a request to EPA from the Commonwealth to redesignate the Northern Virginia PM<sub>2.5</sub> Nonattainment Area as attainment/maintenance. DEQ is accepting comments on both the redesignation request and maintenance plan, but the redesignation request will not be submitted as part of the SIP revision.

**Federal information:** This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). The proposed maintenance plan and supporting technical documents will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104.

**How to comment:** DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ no later than the last day of the comment period. Both oral and written comments are accepted at the public hearing. DEQ prefers that comments be provided in writing, along with any supporting documents or exhibits. Comments on the redesignation request and maintenance plan must be submitted to Doris A. McLeod, Air Quality Planner, Division of Air – Data Analysis and Planning, Department of Environmental Quality, 629 E. Main St, PO Box 1105, Richmond, Virginia 23218 (phone 804-698-4197, fax 804-698-4510, email [doris.mcleod@deq.virginia.gov](mailto:doris.mcleod@deq.virginia.gov)). All materials received are part of the public record.

To review the proposal: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans web site (<http://www.deq.state.va.us/Programs/Air/PublicNotices/airplansandprograms.aspx>). The documents may also be obtained by contacting the DEQ representative named above. The public may review the documents between 8:30 am and 4:30 pm of each business day until the close of the public comment period at the following DEQ locations: 1) Main Street Office, 8th Floor, 629 E. Main St, Richmond, VA, 804-698-4070 and 2) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, 703-583-3800

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

Mr. Michael G. Dowd, Director  
Air Quality Division  
Virginia Department of Environmental Quality  
P.O. Box 1105  
629 East Main Street  
Richmond, Virginia 23240

FEB 15 2013

Dear Mr. Dowd:

Thank you for giving the U.S. Environmental Protection Agency (EPA) the opportunity to review the proposed "Washington DC-MD-VA 1997 PM<sub>2.5</sub> Redesignation Request" and "Washington DC-MD-VA 1997 PM<sub>2.5</sub> Maintenance Plan," both dated January 4, 2013. EPA has reviewed the proposed redesignation request and maintenance plan. Our comments are enclosed.

Please enter these comments into the public record. We look forward to working with you to resolve these comments. Should you have any questions pertaining to EPA's review of Virginia's proposed redesignation request and maintenance plan for the Washington, DC-MD-VA 1997 PM<sub>2.5</sub> nonattainment area, please do not hesitate to contact me. If members of your staff have questions, they may direct them to Ms. Maria A. Pino at (215) 814-2181.

Sincerely,

A handwritten signature in cursive script that reads "Diana Esher".

Diana Esher, Director  
Air Protection Division

Enclosure



## **EPA comments on the 1/4//2013 proposed Washington DC-MD-VA 1997 PM<sub>2.5</sub> Redesignation Request and Maintenance Plan**

### General Comments

On January 4, 2013, in *Natural Resources Defense Council v. EPA*, the U.S. Court of Appeals for the District of Columbia Circuit remanded to EPA the Final Clean Air Fine Particle 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>) (73 FR 28321, 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 emissions budgets.

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.

### Maintenance Plan

#### **5.2.2.4 Future Control Strategies**

The second paragraph in this section 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.”





**Pamela F. Faggert**  
Vice President and Chief Environmental Officer

**Dominion Resources Services, Inc.**  
5000 Dominion Boulevard, Glen Allen, VA 23060  
Phone: 804-273-3467

February 25, 2013

**Submitted via e-mail to: [doris.mcleod@deq.virginia.gov](mailto:doris.mcleod@deq.virginia.gov)**

Ms. Doris McLeod  
Air Quality Planner  
Division of Air – Data Analysis and Planning  
Department of Environmental Quality  
P.O. Box 1105  
Richmond, Virginia 23218

**Regarding: Proposed Plan to Maintain Compliance with the 1997 Fine Particulate Matter (PM<sub>2.5</sub>) National Ambient Air Quality Standard (NAAQS) in the Northern Virginia PM<sub>2.5</sub> Nonattainment Area (*Virginia Register*, Vol. 29, Issue 11, January 28, 2013)**

Dear Ms. McLeod:

We are submitting the following brief comment on the above-referenced proposed maintenance plan for compliance with the 1997 fine particulate PM<sub>2.5</sub> national ambient air quality standard (NAAQS) for the northern Virginia PM<sub>2.5</sub> nonattainment area that DEQ intends to submit to EPA as a state implementation plan (SIP) revision. Our comment pertains to references to the 2010 SO<sub>2</sub> NAAQS and associated requirements for point sources contained in Section 5.2.2.1.4 of the supporting documents “Washington DC-MD-VA 1997 PM<sub>2.5</sub> Redesignation Request (DRAFT 01-04-13)” and “Washington DC-MD-VA 1997 PM<sub>2.5</sub> Maintenance Plan (DRAFT 01-04-13)”.

These sections of the supporting documents appropriately point out that the new, more stringent 1-hour SO<sub>2</sub> NAAQS promulgated by EPA in June 2010, along with the final Utility Mercury and Air Toxics Rule (MATS) and the recently finalized Industrial/Commercial/Institutional (ICI) Boiler Maximum Achievable Control Technology standards (Boiler MACT), will further reduce SO<sub>2</sub> emissions both within and outside of the Washington DC-MD-VA nonattainment area beyond what has been estimated in the 2017 and 2025 inventories developed for the maintenance plan (since these rules were not yet final at the time the maintenance plan was developed). However, the documents indicate that under proposed guidance for the SO<sub>2</sub> standard, “facilities emitting more than 100 tpy year of SO<sub>2</sub> will be required to demonstrate compliance with the standard no later than 2017”. Although existing EPA guidance, as currently proposed, includes this requirement, EPA announced in April 2012 that it was reevaluating its strategy for implementing the 1-hour SO<sub>2</sub> standard. As part of this reevaluation, EPA recently issued a strategy paper<sup>1</sup> describing concepts for a new/revised implementation strategy that would, if adopted and finalized, significantly increase the SO<sub>2</sub> emission thresholds used to determine the universe of sources for which a compliance demonstration would be required (from 2,000 to

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<sup>1</sup> See <http://www.epa.gov/airquality/sulfurdioxide/pdfs/20130207SO2StrategyPaper.pdf>

3,000 tpy in populated areas and 5,000 to 10,000 tpy in other areas). In addition, the revised strategy would allow states the option of using ambient monitoring and/or modeling for demonstrating compliance with the standard. The revised strategy may also alter the implementation timeline and extend compliance deadlines beyond 2017. EPA has indicated its intent to propose revised implementation guidance by April 2013 and issue final guidance in July 2013. EPA has also indicated that it expects to issue a proposed implementation rule by late 2013 and a final implementation rule by the end of 2014.

For these reasons, we request that the following sentence be removed from Section 5.2.2.1.4 of both supporting documents:

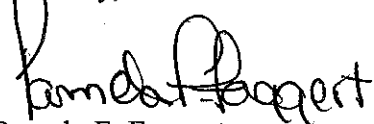
*“Under the new standard’s proposed guidance, facilities emitting more than 100 tpy of SO<sub>2</sub>, many of which are EGU’s, will be required to demonstrate compliance with the standard no later than 2017.”*

To the extent this language is retained, we request that DEQ include additional language referencing EPA’s ongoing reevaluation of its strategy for implementing the SO<sub>2</sub> NAAQS and its recent strategy paper indicating the consideration of different source emission thresholds and a different compliance timeline. We offer, for your consideration, the following text with suggested deletions in strikeout and new text/additions in underlined format:

*“Under the new standard’s proposed guidance, if finalized as currently proposed, facilities emitting more than 100 tpy of SO<sub>2</sub>, many of which are EGU’s, will be required to demonstrate compliance with the standard no later than 2017. However, EPA is reevaluating its strategy for implementing the standard and recently issued a strategy paper indicating its consideration of different source emission thresholds and a different compliance timeline. EPA is expected to issue revised final guidance by July 2013, and to issue a proposed implementation rule by late 2013 and a final implementation rule in 2014 that could include different requirements than indicated in EPA’s current proposed guidance.”*

Thank you for this opportunity to provide comment. If you have any questions, please call me or Lenny Dupuis @ 804-273-3022 ([leonard.dupuis@dom.com](mailto:leonard.dupuis@dom.com)).

Sincerely,

  
Pamela F. Faggert

Ec: Mr. Michael Dowd (Virginia DEQ)  
Mr. Thomas Ballou (Virginia DEQ)



February 19, 2013

VIA E-MAIL ([rcarroll@mde.state.md.us](mailto:rcarroll@mde.state.md.us))

Randall Carroll, Natural Resources Planner  
Maryland Department of the Environment  
Air and Radiation Management Administration  
1800 Washington Boulevard, Ste. 730  
Baltimore, MD 21230

**RE: Sierra Club Comments Regarding Maryland Proposed PM<sub>2.5</sub> Redesignation**

Dear Mr. Carroll,

Pursuant to the Maryland Department of the Environment's ("MDE's") Notice of Public Hearing, the Sierra Club submits the following comments regarding MDE's proposed Maryland Redesignation Request & Maintenance Plan State Implementation Plan for Fine Particulate Matter (PM<sub>2.5</sub>) ("Redesignation Request") for the District of Columbia-Maryland-and Virginia ("DC-MD-VA") 1997 daily and annual PM<sub>2.5</sub> NAAQS nonattainment area.

As set forth below, the Redesignation Request cannot be approved at this time because it fails to meet the requirements set forth for redesignation. Specifically, the Redesignation Request must be revised to address the following issues:

- (1) 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);
- (2) 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; and
- (3) The Redesignation Request's draft maintenance plan fails to consider recent EPA decisions regarding mobile source emissions.

The redesignation request in its current form must be revised and should only resubmitted once MDE has addressed these issues.

## **I. BACKGROUND**

### **A. Factual Background**

In July 1997, the U.S. Environmental Protection Agency ("EPA") revised the National Ambient Air Quality Standard ("NAAQS") for particulate matter and established primary

(health-based) annual and 24-hour standards for fine particulate matter (“PM<sub>2.5</sub>”). *See* 62 Fed. Reg. 38652 (July 18, 1997). The annual standard was set at 15.0 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ), based on the 3-year average of annual mean PM<sub>2.5</sub> concentrations and the 24-hour standard was set at 65  $\mu\text{g}/\text{m}^3$ , based on the 3-year average of the 98th percentile of 24-hour concentrations.

As MDE has recognized, exposure to elevated levels of PM<sub>2.5</sub> is associated with numerous adverse human health effects:

The main impacts of PM<sub>2.5</sub> on human health are on the respiratory system and the cardiovascular system. Children, the elderly, and individuals with pre-existing pulmonary or cardiac disease are the most susceptible to PM<sub>2.5</sub> pollution. Complications that can arise from exposure to PM<sub>2.5</sub> include decreased lung function, chronic bronchitis, respiratory symptoms such as asthma attacks and difficulty breathing, nonfatal heart attacks, irregular heartbeat, and premature death in individuals with pulmonary or cardiac disease.

#### Redesignation Request at 1

On December 17, 2004, EPA signed the final rule regarding the initial PM<sub>2.5</sub> nonattainment areas designations for the PM<sub>2.5</sub> standards across the country. The final rule became effective on April 5, 2005. *See* 70 Fed. Reg. 944 (January 5, 2005). The Washington DC-MD-VA area was originally designated nonattainment for the 1997 PM<sub>2.5</sub> NAAQS based on air quality data showing that the area did not meet the 15.0  $\mu\text{g}/\text{m}^3$  annual standard.

On January 4, 2013, MDE submitted Maryland’s Redesignation Request and Maintenance Plan for the DC-MD-VA nonattainment area for PM<sub>2.5</sub> with regards to the 1997 annual and daily standards. The Redesignation Request stated that the “DC-MD-VA region’s federal reference monitors have demonstrated compliance with the 65  $\mu\text{g}/\text{m}^3$  daily standard since the inception of the PM<sub>2.5</sub> monitoring programs within each state.” Redesignation Request at 5.

Subsequent to finalizing the 1997 daily and annual NAAQS, EPA has revised each standard. On October 17, 2006, EPA amended the PM<sub>2.5</sub> NAAQS to ratchet down the 24-hour standard from 65  $\mu\text{g}/\text{m}^3$  to 35  $\mu\text{g}/\text{m}^3$ . *See* National Ambient Air Quality Standards for Particulate Matter; Final Rule, 71 Fed. Reg. 61144 (Oct. 17, 2006). More recently, on January 15, 2013, EPA finalized its latest PM<sub>2.5</sub> NAAQS, again ratcheting down at least one of the applicable standards. In its January 15, 2013 final rule, EPA lowered the annual PM<sub>2.5</sub> NAAQS from 15.0  $\mu\text{g}/\text{m}^3$  to 12.0  $\mu\text{g}/\text{m}^3$ , and retained the 24-hour PM<sub>2.5</sub> NAAQS at the 35  $\mu\text{g}/\text{m}^3$  level set by the agency in 2006. National Ambient Air Quality Standards for Particulate Matter; Final Rule, 78 Fed. Reg. 3086 (Jan. 15, 2013).

## **B. Legal Background**

The Clean Air Act establishes a number of requirements that must be present in order for the EPA to approve a request to redesignate an area from nonattainment to attainment. Specifically, the EPA can only approve a redesignation request if:

- (i) the Administrator determines that the area has attained the national ambient air quality standard;
- (ii) the Administrator has fully approved the applicable implementation plan for the area under section 110(k);
- (iii) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;
- (iv) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and
- (v) the State containing such area has met all requirements applicable to the area under section 110 and part D.

42 U.S.C. § 7407(d)(3)(E). Each one of these requirements must be met before redesignation is approved.

In light of these requirements, the Sierra Club offers the following recommendations regarding necessary revisions to Maryland's redesignation request.

## **II. SUBSTANTIVE COMMENTS**

### **A. MDE Should Revise Its Redesignation Request to Address Ammonia and VOCs' Contribution to PM<sub>2.5</sub> In the DC-MD-VA Nonattainment Area**

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.

### **B. MDE Should Revise the Draft Maintenance Plan to Consider How Redesignation Will Impact Attainment of Other NAAQS**

The Clean Air Act requires that, "[t]he Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter." 42 U.S.C. § 7410(l). EPA cannot approve a redesignation without

an adequate analysis of the effects that redesignation will have on other NAAQS and visibility. With respect to the 1-hour NO<sub>x</sub> NAAQS, the 1-hour SO<sub>2</sub> NAAQS, the 2008 ozone NAAQS, and visibility MDE has failed to conduct an adequate analysis. Without such an analysis, MDE cannot ensure that redesignation will not interfere with attainment or reasonable further progress of the NAAQS and thus cannot approve the redesignation.

Nonattainment areas are required to have approved Reasonable Available Control Measures (“RACM”) and Reasonably Available Control Technology Programs (“RACT”) for PM<sub>2.5</sub>. Once an area reaches attainment, these requirements are stayed, halting any benefits of the programs. MDE itself stated that if EPA makes an attainment determination, this would suspend “reasonably available control measures/reasonably available control technology determinations.” *See* Redesignation Request at 14. RACM and RACT programs aimed at reducing PM<sub>2.5</sub> also reduce levels of NO<sub>x</sub>, SO<sub>2</sub>, and ozone. Suspending the RACM/RACT programs has the potential to interfere with attainment of the 2006 24-hour PM<sub>2.5</sub> NAAQS, the 2013 annual PM<sub>2.5</sub> NAAQS, the 1-hour NO<sub>x</sub> NAAQS, the 1-hour SO<sub>2</sub> NAAQS, and the 1997 and 2008 ozone NAAQS, as well as visibility. It also has the potential to result in Maryland being designated nonattainment for the 2006 and recently finalized 2013 PM<sub>2.5</sub> NAAQS.

MDE needs to demonstrate that removing this co-benefit will not interfere with NAAQS attainment, RACT, reasonable further progress and any other applicable requirement for the 2006 24-hour PM<sub>2.5</sub> NAAQS, the annual PM<sub>2.5</sub> NAAQS, 1-hour NO<sub>x</sub> NAAQS, the 1-hour SO<sub>2</sub> NAAQS, the 2008 ozone NAAQS, and visibility. While MDE has shown a general trend of reductions in NO<sub>x</sub> and SO<sub>2</sub>, MDE fails to establish that these reductions have achieved compliance with the more recent NAAQS. Nor has MDE shown that further reductions would not be achieved in the 1-hour NO<sub>x</sub> NAAQS, the 1-hour SO<sub>2</sub> NAAQS, and the 2008 ozone NAAQS by virtue of fully implementing the nonattainment SIP provisions for the PM<sub>2.5</sub> NAAQS. Similarly, MDE has not addressed the impacts on visibility if the areas were redesignated. Therefore, MDE’s draft maintenance plan should be revised to demonstrate that redesignation will not interfere with attainment, RACT, and/or reasonable further progress of the NAAQS.

### **C. Maryland Should Revise Its Maintenance Plan to Include Consideration of EPA’s Decision to Increase Ethanol Content in Gasoline**

A nonattainment area cannot be redesignated until “the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 7505a of this title.” 42 U.S.C. § 7407(d)(3)(E)(iv).

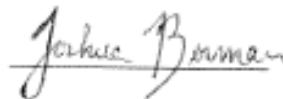
The emissions calculations for on-road mobile sources fail to consider 15% ethanol in gasoline (“E15”). EPA recently decided to allow up to 15% ethanol content in gasoline. *See* 76 Fed. Reg. 4662 (Jan. 26, 2011). An increase in ethanol content will lead to an increase in NO<sub>x</sub> and VOCs emissions for which many cars and light duty trucks, and particularly those with pollution control devices, are not designed to process. The increase in NO<sub>x</sub> and VOCs emissions, which contribute to PM<sub>2.5</sub> emissions, will most likely increase PM<sub>2.5</sub> emission levels.

MDE calculated on-road mobile source emissions using its mobile source emission factor model, MOVES2010a. *See* Draft Maintenance Plan at 7. There is no indication that MDE accounted for the increase in NO<sub>x</sub> and VOCs emissions that will result from use of E15 in their calculations. Thus, for mobile source emission reductions are not permanent and enforceable, MDE must revise the Draft Maintenance Plan to fully consider the impact of E15 on NO<sub>x</sub> and VOCs emissions.

### III. CONCLUSION

Until the issues described above are appropriately addressed, the State has not met “all requirements applicable to the area under section 7410 of this title and part D of this subchapter.” 42 U.S.C. § 107(d)(3)(E). Before MDE submits its Redesignation Request to EPA it should revise the Request and accompanying Maintenance Plan to address each of the above concerns.

Respectfully submitted,



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## RECORD OF HEARING AND SUMMARY OF PUBLIC COMMENTS

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

As required by 40 C.F.R. § 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 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 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 C.F.R. 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 (EPA), Region III

**TEXT:** On January 4, 2013, in *Natural Resources 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 emissions 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 annual national ambient air quality standard (NAAQS) for PM<sub>2.5</sub> 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 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



$\mu\text{g}/\text{m}^3$  on an annual basis. Regardless of how EPA decides to implement the NAAQS requirements, given current mandates on a variety of  $\text{PM}_{2.5}$  and  $\text{PM}_{2.5}$  precursor emitting sources, it is improbable that the Washington DC-MD-VA region 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 (SIP) 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 do 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  $\text{PM}_{2.5}$  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 proposed Redesignation Request and Maintenance Plan of the Washington DC-MD-VA area, 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.

EPA is considering the ramifications of the court decision. EPA's interpretation of the court decision will be posted in 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 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 SIP 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. 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. 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. 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. Since the Redesignation Request and Maintenance Plan show continuing downward trends in PM<sub>2.5</sub> well below the 2007 attainment year inventory, it follows that the region will continue in attainment of standards it has not violated.

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 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 traveled, 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 eight 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.