

Governor Larry Hogan Announces State Lawsuit Against EPA

Written by Jay Apperson

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BALTIMORE (Sept. 27, 2017) – Governor Larry Hogan today directed Maryland Attorney General Brian Frosh to file suit against the U.S. Environmental Protection Agency (EPA) for its failure to act on a petition requiring power plants in five upwind states to reduce pollution that significantly affects the quality of the air that Marylanders breathe.

The petition, filed in November 2016 by the Maryland Department of the Environment (MDE) under Section 126 of the federal Clean Air Act, requests the EPA to require certain power plant units in the upwind states to run their air pollution controls to reduce emissions. The EPA's approval of the petition is critical to protecting the health of Marylanders and is important to a healthy Maryland economy. Ground-level ozone, or smog, has been one of Maryland's most pervasive and challenging air pollution problems. About 70 percent of Maryland's ozone problem originates from emissions in upwind states.

"Maryland has made significant progress in improving our air quality in recent years, and that progress is in jeopardy due to a lack of action by the EPA that dates back to the previous administration," said Governor Hogan. "We strongly urge the EPA to approve the petition and enforce the air pollution controls, already in place in Maryland, at upwind out-of-state facilities that threaten the health of Maryland citizens and our economy."

The filings of the petition and the related lawsuit come after decades of efforts by the Maryland Department of the Environment to influence the reduction in air pollution transported into Maryland from upwind states. MDE has pursued, and will continue to pursue, voluntary and collaborative efforts with partner states to ensure power plants upwind meet the same stringent standards that Maryland has implemented.

"The Maryland Department of the Environment has been working with upwind states to reduce smog that threatens our citizens, communities, and the Chesapeake Bay, but we now need the EPA to step in to ensure the good neighbor provisions of the federal Clean Air Act are fully realized," said Maryland Secretary of the Environment Ben Grumbles. "We're not asking for anything that we're not already doing in Maryland. This common-sense approach – running the pollution controls that are already installed but are not always being used in out-of-state power plants – is one of the smartest ways we can protect our citizens' lungs and level the playing field for businesses."

In January, the EPA issued itself a six-month extension to the original 60-day deadline to respond to the November 2016 petition, requiring EPA action by July 15

. That deadline expired with no EPA action on the petition. Maryland then notified the EPA of intention to file suit unless the federal regulatory agency took the required actions before the end of the applicable notice period. Maryland is to file suit in U.S. District Court for the District of Maryland under section 304 of the Clean Air Act.

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Research shows 36 out-of-state power plant units in Indiana, Kentucky, Ohio, Pennsylvania, and West Virginia emit pollution that contributes at times to poor air quality in Maryland, the petition states. Though Maryland has made dramatic progress on air quality in recent years, emissions from out-of-state sources could prevent Maryland from attaining and maintaining federal health-based air quality standards.

The comprehensive petition includes data showing the power plants have stopped running their pollution controls effectively. A requirement to run those controls throughout the summer “ozone season” is identical to what Maryland’s largest coal-fired power plants must do under regulations implemented in 2015 by the Hogan administration.

EPA approval of the petition is important to a healthy Maryland economy. In recent years, Maryland has been required to find deeper in-state emissions reductions to compensate for the pollution that comes from other states – placing a regulatory burden on Maryland’s business community, including small businesses.

EPA approval of the petition would also help in the multi-state restoration of the Chesapeake Bay. Up to a third of the nitrogen pollution in the Bay comes from air pollution.

Since taking office, Governor Hogan and the administration have taken substantial action to preserve and protect the environment. In 2015, Maryland adopted some of the country’s strictest regulations on nitrogen oxide pollution emitting from Maryland power plants. In 2016, Governor Hogan enacted the Greenhouse Gas Emissions Reduction Act, which implemented an aggressive new state goal for reducing carbon pollution and other greenhouse gases. Earlier this year, Governor Hogan announced that Maryland joined with the other eight states in the Regional Greenhouse Gas Initiative (RGGI), in agreeing to reduce the program’s carbon pollution cap by 30 percent from 2020 to 2030.