

Clean Air Act Forum:  
State, Local, and Federal Cooperation under the Clean Air Act  
July 31, 2012 and August 2, 2012

Participant Responses: Collin O'Mara, Delaware Secretary of Environment and Energy

1. In your agency's experience implementing the Clean Air Act (CAA), what is working well? What is not working well?

The Clean Air Act (CAA) continues to serve as an extremely effective tool at improving air quality. Since the 1990 amendments, Delaware has reduced Energy Generating Unit (EGU) Oxides of Nitrogen (NO<sub>x</sub>) emissions by 93%, overall NO<sub>x</sub> emissions by 67% and Volatile Organic Compound (VOC) emissions by 68%. Overall, our experience with the Clean Air Act has been very positive.

The effectiveness of the Act is predicated on both ensuring that the National Ambient Air Quality Standards (NAAQS) are established based upon sound-science and providing states with the flexibility to achieve the promulgated standards in the most cost-effective manner. While policy flexibility can be integrated into several aspects on the implementation process, the foundational science and NAAQS themselves must only be based upon public health concerns to ensure that citizens know whether the air they are breathing is truly safe. The NAAQS must remain beyond reproach and uninfluenced by politics or potential cost to achieve them. The science should be the guide for establishing the NAAQS and the economic considerations should guide the implementation.

Specific implementation areas which are working well include:

- For reducing toxic emissions, the Maximum Available Control Technology (MACT) approach under the CAA has resulted in significant forward progress in reducing air toxics emissions and reducing the risk imposed to our citizens. This approach is vastly superior in comparison to the old risk based approach to managing the hazardous air pollutants which resulted in development of a mere handful of standards over twenty years
- The establishment of strong national standards, including the clean vehicle program, transport rules, MATS, etc. If the federal government establishes strong standards, it obviates the need for states/localities to adopt these rules on their own, while still allowing agencies to go beyond where necessary and eliminating some of challenges of submitting approvable attainment demonstrations.
- The establishment of the Ozone Transport Commission has been enormously helpful in addressing inter-corridor transport of pollution in a coordinated and uniform manner.
- Title V permit program for instance fundamentally changed our program by ensuring adequate resources were available to address the air quality challenges facing our state and provide an expedited permitting process.

What has not worked well is the ability to address transport of air pollution from areas outside of the Ozone Transport Region. We believe that the CAA provides sufficient authority to address transport and the states with clear obligation to reduce their contribution to other states. The failure has been in the way several Administrations have implemented the transport-related sections of the Act and upwind states' failure to adhere to the existing good neighbor provisions.

2. Do state and local governments have sufficient autonomy and flexibility to address local conditions and needs?

We believe that the CAA provides ample flexibility within a prescriptive framework that was designed to ensure forward progress for addressing local sources of emissions. It is critical that states retain the ability to address problems unique to their local needs. For example, Delaware used this flexibility to promulgate multi-pollutant regulations in 2006 which required Oxides of Nitrogen (NO<sub>x</sub>), Sulfur Dioxide (SO<sub>2</sub>), and Mercury (Hg) emission controls on all of our coal and oil fired power plants. This multi-pollutant approach benefited the power plants because they were afforded the opportunity to design cost-effective emission controls that complimented each other. These controls aided in our attainment of the ozone NAAQS by reducing NO<sub>x</sub>, and the PM<sub>2.5</sub> NAAQS by reducing NO<sub>x</sub> and SO<sub>2</sub>. In addition, although direct PM<sub>2.5</sub> was not specifically regulated, direct PM<sub>2.5</sub> (filterable and condensable) emissions were reduced from 2006 levels by 63% beginning 2012 (1750 tons/year to 643 tons/year) and 83% by the end of 2013 (1750 tons/year to 294 tons/year). Furthermore, acid gas emissions were reduced to the extent that these units will no longer top the Toxics Release Inventory (TRI) list in Delaware.

Unfortunately as a state with more than 90% of our pollution coming from upwind sources, the Act does not provide us the autonomy or flexibility to directly influence these upwind emissions that have a direct impact on local air quality conditions and the public health consequences that results.

3. Does the current system balance federal, state, and tribal roles to provide timely, accurate permitting for business activities, balancing environment protection and economic growth?

Delaware has proven repeatedly that our permitting process can be both protective of the environment and extremely efficient at the state time. Delaware has a State Implementation Plan (SIP) approved permitting program which provides the state with primacy over all permitting decisions. Because of this local autonomy, we are able to review permits on an expedited timeline which advance both our state's economic development and environmental goals. We have found our EPA regional office to be an excellent resource for help with applicability determinations and technology reviews. As an example, Delaware was able to adopt the Outer Continental Shelf requirements into its SIP and issue a needed construction permit to an offshore wind project in record time. This effort was coordinated closely with the EPA Region III and EPA headquarters.

In addition, Delaware, under its delegated authority, has already issued a final Greenhouse Gas BACT permit and is about to issue a second one. The first permit was issued in less than six months and the second one is also meeting similar timelines. In the past, Delaware issued the nation's first flexible permit for an auto-assembly plant as well as several other Plant-wide Applicability Limit permits even in the absence of specific federal rules.

What remains troubling is that Delaware has reached a point where more than 90% of its ozone pollution is caused by sources outside of its borders but any new permit in Delaware is required to meet the Lowest Achievable Emission Rate requirement and offset its emission from reductions achieved within our small nonattainment area. However, new or expanded sources located in upwind states that already cause Delaware's nonattainment are able to be permitted without the mandatory controls or any offsets. In other words, emissions upwind continue to grow while Delaware's emissions continue to shrink. This trajectory is unfair economically and unsustainable. What is needed is a strong national (or regional) transport policy, not only to address the 1997 ozone standard (and current PM2.5 standard), but more recent NAAQS as they are promulgated—such as the current 75 ppb ozone standard.

4. Does the CAA support a reasonable and effective mechanism for federal, state, tribal and local cooperation through State Implementation Plans? How could the mechanism be improved?

Nothing in the CAA prohibits reasonable and effective cooperation between various jurisdictions and EPA through State Implementation Plans. EPA's issuance of more timely and complete guidance, which were timed with the release of the various regulations, would help this effort. EPA could also encourage greater cooperation by enlarging the nonattainment areas to include contributing states in the planning process.

5. Are cross-state air pollution issues coordinated well under the existing framework?

Cross-state air pollution issues are poorly addressed through the current approach to implementing the existing framework. For instance, we have been supportive of EPA's contested Cross-State Air Pollution Rule; however, it is designed to address the 1997 ozone standard (84 ppb) while Delaware is struggling to find ways to meet the more protective 2008 standards (75 ppb)—a standard which does not provide a health based ozone level—because at this point only a few ppb of ozone derive from Delaware sources. While potential remedies exist in sections 110(a)(2)(d), 176, and 184, the state's only current administrative remedy is to file a petition under Section 126 of the CAA which is an insufficient framework that we are forced to operate under.

6. Are there other issues, ideas or concerns relating to the role of federalism under the CAA that you would like to discuss?

- States' rights to retain authority to be more stringent than EPA should be retained.
- EPA should exercise its oversight responsibility to ensure that states are meeting their obligations under the CAA particularly the good neighbor provisions—there should not be upwind winners at the expense of downwind states.
- States need sufficient Federal funding for implementation.