



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

Angela Marconi
Delaware Department of Natural Resources and Environmental Control
100 W. Water Street, Suite 6A
Dover, DE 19904

Via email at Angela.Marconi@delaware.gov

Dear Ms. Marconi:

Thank you for giving the U.S. Environmental Protection Agency (EPA) the opportunity to review and comment on Delaware's Proposed Regional Haze State Implementation Plan.

EPA's comments for the public record are provided in the enclosure to this letter. We look forward to working with you to resolve these comments. Please feel free to contact me at (215) 814-2039, or Adam Yarina at (215) 814-2027, if you have any questions or concerns regarding EPA's comments.

Sincerely,

MICHAEL
GORDON

Mike Gordon
Chief, Planning and Implementation Branch
Air and Radiation Division

Digitally signed by MICHAEL
GORDON
Date: 2022.01.13 15:56:13
-05'00'

Enclosure

Cc: Valerie Gray, DNREC (via email at Valerie.Gray@delaware.gov)
Renaë Held, DNREC (via email at renae.held@delaware.gov)



EPA Comments on Delaware's Draft Regional Haze SIP

Introduction

On behalf of the Environmental Protection Agency (EPA), thank you for the opportunity to provide feedback on the Draft Regional Haze State Implementation Plan for the Second Planning Period for the State of Delaware.

While the Draft SIP includes a wealth of information and analyses, some areas would benefit from additional information, specificity, or justification to bolster the SIP and its analyses and conclusions.

EPA Comments on Delaware Draft Regional Haze SIP for the Second Planning Period

4-Factor Analyses

The 4-factor analyses in Section 10 of the Draft SIP would benefit from additional information and context to support its conclusions. For example, some sources do not have a dollars-per-ton cost estimate in their Cost of Compliance analysis;¹ other sources have dollars-per-ton cost estimates which are deemed to be economically infeasible but do not have an explanation as to why.² The EPA recommends updating the Draft SIP to include this information, and also provide additional details on how the costs and cost/ton numbers were derived, and the emissions and emissions reductions associated with the potential controls. We note that many of the sources are relatively low-emitting and operate relatively few hours per year. Providing more detailed information in the record that documents Delaware's information and rationale underlying its decisions will assist EPA in evaluating the overall four factor analysis conclusions. The Court of Appeals for the Third Circuit recently has spoken to the importance of the information developed by the state in support of EPA's administrative record in SIP decisions. See, e.g., Sierra Club v. EPA, 972 F.3d 290 (3d Cir. 2020).

Section 110(a) of the Clean Air Act (42 USC section 7410(a)) requires that SIPs contain enforceable emissions limitations and other control measures, means, or techniques relied on, as well as a program for the enforcement of the measures. Therefore, any emission limits or other control measures relied on by Delaware to make reasonable progress must be accompanied by SIP provisions to ensure that the emission limits or other control measures are enforceable. EPA's Guidance on Regional Haze State Implementation Plans for the Second Implementation Period (August 20, 2019; hereinafter "Guidance") at 42. See also 40 CFR 51.308(f)(2). With respect to measures identified through a 4-factor analysis, EPA has clarified that we anticipate that many states "will find that new (i.e., additional) measures are necessary to make reasonable progress. All new measures must be included in the SIP." EPA's Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period (July 8, 2021); CAA 169A(b)(2); 40 CFR 51.308(f)(2). If these measures are included in a Title V permit, that permit must be in the SIP in order for those measures to be federally enforceable and permanent; this is relevant to the Delaware SIP given that there are facilities whose Title V permits will be updated to incorporate control measures for NOx.³

¹ See Section 10.1.1, Edge Moor (Calpine) Units 3 and 4 on Page 106

² See Section 10.1.1, Christiana Energy Center (Calpine) on Page 104, and Edge Moor (Calpine) Unit 5 on Page 106; Section 10.5, Christiana Energy Center (Calpine) on Page 111, Delaware City Energy Center (Calpine) on Page 113, Van Sant (City of Dover) on Page 116, and West Energy Center (Calpine) on Pages 118 and 119

³ See Delaware City Energy Center (Calpine) on Page 112 and West Energy Center (Calpine) Unit 10 on Page 117

If Delaware determines that no additional (i.e., new) measures are necessary to make reasonable progress, it must then determine whether existing measures are necessary to make reasonable progress. See section 4 (pages 8 – 12) of the Clarifications Memo for information on determining when a source's existing measures are necessary to make reasonable progress. Generally, a source's existing measures are needed to prevent future emission increases and are thus needed to make reasonable progress. If Delaware concludes that the existing controls at a selected source are necessary to make reasonable progress, Delaware must adopt emissions limits based on those controls as part of its long-term strategy for the second planning period and include those limits in its SIP (to the extent they do not already exist in the SIP).

Finally, the EPA wishes to emphasize the importance of building a strong administrative record. Improper or lacking evidence or justification has been an issue in prior litigation with other states' Regional Haze SIPs, and is likely to be an ongoing focus of interested stakeholders and commenters. Therefore, it is imperative that any conclusions in Regional Haze SIPs – and 4-factor analyses in particular – include adequate and proper justification that is evident in the administrative record.