

ORAL ARGUMENT NOT YET SCHEDULED

Case No. 18-1285 (and consolidated cases)

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF MARYLAND,*Petitioner,*

v.

ENVIRONMENTAL PROTECTION AGENCY, *ET AL.*,*Respondents.*

ON PETITION FOR REVIEW OF FINAL ACTION BY THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
83 Fed. Reg. 50,444 (Oct. 5, 2018)

OPENING PROOF BRIEF FOR CITIZEN PETITIONERS

Ariel Solaski
Jon A. Mueller
Chesapeake Bay Foundation, Inc.
6 Herndon Ave.
Annapolis, MD 21403
(443) 482-2171
asolaski@cbf.org
jmueller@cbf.org

*Counsel for Chesapeake Bay
Foundation, Inc.*

Joshua Berman
Sierra Club
50 F Street NW, 8th Floor
Washington, DC 20001
(202) 650-6062
josh.berman@sierraclub.org

Counsel for Sierra Club

DATED: March 29, 2019

(additional counsel on next page)

Graham McCahan
Environmental Defense Fund
2060 Broadway, Suite 300
Boulder, CO 80302
(303) 447-7228
gmccahan@edf.org

Leah Kelly
Environmental Integrity Project
1000 Vermont Ave. NW, Suite 1100
Washington, DC 20005
(202) 263-4448
lkelly@environmentalintegrity.org

Sean H. Donahue
Susannah L. Weaver
Donahue, Goldberg & Weaver, LLP
1008 Pennsylvania Ave. SE
Washington, DC 20003
(202) 277-7085
sean@donahuegoldberg.com
susannah@donahuegoldberg.com

*Counsel for Environmental Integrity
Project and Chesapeake Climate
Action Network*

*Counsel for Environmental Defense
Fund*

Sean H. Donahue
Susannah L. Weaver
Donahue, Goldberg & Weaver, LLP
1008 Pennsylvania Ave. SE
Washington, DC 20003
(202) 277-7085
sean@donahuegoldberg.com
susannah@donahuegoldberg.com

Ann Brewster Weeks
Clean Air Task Force
114 State Street, 6th Floor
Boston, MA 02109
(617) 359-4077
aweeks@catf.us

Counsel for Clean Air Council

Counsel for Adirondack Council

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1), and updating the certificate filed November 19, 2018 (Doc. No. 1760681), the undersigned counsel of record certifies as follows:

A. PartiesPetitioners

The following parties appear as petitioners: State of Maryland, State of Delaware, Chesapeake Bay Foundation, Inc., Adirondack Council, Chesapeake Climate Action Network, Clean Air Council, Environmental Defense Fund, Environmental Integrity Project, and Sierra Club.

Petitioner Physicians for Social Responsibility, Chesapeake, Inc. filed a Motion to Withdraw as Petitioner on March 22, 2019 (Doc. No. 1778913). As of the date of this filing, the Court has not ruled on the Motion to Withdraw.

Respondents

The following parties appear as respondents: United States Environmental Protection Agency and Andrew Wheeler, in his official capacity as Administrator of the United States Environmental Protection Agency (together, EPA).

Intervenors

The following parties have been permitted to intervene in support of petitioners: State of New Jersey, State of New York, and City of New York (Doc. No. 1763115).

The following parties have been permitted to intervene in support of respondents: Utility Air Regulatory Group, Duke Energy Indiana, LLC, and Duke Energy Kentucky, Inc. (Doc. No. 1763115).

B. Ruling Under Review

Citizen Petitioners seek review of the final agency action by EPA as published in the Federal Register and titled: “Response to Clean Air Act Section 126(b) Petitions from Delaware and Maryland.” 83 Fed. Reg. 50,444 (Oct. 5, 2018).

C. Related Cases

The final agency action at issue in this proceeding has not been previously reviewed in this or any other court. There are no related cases (other than those consolidated herein: Case Nos. 18-1285 and 18-1301) within the meaning of D.C. Circuit Rule 28(a)(1)(C).

/s/ Ariel Solaski

Ariel Solaski

Chesapeake Bay Foundation, Inc.

6 Herndon Ave.

Annapolis, MD 21403

(443) 482-2171

asolaski@cbf.org

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and D.C. Circuit Rule 26.1, petitioners Chesapeake Bay Foundation, Inc., Adirondack Council, Chesapeake Climate Action Network, Clean Air Council, Environmental Defense Fund, Environmental Integrity Project, and Sierra Club (collectively, Citizen Petitioners) make the following disclosures:

Chesapeake Bay Foundation, Inc.

Chesapeake Bay Foundation is a non-profit corporation organized under the laws of the State of Maryland. The Chesapeake Bay Foundation is dedicated to protecting the Chesapeake Bay and its tributary rivers and streams by improving water quality and reducing pollution.

The Chesapeake Bay Foundation does not have any parent corporations, and no publicly held corporation has a ten percent or greater ownership interest in the Chesapeake Bay Foundation.

Adirondack Council

Adirondack Council is a non-profit corporation organized under the laws of the State of New York. Adirondack Council is dedicated to ensuring ecological integrity and wild character of New York's six-million-acre Adirondack Park.

Adirondack Council does not have any parent corporations, and no publicly held corporation has a ten percent or greater ownership interest in the Adirondack Council.

Chesapeake Climate Action Network

Chesapeake Climate Action Network is a grassroots non-profit organization dedicated to raising awareness about the health and environmental impacts of global warming and promoting the transition to clean energy generation in the mid-Atlantic region.

Chesapeake Climate Action Network does not have any parent corporations, and no publicly held corporation has a ten percent or greater ownership interest in the Chesapeake Climate Action Network.

Clean Air Council

Clean Air Council is a non-profit environmental organization, organized under the laws of the Commonwealth of Pennsylvania. Clean Air Council's mission is to protect and defend everyone's right to breathe clean air.

Clean Air Council does not have any parent corporations, and no publicly held corporation has a ten percent or greater ownership interest in the Clean Air Council.

Environmental Defense Fund

Environmental Defense Fund is a national non-profit organization, organized under the laws of the State of New York, that links science, economics, and law to create innovative, equitable, and cost-effective solutions to urgent environmental problems.

Environmental Defense Fund does not have any parent corporations, and no publicly held corporation has a ten percent or greater ownership interest in the Environmental Defense Fund.

Environmental Integrity Project

Environmental Integrity Project is a national non-profit corporation dedicated to ensuring the effective enforcement of state and federal environmental laws in order to protect public health and the environment, with a specific focus on the Clean Air Act and large stationary sources of pollution, like coal-fired power plants.

Environmental Integrity Project does not have any parent corporations, and no publicly held corporation has a ten percent or greater ownership interest in the Environmental Integrity Project.

Sierra Club

Sierra Club is a non-profit corporation organized under the laws of the State of California. Sierra Club's mission is to explore, enjoy, and protect the wild places of the Earth; to practice and promote the responsible use of the Earth's resources and ecosystems; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives.

Sierra Club does not have any parent corporations, and no publicly held corporation has a ten percent or greater ownership interest in Sierra Club.

TABLE OF CONTENTS

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES	i
A. Parties	i
B. Ruling Under Review	ii
C. Related Cases	ii
CORPORATE DISCLOSURE STATEMENT.....	iii
TABLE OF CONTENTS.....	vii
TABLE OF AUTHORITIES.....	ix
GLOSSARY.....	xi
JURISDICTIONAL STATEMENT.....	1
ISSUES PRESENTED.....	1
STATUTES AND REGULATIONS.....	2
STATEMENT OF THE CASE.....	2
1. Factual Background.....	3
A. Impacts of Ground-Level Ozone on Human Health.....	3
B. Impacts of Ozone and Precursor Nitrogen Oxides on Ecosystems and Water Quality.....	4
STANDARD OF REVIEW.....	5
SUMMARY OF THE ARGUMENT.....	5
STANDING.....	7
ARGUMENT.....	9
I The Court Should Vacate EPA's Unlawful and Arbitrary Denial of Delaware's Ability to Seek Relief Through Section 126(b) under the 2015 Ozone Standard.....	9

II.	EPA's Rejection of the Maryland and Delaware Petitions on the Basis that No Cost-Effective Emission Reductions are Available at the Petition Units is Unlawful and Arbitrary.....	15
III.	EPA's Denial of the Section 126(b) Petitions is Arbitrary and Unlawful in Light of the Larger Pattern of EPA's Persistent Delays and Denials in Implementing and Enforcing the Good Neighbor Provision and Regulating the Interstate Transport of Ozone Pollution.....	21
	CONCLUSION.....	24
	CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT.....	27
	CERTIFICATE OF SERVICE.....	28

TABLE OF AUTHORITIES

CASES	Page(s)
<i>Am. Lung Ass’n v. EPA</i> , Case No. 17-1172, 2019 U.S. App. LEXIS 34 * (D.C. Cir. Jan. 2, 2019).....	14
<i>Appalachian Power Co. v. EPA</i> , 249 F.3d 1032 (D.C. Cir. 2001).....	10
<i>Friends of the Earth v. Laidlaw Envtl. Servs., Inc.</i> , 528 U.S. 167 (2000).....	7
<i>GenOn REMA v. EPA</i> , 722 F.3d 513 (3d Cir. 2013).....	11, 22
<i>Hunt v. Wash. State Apple Adver. Comm’n</i> , 432 U.S. 333 (1977).....	7
<i>In re Ozone Designation Litig.</i> , 286 F. Supp. 3d 1082 (N.D. Cal. 2018).....	14
<i>Lujan v. Defenders of Wildlife</i> , 504 U.S. 555 (1992).....	7, 9
<i>New York v. Pruitt</i> , Case No. 18-cv-00406-JGK, 2018 U.S. Dist. LEXIS 99240 * (S.D.N.Y. June 12, 2018).....	23
<i>North Carolina v. EPA</i> , 531 F.3d 896 (D.C. Cir. 2008).....	11–13, 22
<i>Sierra Club v. Pruitt</i> , Case No. 15-cv-04328, 2017 U.S. Dist. LEXIS 79133 * (N.D. Cal. May 23, 2017).....	23
<i>State of Maryland v. Pruitt</i> , 320 F. Supp. 3d 722 (D. Md. 2018).....	23
<i>State of New York, et al. v. EPA</i> , Case No. 17-1273 (D.C. Cir. filed Dec. 26, 2017).....	23

STATUTES

42 U.S.C. § 7410(a)(2)(D)(i).....	10
42 U.S.C. § 7410(a)(2)(D)(i)(I).....	10, 21
42 U.S.C. § 7426(b).....	10, 21
42 U.S.C. § 7506a(a)(1).....	22
42 U.S.C. § 7511(a).....	12
42 U.S.C. § 7511(a)(1).....	22
42 U.S.C. § 7511a	21
42 U.S.C. § 7511c(a).....	21
42 U.S.C. § 7511c(b).....	21
42 U.S.C. § 7607(b).....	1

FEDERAL REGISTER (“Fed. Reg.”)

76 Fed. Reg. 19,662 (Apr. 7, 2011).....	11
76 Fed. Reg. 69,052 (Nov. 7, 2011).....	11
78 Fed. Reg. 47,191 (Aug. 5, 2013).....	11
80 Fed. Reg. 65,292 (Oct. 26, 2015).....	3
82 Fed. Reg. 51,238 (Nov. 3, 2017).....	22
83 Fed. Reg. 26,666 (June 8, 2018).....	12
83 Fed. Reg. 42,986 (Aug. 24, 2018).....	15
83 Fed. Reg. 50,444 (Oct. 5, 2018).....	1, 10–18, 20, 23

MISCELLANEOUS AUTHORITIES

Chesapeake Bay Total Maximum Daily Load for Nitrogen, Phosphorus, and Sediment (Dec. 2010).....	4
--	---

GLOSSARY

Act	Clean Air Act
EPA	United States Environmental Protection Agency
Good Neighbor Provision	42 U.S.C. § 7410(a)(2)(D)(i)(I)
JA	Joint Appendix
lb/MMBtu	Pounds of air pollution emitted when burning one million British Thermal Units' worth of fuel
ppb	Parts per billion

JURISDICTIONAL STATEMENT

Pursuant to Fed. R. App. P. 28(i), Citizen Petitioners hereby adopt the Jurisdictional Statement in the State of Maryland's Brief at 2, and supplement it as follows: Citizen Petitioners petitioned for review of EPA's final action, 83 Fed. Reg. 50,444 (Oct. 5, 2018), on October 19, 2018, within the 60-day period provided by 42 U.S.C. § 7607(b)(1).¹

ISSUES PRESENTED

1. Whether EPA's reliance on projected ozone levels in 2023, well beyond Delaware's attainment date for the 2015 ozone air quality standard, to deny Delaware's Section 126(b) petitions is contrary to the Clean Air Act, precluded by D.C. Circuit precedent, and arbitrary and capricious where Delaware continues to fail to attain the 2015 ozone standard.

2. Where Maryland and Delaware are both failing to attain or maintain applicable ozone air quality standards and where electric generating units identified in Maryland's and Delaware's Section 126(b) petitions are failing to

¹ Citizen Petitioners' petition for review included the three Delaware petitions for the following sources: Conemaugh Generating Station, Homer City Generating Station, and Harrison Power Station. Arguments and references herein to Delaware's petitions refer only to these three petitions. Due to their focus on the State of Maryland, Petitioners Environmental Integrity Project and Chesapeake Climate Action Network seek review only of EPA's denial of Maryland's petition.

achieve emission reductions consistent with optimization of already installed pollution controls, whether it is arbitrary, capricious, and contrary to the Clean Air Act for EPA to conclude, based on the Cross-State Air Pollution Rule Update, that all cost-effective control strategies and emission reductions at these units have already been implemented and achieved.

3. Whether EPA's denial of the Section 126(b) petitions is arbitrary and unlawful in light of the larger pattern of EPA's persistent delays and denials in implementing and enforcing the Good Neighbor Provision and regulating the interstate transport of ozone pollution.

STATUTES AND REGULATIONS

All applicable statutory provisions are contained in the Addendum accompanying the Brief for Petitioner State of Maryland.

STATEMENT OF THE CASE

Pursuant to Fed. R. App. P. 28(i), Citizen Petitioners hereby adopt the Statement of the Case in the State of Maryland's Brief and Section I of the Statement of the Case in the State of Delaware's Brief, supplemented as follows:

I. Factual Background

A. Impacts of Ground-Level Ozone on Human Health

Ground-level ozone, or smog, forms when the ozone precursor pollutants volatile organic compounds and nitrogen oxides react together in the presence of sunlight. Exposure to ozone causes real and significant harm to human health as it impairs lung function, aggravates asthma, increases the risk of heart attacks and other cardiovascular conditions, and is linked to premature mortality. *See* 80 Fed. Reg. 65,292, 65,302-11 (Oct. 26, 2015).

Ozone is a noxious gas that eats away at solid materials, therefore “it comes as no surprise that ozone can also have serious adverse health effects on the more vulnerable human lung.” Chesapeake Bay Foundation, *et al.* Comments (EPA-HQ-OAR-2018-0295-0080) at 4 (July 23, 2018) [hereinafter “Citizen Comments”], JA ___. Exposure has been likened to “getting a sunburn on your lungs.” *Id.* Ozone pollution disproportionately harms those with pre-existing respiratory diseases, children, the elderly, and outdoor workers. *See* 80 Fed. Reg. 65,310-11.

Ozone pollution imposes high health and economic costs on states downwind from pollution sources. Citizen Comments included an expert report from Dr. George Thurston using EPA’s Environmental Benefits Mapping and Analysis Program model. Citizen Cmts., Attach. A, JA ___. Dr. Thurston’s analysis quantified the numbers, and dollar valuation, of negative health outcomes that

could have been avoided if the 36 electric generating units identified in Maryland's 126(b) petition had fully optimized their pollution controls throughout the ozone season. *Id.* at 13, JA ___. Taking account of hospital admissions, asthma events, school loss days, and mortalities, the analysis found that the health impacts that could be avoided in Washington, D.C., Northern Virginia, Maryland, and Delaware would have a combined valuation of over \$750 million per year. *Id.* at 13-14. EPA's denial of Maryland's and Delaware's 126(b) petitions ignores the actual health harms suffered by citizens in downwind states.

B. Impacts of Ozone and Precursor Nitrogen Oxides on Ecosystems and Water Quality

Ozone and its precursor pollutants also damage natural resources, including plants, trees, and aquatic systems. Citizen Cmts. at 6, JA ___. Nitrogen oxides transform and fall to the Earth's surface in a process called nitrogen deposition, causing serious ecological harm, particularly in aquatic systems. Excess nitrogen in surface waters can cause harmful algal blooms and dead zones where fish and other aquatic species cannot survive. *Id.*

Nitrogen deposition from power plants poses a significant threat to the EPA-established federal-state partnership to restore the Chesapeake Bay. *See* Chesapeake Bay Total Maximum Daily Load for Nitrogen, Phosphorus, and Sediment (Dec. 2010), *available at* <https://www.epa.gov/chesapeake-bay-tmdl/chesapeake-bay-tmdl-document>. Atmospheric deposition contributes about

one-third of the total nitrogen loads to the Bay. *Id.* at 4-33. Air modeling shows that in 2016, nitrogen oxides emitted by just three of the power plants identified in the petitions contributed 2.6 million pounds of nitrogen to the land, tributary streams, and rivers within the Chesapeake Bay watershed, and 57,600 pounds of nitrogen directly into the Chesapeake Bay. Citizen Cmts. at 8, JA ___. EPA's denial of the 126(b) petitions ignores the significant environmental harm these upwind emissions pose to environmental resources downwind.

STANDARD OF REVIEW

Pursuant to Fed. R. App. P. 28(i), Citizen Petitioners hereby adopt the Standard of Review in the State of Maryland's Brief at 16.

SUMMARY OF THE ARGUMENT

EPA denied Section 126(b) petitions submitted by Maryland and Delaware based on the Agency's projection that Delaware will meet all applicable air quality standards in 2023 and its conclusion that, based on its implementation of the Cross-State Air Pollution Rule Update (Cross-State Update), no additional cost-effective emission reductions are achievable from the units identified in the petitions. Both bases are arbitrary and unlawful.

EPA's reliance on modeled 2023 air quality to deny Delaware's 126(b) petitions under the 2015 ozone standard is precluded by the plain language of the Clean Air Act and controlling D.C. Circuit precedent. EPA must consider

Delaware's present nonattainment, which is the best evidence of Delaware's ongoing inability to meet the 2015 standard; and in no event can it look beyond Delaware's relevant 2021 attainment date to deny Delaware relief.

EPA's conclusion that additional cost-effective emission reductions are unachievable from the units identified in the Section 126(b) petitions is belied by the actual recent emissions data from those units, which show that numerous units continue to emit nitrogen oxides at rates that exceed both their demonstrated actual past performance and EPA's generic assumptions regarding optimized performance. EPA's observation that the Cross-State Update has resulted in pollution reductions at *other* units has no bearing on an evaluation of the Maryland and Delaware petitions because EPA nowhere claims these emission reductions resolve attainment and maintenance issues in Maryland and Delaware by their applicable attainment dates. Allowing EPA to rely on emission reductions occurring at other units as a basis to deny the 126(b) petitions in this situation would fatally undermine Section 126(b) as an independent tool for downwind states to obtain relief from upwind pollution.

EPA's denial of the 126(b) petitions is just the most recent move in the Agency's ozone transport shell game, in which it repeatedly justifies denials by pointing to separate regulations—which EPA later delays and denies—thus

foreclosing downwind states' ability to obtain relief from out-of-state ozone pollution using any of the statutory tools provided by the Act.

STANDING

Citizen Petitioners meet applicable standing requirements. Article III requires petitioners to establish: (1) injury-in-fact, (2) causation, and (3) redressability. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559–61 (1992). An organization has associational standing when one or more of its members would independently have standing, the interests the lawsuit seeks to protect are germane to the organization's purpose, and the litigation does not require participation of individual members. *Friends of the Earth v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 181 (2000) (citing *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977)).

Citizen Petitioners are public interest, non-profit environmental and health organizations representing members across the country, including areas harmed by ground-level ozone pollution and the excess emissions from the sources identified in the Section 126(b) petitions. Declaration of Huda Fashho ¶ 6; Declaration of Lisa Feldt ¶ 4; Declaration of Mark Kresowik ¶ 4; Declaration of John Stith ¶¶ 3, 9; Declaration of Michael Tidwell ¶¶ 3, 9–10; Declaration of Joseph O. Minott ¶¶ 3, 6; attached as Addendum to Citizen Petitioners' Opening Brief. Citizen Petitioners have devoted significant organizational resources to understanding air

pollution and its consequences and advocating policies to abate it, Feldt Decl. ¶¶ 13–18; Kresowik Decl. ¶¶ 7, 8; Declaration of Eric Schaeffer ¶¶ 5–8; Stith Decl. ¶¶ 5, 7; Tidwell Decl. ¶¶ 4–8; Minott Decl. ¶ 4, and expend resources on restoration and conservation projects to improve air and water quality. Feldt Decl. ¶¶ 6, 7.

EPA’s denial of Maryland’s and Delaware’s Section 126(b) petitions has caused and will continue to cause concrete, particularized harm to Citizen Petitioners’ members. These members enjoy recreating outdoors, or must be outdoors for work or community events, and are concerned about their own exposure to air pollution. Declaration of Elizabeth Brandt ¶¶ 9, 12; Declaration of Christina Browning ¶¶ 4, 9; Declaration of Barbara Einzig ¶ 7; Declaration of James Alfred Tyler Frakes ¶¶ 3, 5; Declaration of Rodette Jones ¶¶ 4, 11; Declaration of Nicholas Zuwiala-Rogers ¶ 3; Declaration of Sharman Stephenson ¶¶ 2, 5; Declaration of William Temmink ¶¶ 6, 9. Many members suffer from respiratory illnesses and as a result cannot be outside when air quality is poor, without suffering adverse symptoms. Browning Decl. ¶¶ 5, 7; Einzig Decl. ¶¶ 4–8; Frakes Decl. ¶¶ 4, 5; Jones Decl. ¶ 5; Zuwiala-Rogers Decl. ¶ 4; Stephenson Decl. ¶¶ 4, 6; Temmink Decl. ¶ 6. These members miss work and incur medical expenses to seek treatment, limiting their earning potential and affecting their overall economic security. Browning Decl. ¶ 7; Einzig Decl. ¶ 9; Jones Decl. ¶ 5. Other members refrain from going outdoors when air quality is poor to limit their

exposure to harmful pollution. Brandt Decl. ¶ 12; Stephenson Decl. ¶ 6; Temmink Decl. ¶ 6. *See Friends of the Earth*, 528 U.S. at 184–85 (recognizing reasonable fear of harm from pollution as an injury in fact). Citizen Petitioners seek to protect interests that are germane to their purpose, and neither the claims asserted, nor the relief requested requires individual members’ participating in the lawsuit. *Hunt*, 432 U.S. at 343.

EPA’s decision harms Citizen Petitioners and their members, and a reversal would redress their injuries. *Lujan*, 504 U.S. at 560–61.

ARGUMENT

I. The Court Should Vacate EPA’s Unlawful and Arbitrary Denial of Delaware’s Ability to Seek Relief Through Section 126(b) under the 2015 Ozone Standard

In denying Delaware’s 126(b) petitions under the 2015 ozone standard,² EPA ignored Delaware’s present nonattainment of this standard in favor of arbitrary speculation that Delaware will attain this standard in 2023, two years beyond its current attainment date. This approach is contrary to the plain language of the Clean Air Act and controlling case law. EPA’s shifting rationales for

² EPA denied Delaware’s petitions under the 2015 ozone standard at the first step of its four-step transport framework. 83 Fed. Reg. at 50,458-63; *see also id.* at 50,449-50 (describing framework).

choosing this date and ignoring Delaware's current nonattainment and relevant attainment date are unavailing.

The Court should enforce the plain language of Section 126(b) and reject EPA's proposed reliance on 2023 modeled air quality as a basis for denying Delaware relief. Section 126(b) authorizes a state to petition EPA to make a finding where a source "*emits* or would emit" in violation of Section 110(a)(2)(D)(i).³ 42 U.S.C. § 7426(b) (emphasis added). That cross-referenced provision, commonly called the "Good Neighbor Provision," requires state implementation plans to contain provisions "prohibiting . . . any source . . . within the State from emitting any air pollutant in amounts which will . . . contribute significantly to nonattainment in, or interfere with maintenance by, any other State" with respect to an air quality standard. 42 U.S.C. § 7410(a)(2)(D)(i)(I). Despite the statute's use of the present tense—"emits"—in Section 126(b), EPA latches onto the word "will" in section 110(a)(2)(D)(i) to claim that it can evaluate impacts to Delaware in 2023, the year immediately preceding what EPA incorrectly claims is "the relevant 2024 attainment date" for Delaware. 83 Fed. Reg. at 50,459. This approach has multiple fatal defects.

³ The cross-reference, which reads "110(a)(2)(D)(ii)," is a scrivener's error and should be "110(a)(2)(D)(i)." *See Appalachian Power Co. v. EPA*, 249 F.3d 1032, 1040-44 (D.C. Cir. 2001).

First, EPA's proposed approach, which ignores current nonattainment in favor of hypothesized attainment in a future year, is directly inconsistent with the present tense language of Section 126(b), and would effectively eliminate the word "emits" from that section of the Act. *See North Carolina v. EPA*, 531 F.3d 896, 910 (D.C. Cir. 2008) ("All the policy reasons in the world cannot justify reading a substantive provision out of a statute.").

EPA itself has previously recognized that upwind contributions to *current* nonattainment in downwind states are susceptible to relief through Section 126(b). EPA granted New Jersey's 126(b) petition regarding the Portland Generating Station in Pennsylvania based on significant *current* pollution contributions despite not even having promulgated any designations under the relevant 2010 sulfur dioxide air quality standard (meaning that there necessarily was no relevant attainment date for the downwind area). *See* 76 Fed. Reg. 19,662 (Apr. 7, 2011) (proposed response); 76 Fed. Reg. 69,052 (Nov. 7, 2011) (final response); 78 Fed. Reg. 47,191 (Aug. 5, 2013) (promulgating first designations under 2010 sulfur dioxide air quality standard for a limited number of areas); *see also GenOn REMA v. EPA*, 722 F.3d 513, 520–22 (3d Cir. 2013) (affirming EPA's timing for addressing New Jersey's Section 126(b) petition).

Second, even if EPA were somehow authorized to ignore the plain, present-tense language of Section 126(b) and look to a future attainment date, 2024 is *not*

the relevant attainment date for Delaware, which EPA elsewhere acknowledges is August 2, 2021. 83 Fed. Reg. at 50,461. EPA's rationale for relying on air quality projections in 2023 has been a moving target, but in every variation unlawful. In its proposed denial, EPA claimed that it could rely on air quality modeling for 2023 because it was only obligated to use modeled air quality concentrations "for a year that *considers* the relevant attainment deadlines for the [air quality standard]." 83 Fed. Reg. 26,666, 26,676 (June 8, 2018) (emphasis added). As commenters pointed out, Citizen Cmts. at 10–11, this approach is flatly precluded by *North Carolina*, 531 F.3d at 911-12. In its final denial, EPA offers a different and even more tortured interpretation of the Good Neighbor Provision. EPA now claims that it can rely on air quality modeling for 2023 because 2023 is the final ozone season before 2024, which would be Delaware's attainment date if Delaware, which is classified as "Marginal" nonattainment,⁴ failed to attain the 2015 ozone standard by its actual 2021 attainment date and then were immediately bumped up by EPA to a higher classification of nonattainment, thereby establishing a new nonattainment date. *See* 83 Fed. Reg. at 50,461. This novel attempt to avoid the *North Carolina* holding also fails.

⁴ For ozone, unlike other criteria air pollutants, the Act establishes classifications of nonattainment (Marginal, Moderate, Serious, Severe), with areas in more severe nonattainment having more time to attain the standard. *See* 42 U.S.C. § 7511(a).

As an initial matter, 2024 could only become an attainment date for Delaware if the state failed to attain by its current 2021 deadline. But if Delaware is not on track to attain by 2021, EPA has no basis for denying Delaware's petitions at the first step of its analysis.

This Court should decline EPA's invitation to render meaningless attainment dates for Marginal nonattainment areas. In *North Carolina*, this Court remanded EPA's Clean Air Interstate Rule—an earlier regulation addressing transported ozone—in part because “EPA did not make any effort to harmonize [the Clean Air Interstate Rule's] . . . deadline for upwind contributors to eliminate their significant contribution with the attainment deadlines for downwind areas.” 531 F.3d at 912. The Court based this conclusion on the section 110(a)(2)(D) requirement that implementing provisions be consistent with Title I of the Act, finding that a plan must be consistent with both the substance and procedural requirements of air quality standard compliance. *Id.* EPA's position that it may ignore applicable attainment dates in favor of future dates that could theoretically *become* attainment dates if a series of uncertain events occurs is untenable and directly contrary to *North Carolina's* holding that the Act requires EPA to take seriously the urgent need to attain health-based air quality standards (and the real-world health harms caused by failing to do so).

EPA also contends that, even though Delaware established that it was not attaining the 2015 standard at the time it filed its 126(b) petitions, and continued to be out of attainment of the 2015 standard through the time the agency belatedly acted on the petitions, Delaware had an obligation to demonstrate that it would remain in nonattainment through its 2021 attainment date. 83 Fed. Reg. at 50,461. But EPA acknowledges that there are no data available for years between 2017 and 2023 that could support such a demonstration, making EPA's request essentially impossible to meet. *See* 83 Fed. Reg. at 50,461. And even if Delaware had the capacity to obtain those data and undertake the relevant modeling, it could not have known with certainty what its attainment date would be when it filed the 126(b) petitions. Indeed, EPA missed *its* statutory deadline to designate all nonattaining areas under the 2015 ozone standard and only promulgated those designations after being sued (twice) by states and environmental groups, resulting in an attainment date of 2021 rather than 2020.⁵ EPA should not be able to benefit from its pattern of unlawful delay.

As a last resort, EPA claims that its 2023 modeling is better evidence of Delaware's 2021 ozone attainment than current ozone levels. 83 Fed. Reg. at 50,461. This is arbitrary. As set forth in Delaware's brief at section I.B.ii, monitor

⁵ *Am. Lung Ass'n v. EPA*, Case No. 17-1172, 2019 U.S. App. LEXIS 34 * (D.C. Cir. Jan. 2, 2019); *In re Ozone Designation Litig.*, 286 F. Supp. 3d 1082 (N.D. Cal. 2018).

data post-dating implementation of the Cross-State Update, the rule that EPA's rationale rests upon, do *not* show Delaware monitors uniformly attaining the 2015 standard. Moreover, EPA's 2023 modeling is deeply flawed, failing, for example, to account for any of the current EPA efforts to weaken or roll back rules providing significant ozone benefits to East Coast states (*e.g.*, EPA's proposal to dramatically roll back federal vehicle emission standards and strip states of existing authority to enforce more stringent standards, 83 Fed. Reg. 42,986 (Aug. 24, 2018)). *See* Citizen Cmts. at 11–13, JA ____.

The Court should give effect to Section 126(b)'s present tense language as written and vacate EPA's arbitrary denial of Delaware's petitions at the initial step in light of Delaware's ongoing nonattainment under the 2015 ozone standard.

II. EPA's Rejection of the Maryland and Delaware Petitions on the Basis that No Cost-Effective Emission Reductions are Available at the Petition Units is Unlawful and Arbitrary

Although EPA has backpedaled from its proposed finding that Maryland's petition was technically deficient, 83 Fed. Reg. at 50,457, EPA nevertheless denied Maryland's petition and independently denied Delaware's petitions on the basis that, following implementation of the Cross-State Update, no cost-effective emission reductions remain at the units targeted by the Section 126(b) petitions.⁶ EPA's denial, however, rests on a flawed proposition. EPA insists that, because its

⁶ Step 3 of EPA's four-step transport framework. *See supra* note 2.

Cross-State Update was based on a control strategy approximating optimization of generic Selective Catalytic Reduction controls across the coal fleet equipped with these controls, all cost-effective emission reductions from optimizing these controls at the Petition Units⁷ must have already occurred. *See* 83 Fed. Reg. at 50,464-65. This is false.

As the 2017 ozone season emission data from the Petition Units plainly demonstrate, the Cross-State Update did not, in fact, result in all those units optimizing operation of their installed controls, whether measured against their demonstrated past performance or EPA's generic optimized control performance rate.

EPA claims that the Cross-State Update is "generally achieving" the emission reductions Maryland's petition seeks, 83 Fed. Reg. at 50,465, pointing to the fact that the units identified in Maryland's petition, on average in the 2017 ozone season, when the Cross-State Update was in effect, emitted nitrogen oxides at a rate of 0.115 lb/MMBtu. 83 Fed. Reg. at 50,465. But this collective emission rate exceeds EPA's generic emission rate for optimized Selective Catalytic Reduction control performance (0.10 lb/MMBtu) by 15 percent.

⁷ "Petition Units" is used herein to denote the 34 units identified in Maryland's and Delaware's Section 126(b) petitions that are equipped with Selective Catalytic Reduction controls. This is all of the units except those at Grant Town and Cambria Cogen, which are equipped with Selective Non-Catalytic Reduction controls.

Moreover, EPA's analysis understates the actual underperformance of the Petition Units in several ways. First, by aggregating the emission rate data across all of the Petition Units, EPA obscures the significant underperformance of a number of the individual units. As summarized in the table below, which was submitted by Citizen Commenters, JA___, 13 of the 34 Petition Units emitted at rates higher than EPA's generic optimized control rate of 0.10 lb/MMBtu and seven of those units emitted at rates at least 50 percent higher than a generic optimized Selective Catalytic Reduction control. Second, when the Petition Units' 2017 ozone season performance is compared to their respective *actual* capabilities, the deficiency is even greater, with 17 of the 34 Petition Units emitting at levels more than 25 percent greater than their best demonstrated ozone season performance. *See* Table, *infra*, p. 19. EPA's disregard for unit-specific capabilities is arbitrary and capricious. Citizen Comments provided technical analysis by Dr. Ranajit Sahu and empirical evidence confirming that numerous unit-specific attributes about the boiler and Selective Catalytic Reduction device significantly affect control efficiency, and units equipped with Selective Catalytic Reduction controls are fully capable of regaining best historic performance. Citizen Cmts. at 16–18 and Attach. C (Sahu), JA___. EPA offered no unit-specific rebuttal, but instead relied on the generality that “the average capacity factor of the coal fleet has declined,” EPA Resp. to Cmts. at 57, JA___, entirely failing to examine whether

the capacity factors of *the units at issue in Maryland's petition* have declined or account for the numerous units that during the 2017 ozone season managed to regain or even exceed best historic performance. Citizen Cmts. at 16–18, JA__.

When compared either to EPA's generic control rate for Selective Catalytic Reduction or to actual past performance, it is clear that cost-effective⁸ emission reductions remain at many of the Petition Units.

⁸ Although EPA in its final denial declined to specify a dollar-per-ton threshold for cost-effectiveness, in the Cross-State Update EPA previously found optimization of Selective Catalytic Reduction controls to achieve a rate of 0.10 lb/MMBtu to be cost-effective at a cost threshold of \$1,400/ton of nitrogen oxide reduced. *See* 83 Fed. Reg. at 50,445 n.3.

Table: Nitrogen Oxide Emission Rate Data for Underperforming Petition Units

Facility Name	Unit ID	State	Maximum actual 30-day average NOx rate from best historic ozone season (lb/MMBtu) ⁹	Actual 2017 ozone season average emission rate for nitrogen oxides rate (lb/MMBtu) ¹⁰	Percent 2017 rate is above past actual rate
Gibson	5	IN	0.084	0.146	74%
East Bend	2	KY	0.067	0.107	60%
Paradise	3	KY	0.120	0.223	86%
Killen	3	OH	0.120	0.264	120%
W.H. Zimmer	1	OH	0.094	0.193	105%
Cheswick	1	PA	0.097	0.156	61%
Homer City	1	PA	0.072	0.176	144%
Homer City	2	PA	0.093	0.179	92%
Homer City	3	PA	0.105	0.115	10%
Montour	1	PA	0.100	0.144	44%
Montour	2	PA	0.088	0.153	74%
Harrison	1	WV	0.066	0.105	59%
Pleasants	2	WV	0.045	0.132	193%

(From Citizen Cmts. at 19)

⁹ This is the emission rate that Maryland requested that EPA impose on the Petition Units. As described in Appendix A to Maryland's 126(b) Petition, it represents the highest actual 30-day rolling average nitrogen oxide emissions from a unit during the ozone season when it did the best job optimizing performance of its installed Selective Catalytic Reduction control.

¹⁰ EPA, 2011-2017 NOx Emission Rates from Petition Units, JA __.

EPA attempts to deflect concerns about underperformance at the Petition Units by asserting that additional emission reductions are occurring at other *non*-Petition Units. 83 Fed. Reg. at 50,466. This effort is misplaced and would fatally undercut Section 126(b) as an independent remedy for downwind states. To be clear, the Cross-State Update that EPA relies upon was not calibrated to fully resolve Good Neighbor obligations under the 2008 ozone standard and EPA nowhere in this record claims it does.¹¹ Indeed, EPA does not dispute that Maryland continues to have a maintenance monitor for the 2008 standard linked to emissions from states in which the petition sources are located. 83 Fed. Reg. at 50,463. EPA nevertheless points to emission reductions occurring at non-Petition Units to demonstrate that no additional cost-effective emission reductions are available at the *Petition* Units. *See* 83 Fed. Reg. at 50,468. This is irrational. Having conceded there is a nonattainment or maintenance issue linked to the upwind state, EPA cannot ignore cost-effective emission reductions at Petition Units because other non-Petition Units have reduced their emissions in some measure that does not fully resolve downwind attainment and maintenance. Section 126(b) loses any independent function if EPA, in this situation, can claim that

¹¹ EPA acknowledges that the Cross-State Update was based around control strategies that could be implemented quickly and inexpensively, 83 Fed. Reg. at 50,464, and described most of the state budgets as a “partial remedy” for interstate ozone transport under the 2008 ozone standard.

admittedly insufficient emission reductions occurring at non-Petition Units alleviate its responsibility to ensure that all cost-effective emission reductions are also occurring at the Petition Units.

III. EPA's Denial of the Section 126(b) Petitions is Arbitrary and Unlawful in Light of the Larger Pattern of EPA's Persistent Delays and Denials in Implementing and Enforcing the Good Neighbor Provision and Regulating the Interstate Transport of Ozone Pollution

EPA's denial of the 126(b) petitions occurs within a larger pattern of agency delay and failure to effectively address interstate ozone transport, despite the clear directive of the Clean Air Act. *See* Maryland Br. at 16 (standard of review).

EPA and Congress have recognized the persistent problem of interstate ozone pollution for decades. Congress has provided at least three statutory tools in the Act to address the problem. The Good Neighbor Provision requires states to ensure their pollution does not travel into neighboring states and impair their ability to attain or maintain air quality standards. 42 U.S.C.

§ 7410(a)(2)(D)(i)(I). Section 126(b) is an enforcement tool for downwind states who are suffering from upwind states' failure to comply with the Good Neighbor Provision. 42 U.S.C. § 7426(b). The Ozone Transport Region includes eleven Northeast states that, in order to address ozone pollution within and without the region, implement heightened control measures to reduce ozone precursor pollutants. *See* 42 U.S.C. §§ 7511a, 7511c(a)-(b). States can petition EPA to

expand the Transport Region to add states when the Administrator “has reason to believe that the interstate transport of air pollutants from such State significantly contributes to a violation of the [ozone standard] in the transport region.” 42

U.S.C. § 7506a(a)(1); *see also* Maryland Br. at 7.

Congress designed these statutory tools to provide timely action to address ozone pollution. In particular, “Congress intended Section 126(b) as a means for EPA to take immediate action when downwind states are affected by air pollution from upwind sources.” *GenOn REMA*, 722 F.3d at 522. EPA must implement the Good Neighbor Provision consistent with the timeline for attaining ozone standards: “as expeditiously as practicable but not later than” the specified attainment deadlines. 42 U.S.C. § 7511(a)(1); *see also North Carolina*, 531 F.3d at 911–913. Contrary to this clear intent for quick action, EPA has demonstrated a pattern of delay and inaction in addressing interstate transport of ozone pollution.

In December 2013, Northeastern states, including Maryland and Delaware, petitioned EPA under section 176A to expand the Ozone Transport Region to include eight upwind states and require those states to implement more stringent controls to reduce ozone precursor pollutants. EPA denied that petition in November 2017 primarily based on the availability of “other, more effective means of addressing the impact of interstate ozone transport,” namely the Good Neighbor Provision and Section 126(b) petitions. 82 Fed. Reg. 51,238, 51,242–45 (Nov. 3,

2017).¹² However, while EPA pointed to these other provisions, it failed to mention the Agency's long history of delay in implementing the Good Neighbor Provision¹³ or its failure to respond to pending 126(b) petitions within the statutory deadlines.¹⁴

In the face of continuing nonattainment, and EPA's denial of other avenues of relief, Maryland and Delaware turned to Section 126(b) petitions to seek relief from upwind pollution sources. Using this targeted approach, EPA had recommended, the 126(b) petitions identified specific sources in upwind states that are contributing to downwind nonattainment. EPA denied the Section 126(b) petitions and based its denial on the existence of the Cross-State Update, 83 Fed. Reg. at 50,444, even though that rule admittedly does not fully resolve significant contribution to downwind nonattainment, and, as discussed above, is an

¹² A legal challenge to the denial of the 176A petition is currently pending before this Court. *State of New York v. EPA*, Case No. 17-1273.

¹³ See, e.g., *New York v. Pruitt*, Case No. 18-cv-00406-JGK, 2018 U.S. Dist. LEXIS 99240 * (S.D.N.Y. June 12, 2018) (finding that EPA failed to meet deadline to promulgate federal plans to address interstate ozone transport); *Sierra Club v. Pruitt*, Case No. 15-cv-04328, 2017 U.S. Dist. LEXIS 79133 *, Order Re Partial Consent Decree and Summary Judgment (N.D. Cal. May 23, 2017) (finding that EPA failed to meet deadline to promulgate federal plan after belatedly disapproving Kentucky's Good Neighbor plan).

¹⁴ See, e.g., *State of Maryland v. Pruitt*, 320 F. Supp. 3d 722, 732 (D. Md. 2018) (entering summary judgment compelling EPA to respond to Maryland's 126(b) petition and noting that the "Court is troubled by EPA's apparent unwillingness or inability to comply with its mandatory statutory duties within the timeline set by Congress").

insufficient tool to address the specific underperforming coal-fired units identified in the petitions. Thus, for each attempt by the downwind states, EPA's denials pointed to a separate provision, only to reject later attempts to utilize those same provisions. EPA's actions frustrate Congress' clear intent that interstate ozone transport be resolved in a timely manner.

In its denials of the 126(b) and 176A petitions, EPA proposed narrow justifications, ignoring the cumulative result: ineffective reductions of transported air pollution resulting in nonattainment of air quality standards and unhealthy air for residents and the environment in downwind states. However, the Act requires EPA to ensure that upwind pollution does not interfere with downwind states' air quality. EPA has failed in its duty to protect states from the chronic problem of pollution from beyond their borders.

CONCLUSION

For the foregoing reasons, and those set out in the State's respective briefs, this Court should hold unlawful and set aside the EPA's denial of Maryland's and Delaware's petitions.

Respectfully submitted,

/s/ Ariel Solaski

Ariel Solaski
Jon A. Mueller
Chesapeake Bay Foundation, Inc.

6 Herndon Ave.
Annapolis, MD 21403
(443) 482-2171
asolaski@cbf.org
jmueller@cbf.org

*Counsel for Chesapeake Bay
Foundation, Inc.*

Graham McCahan
Environmental Defense Fund
2060 Broadway, Suite 300
Boulder, CO 80302
(303) 447-7228
gmccahan@edf.org

Leah Kelly
Environmental Integrity Project
1000 Vermont Ave. NW, Suite 1100
Washington, DC 20005
(202) 263-4448
lkelly@environmentalintegrity.org

Sean H. Donahue
Susannah L. Weaver
Donahue, Goldberg & Weaver, LLP
1008 Pennsylvania Ave. SE
Washington, DC 20003
(202) 277-7085
sean@donahuegoldberg.com
susannah@donahuegoldberg.com

*Counsel for Environmental Integrity
Project and Chesapeake Climate Action
Network*

*Counsel for Environmental Defense
Fund*

Joshua Berman
Sierra Club
50 F Street NW, 8th Floor
Washington, DC 20001
(202) 650-6062
josh.berman@sierraclub.org

Ann Brewster Weeks
Clean Air Task Force
114 State Street, 6th Floor
Boston, MA 02109
(617) 359-4077
aweeks@catf.us

Counsel for Sierra Club

Counsel for Clean Air Council

Sean H. Donahue
Susannah L. Weaver

Donahue, Goldberg & Weaver, LLP
1008 Pennsylvania Ave. SE
Washington, DC 20003
(202) 277-7085
sean@donahuegoldberg.com
susannah@donahuegoldberg.com

Counsel for Adirondack Council

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

Counsel hereby certifies that in compliance with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B)(i) and this Court's briefing order dated February 28, 2019 (Doc. No. 1775438), this document contains 5,277 words, exclusive of the sections excluded by Fed. R. App. P. 32(f) and D.C. Circuit Rule 32(e)(1). Combined with the Petitioner State of Maryland's and State of Delaware's briefs, the cumulative word total is below the 21,000 words allotted in this Court's briefing order. Doc. No. 1775438.

This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in proportionally spaced 14-point Times New Roman typeface.

DATED: March 29, 2019

Respectfully submitted,

/s/ Ariel Solaski

Ariel Solaski
Chesapeake Bay Foundation, Inc.
6 Herndon Ave.
Annapolis, MD 21403
Phone: (443) 482-2171
asolaski@cbf.org

CERTIFICATE OF SERVICE

I certify that on March 29, 2019 the foregoing Opening Proof Brief of Citizen Petitioners was electronically filed with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit through the Court's CM/ECF system, which effected service upon counsel of record through the Court's system.

/s/ Ariel Solaski

ORAL ARGUMENT NOT YET SCHEDULED

Case No. 18-1285 (and consolidated cases)

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF MARYLAND,

Petitioner,

v.

ENVIRONMENTAL PROTECTION AGENCY, *ET AL.*,*Respondents.*

ON PETITION FOR REVIEW OF FINAL ACTION BY THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
83 Fed. Reg. 50,444 (Oct. 5, 2018)

**ADDENDUM OF STANDING DECLARATIONS
TO CITIZEN PETITIONERS' OPENING BRIEF**

Ariel Solaski
Jon A. Mueller
Chesapeake Bay Foundation, Inc.
6 Herndon Ave.
Annapolis, MD 21403
(443) 482-2171
asolaski@cbf.org
jmueller@cbf.org

*Counsel for Chesapeake Bay
Foundation, Inc.*

Joshua Berman
Sierra Club
50 F Street NW, 8th Floor
Washington, DC 20001
(202) 650-6062
josh.berman@sierraclub.org

Counsel for Sierra Club

DATED: March 29, 2019

(additional counsel on next page)

Graham McCahan
Environmental Defense Fund
2060 Broadway, Suite 300
Boulder, CO 80302
(303) 447-7228
gmccahan@edf.org

Leah Kelly
Environmental Integrity Project
1000 Vermont Ave. NW, Suite 1100
Washington, DC 20005
(202) 263-4448
lkelly@environmentalintegrity.org

Sean H. Donahue
Susannah L. Weaver
Donahue, Goldberg & Weaver, LLP
1008 Pennsylvania Ave. SE
Washington, DC 20003
(202) 277-7085
sean@donahuegoldberg.com
susannah@donahuegoldberg.com

*Counsel for Environmental Integrity
Project and Chesapeake Climate
Action Network*

*Counsel for Environmental Defense
Fund*

Sean H. Donahue
Susannah L. Weaver
Donahue, Goldberg & Weaver, LLP
1008 Pennsylvania Ave. SE
Washington, DC 20003
(202) 277-7085
sean@donahuegoldberg.com
susannah@donahuegoldberg.com

Ann Brewster Weeks
Clean Air Task Force
114 State Street, 6th Floor
Boston, MA 02109
(617) 359-4077
aweeks@catf.us

Counsel for Clean Air Council

Counsel for Adirondack Council

INDEX TO ADDENDUM

Standing Declaration of:	Page Number
Elizabeth Brandt	ADD-1
Christina Browning	ADD-8
Barbara Einzig	ADD-11
Huda Fashho	ADD-16
Lisa Feldt	ADD-18
James Alfred Tyler Frakes	ADD-27
Rodette Jones	ADD-31
Mark Kresowik	ADD-36
Joseph O. Minott	ADD-40
Eric Schaeffer	ADD-45
Sharman Stephenson	ADD-50
John Stith	ADD-54
William Temmink	ADD-59
Michael Tidwell	ADD-65
Nicholas Zuwiala-Rogers	ADD-71

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

CHESAPEAKE BAY FOUNDATION,
INC., *et al.*,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, *et al.*,

Respondents.

Case No. 18-1287

(consolidated with Case Nos.
18-1285 and 18-1301)

DECLARATION OF ELIZABETH BRANDT

I, Elizabeth Brandt, declare:

1. This declaration is based on my personal and professional knowledge. I am over the age of eighteen years and suffer from no legal incapacity. I submit this declaration in support of the Environmental Defense Fund's ("EDF's") appearance in the above-captioned case challenging the U.S. Environmental Protection Agency's ("EPA's") denial of the State of Maryland and the State of Delaware's Clean Air Action Section 126(b) petitions. If called to testify, I could and would testify to the truth of these facts.

2. I am a member of EDF, a non-profit organization with U.S. offices in Austin, TX; New York, NY; Washington, D.C.; Boston, MA; San Francisco and

Sacramento, CA; Raleigh, NC; Boulder, CO; and Bentonville, AR. A core mission of EDF is to protect human health and the environment from airborne contaminants, including ozone pollution that results from power plant emissions.

3. EDF has long sought to promote its members' interests in reducing emissions of air pollution in general and from power plants in particular. More specifically, EDF has engaged in significant efforts to help address the interstate transport of ozone pollution. For example, EDF engaged extensively in the administrative and legal proceedings involving the EPA's Cross-State Air Pollution Rule and its predecessor, the Clean Air Interstate Rule. In addition, EDF has long advocated in support of federal, state, and local efforts to reduce ozone pollution and to ensure that the national, health-based national ambient air quality standards for ozone are grounded in sound and rigorous science.

4. In addition to being a member of EDF, I serve as a Field Consultant for Mom's Clean Air Force and work on a variety of air pollution and public health policy issues. In my role with Mom's Clean Air Force, a substantial portion of my work has focused on Maryland's persistent air pollution challenges.

5. I have worked with Mom's Clean Air Force since March of 2017.

6. I typically work from my home office and residence, which is located in Chevy Chase, Maryland. Chevy Chase is located in Montgomery County, Maryland. I have lived in Montgomery County for three years.

7. I have a master's degree in social work and have worked in social services and public health since 2002.

8. I have two daughters who are ages 2 and 5.

9. I enjoy spending time outdoors with my daughters in and around Chevy Chase and Montgomery County. When possible, my family swims in the outdoor pool and plays outdoor soccer at the YMCA in Silver Spring, Maryland. We also enjoy paddling on waterways located throughout Montgomery County. I also frequently walk with my 2-year old daughter in a stroller to run errands near my home in Chevy Chase, Maryland. I plan to continue spending time outdoors with my daughters in Montgomery County in the future.

10. Because of my professional background, and in the course of my work at Mom's Clean Air Force, I am aware of a longstanding body of scientific research (including numerous EPA assessments), demonstrating that short- and long-term exposure to ozone harms human health. EPA has concluded that "a very large amount of evidence spanning several decades supports a relationship between exposure to [ozone] and a broad range of respiratory effects." *2013 Final Report: Integrated Science Assessment of Ozone and Related Photochemical Oxidants* (EPA/600/R-10/076F) at 1-6. These effects range from decreases in lung function and increases in respiratory-related hospital admissions and emergency room visits, to premature death from ozone exposure. *Id.* at 6-131 to 6-158, 6-162 to 6-

163. Ozone pollution poses increased risks for vulnerable populations, such as children, people with respiratory diseases or asthma, older adults, and people who are active outdoors, especially outdoor workers. *Id.* at 1-8.

11. Due to my professional and personal interests, I generally monitor ozone levels in and around Montgomery County, Maryland. Based upon my review of EPA's ozone monitoring data, I am aware that Montgomery County is located in the Washington, DC-MD-VA marginal non-attainment area for both the 2008 and the 2015 ozone standard. *See EPA, Nonattainment Areas for Criteria Pollutants (Green Book)*, <https://www.epa.gov/green-book> (last updated October 31, 2018). I am also aware that Montgomery County exceeded the 2015 ozone standard two days in 2017. *See Ozone Design Values, 2017*, <https://www.epa.gov/air-trends/air-quality-design-values#report> (last updated July 24, 2018).

12. When ozone levels in my area are high and considered unhealthy for children, I sometimes reduce or curtail outdoor activities with my daughters due to my concerns about the negative effects of short-term ozone exposure on their respiratory health. For example, when ozone levels are high, I do not walk my 5-year old daughter to school or run errands with my 2-year old in a stroller. We also choose to spend time indoors rather than hiking, paddling, swimming or playing soccer. I intend to continue to monitor ozone levels in my area in the future and to

reduce or curtail outdoor activities with my daughters when ozone concentrations reach levels that are considered unhealthy for children and other sensitive groups.

13. I am aware that EPA has denied a Clean Air Act Section 126(b) petition filed by the State of Maryland, requesting that EPA require 36 electric generating units (EGUs), at 19 coal-fired power plants located in five upwind states, to turn on existing pollution controls in order to reduce nitrogen oxide (NO_x) pollution that significantly contributes to nonattainment or interferes with maintenance of the 2008 and 2015 ozone standards in Maryland. It is also my understanding that EPA has denied three Section 126(b) petitions filed by the State of Delaware requesting EPA to require three power plants to fully operate existing modern pollution controls in order to reduce dangerous ozone-forming pollution. I am aware that EGUs at two of the power plants addressed by Delaware's Section 126(b) petitions, Homer City and Harrison Power Station, are also included in Maryland's Section 126(b) petition.

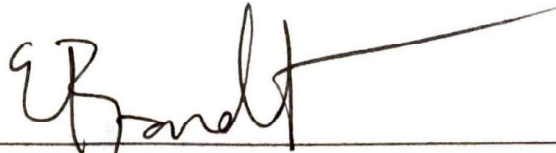
14. It is my understanding that emissions of NO_x from the EGUs identified in Maryland and Delaware's petitions exacerbate air pollution not only in Maryland and Delaware, but in numerous downwind areas, including Washington, D.C., Connecticut, New York, New Jersey, and Pennsylvania.

15. I also understand that if NO_x emissions from the EGUs identified in Maryland and Delaware's Section 126(b) petitions were controlled as requested,

pollution in areas where I engage in recreational activities with my family would decrease. I am also concerned that without a requirement for the EGUs identified in Maryland and Delaware's Section 126(b) petitions to run their already installed pollution controls every day during ozone season, my opportunities to recreate with my family will continue to be compromised. Therefore, there is a likelihood that the harms I suffer from ozone pollution would be lessened should the remedy requested by both Maryland and Delaware in their Section 126(b) petitions be implemented.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Chevy Chase, Maryland on November 19, 2018



Elizabeth Brandt

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

CHESAPEAKE BAY FOUNDATION,
INC., *et al.*,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, *et al.*,

Respondents.

Case No. 18-1287

(consolidated with Case Nos.
18-1285 and 18-1301)

DECLARATION OF CHRISTINA BROWNING

I, Christina Browning, hereby declare and state as follows:

1. I am over 18 years of age, competent to testify, and have personal knowledge of the facts stated herein.
2. I reside at 28143 John J. Williams Highway, Millsboro, Delaware 19966. I have been a resident of Millsboro, Delaware since 2005. Prior to 2005, I lived in Maryland for over 30 years.
3. I am a member of the Chesapeake Bay Foundation because I value clean air, clean water, and a healthy environment.
4. I enjoy engaging in recreational activities outdoors, including boating, fishing, camping, and spending time with my family at the beach, community pool, outdoor events and parks throughout the region.

5. I have chronic bronchitis and associated respiratory conditions, including COPD (Chronic Obstructive Pulmonary Disease). On warm days when the air quality index is high and air quality is poor, I have difficulty breathing when outdoors.

6. I had my first experience with chronic bronchitis and associated respiratory conditions in 2005 when I began experiencing shortness of breath and wheezing. I was hospitalized on a number of occasions. Most recently in 2016 for five days where I was given oxygen and other medicines to control my breathing. These episodes cause me to panic which makes breathing more difficult. I am concerned about my immediate and long-term health as a result of these conditions.

7. When the air quality is poor and I have difficulty breathing, I am forced to miss time from work and time with my family because I struggle trying to catch my breath which forces me to wear oxygen to maintain my breathing throughout the day. This causes me financial harm and deprives me of the enjoyment of spending time with my family and the physical benefits of outdoor recreation.

8. I understand that poor air quality is often the result of high levels of ozone pollution and that ozone is formed by air pollution from power plants in states “upwind” from Maryland and Delaware.

9. I am aware of the adverse health effects associated with ozone pollution and

I am concerned about my health as well as the health of my family, friends, and the environment.

10. I understand that the Clean Air Act Petitions filed by the State of Maryland and the State of Delaware asked the Environmental Protection Agency (EPA) to reduce the amount of harmful air pollution that is transported from upwind power plants into downwind states, including Delaware.

11. Because I am concerned about air pollution and how it affects me and my family, I submitted a letter to EPA on July 20, 2018 asking the EPA Administrator to reconsider his proposal to deny the petitions. *See* regulations.gov, Docket ID No. EPA-HQ-OAR-2018-0295-0057.

12. However, I understand that EPA has recently finalized its denial of Maryland's and Delaware's petitions. I am aware that the lawsuit filed by CBF and other groups asks the court to review EPA's decision and decide whether EPA's decision was justified and complied with the law.

I declare under penalty of perjury and based on personal knowledge that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 20 day of November, 2018.



Christina Browning

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

CHESAPEAKE BAY FOUNDATION,
INC., *et al.*,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, *et al.*,

Respondents.

Case No. 18-1287

(consolidated with Case Nos.
18-1285 and 18-1301)

DECLARATION OF BARBARA EINZIG

I, Barbara Einzig, hereby declare and state as follows:

1. This declaration is based on my personal knowledge. I am over the age of eighteen (18) and suffer no legal incapacity.
2. I am a member of the Sierra Club, having joined in November of 2016.
3. I am 67 years old and have lived in northern Baltimore, Maryland in the county of Baltimore City, since 2005. I work as a writer, translator, editor, and consultant.
4. As a result of living through the September 11, 2001 terrorist attacks in New York (I lived in the building closest to the World Trade Center), I suffer from asthma and reactive airway dysfunction which affects both my upper and

lower respiratory tracts and makes me particularly sensitive to air pollution. I came to Baltimore after my doctor recommended that I move out of New York because the building I had lived in was still contaminated with World Trade Center dust, and the high ozone levels downtown were exacerbating my respiratory problems.

5. I'd hoped that my move to Baltimore would allow me to spend more time outside, but I didn't realize until living here how bad the air quality actually is. When ozone levels are high and I try to go outside, I get sinus pain, chest pain, phlegm, and have coughing fits so bad that people always ask me if I'm ok. It feels like trying to suck in air through a straw, but you can't quite get all the air in; it's exhausting and makes me feel extremely worn out at the end of the day. And sometimes a bad pollution reaction episode can trigger the onset of a virus or bacteria-based illness, like the flu, which would not occur if my bronchial tract were not already inflamed. I have to visit the doctor regularly for respiratory-related health care.

6. I can always tell when ozone pollution is high, because I have an increased sensitivity to smell, which is actually a common trait of people who have asthma and who suffered acute chemical exposures from events like 9/11. It smells to me like an oil tanker. However, I don't have to rely on my own senses; air quality alerts are publicly available and I live my life by them. I cannot go out at all on days classified as "red" or "orange," and I limit my outdoor activities on

“yellow” days. Ozone pollution is worse in the summer, which often makes me sick, so I primarily limit my outdoor activities to the spring and fall. I have noted that even during the winter months, we sometimes have suddenly high ozone levels. Following prolonged bouts of chronic bronchitis, my doctor suggested if possible I leave Baltimore at the times when there are the highest levels of ozone and particulate matter, so I try to travel to visit friends in more rural areas of the country, particularly during the summer months. If I can’t control where I’m going to be, I use a rescue inhaler, which opens up my airways.

7. I really wish ozone pollution levels did not keep me from doing outdoor activities in the summer, because I love bicycling, hiking, and swimming. I would do rowing if I could; there’s an excellent rowing club in Baltimore. However, with current ozone pollution, I cannot.

8. Even simple social activities become difficult for me because of the damper ozone pollution puts on my life. I can’t make long term plans; for example, I don’t buy season tickets to outdoor events. If my friends want to share a meal outside at a cafe or have a picnic, I have to wait and see what the air pollution alerts say. The Baltimore Museum of Art has a wonderful “Jazz in the Sculpture Garden” series - but I can only go if it’s a good ozone day. There are many other great outdoor festivals in Baltimore, but I can’t usually take part in them because they’re given during the summer. If ozone pollution were not a constant problem

for me, I could plan social events with more stability and certainty and could attend many events that I cannot now attend.

9. The interaction of my medical condition and ozone pollution has also limited my earning power by necessitating, in many instances, the ability to work from home.

10. I understand that Maryland filed a petition asking the U.S. Environmental Protection Agency (EPA) to find that emissions from a number of coal plants in surrounding states are impeding Maryland's ability to achieve and maintain safe levels of ozone. Maryland has completed analyses showing that if these power plants consistently operated their installed pollution controls, air quality levels would improve significantly in the Baltimore area where I live. I also understand that Delaware submitted petitions asking EPA to find that two of the plants identified by Maryland as well as a third plant in Pennsylvania are impairing downwind air quality by failing to operate their installed pollution controls.

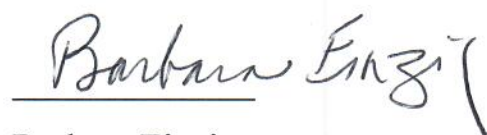
11. I also understand that EPA on October 5, 2018, published a final response to these petitions, denying all of them. EPA's denial of the Maryland and Delaware petitions prolongs my exposure to unsafe levels of ozone and continues to impair my ability to engage in the outdoor activities that I enjoy.

12. I am aware that, as someone above the age of 65 with persistent respiratory conditions, I am especially vulnerable to ozone pollution. I hate the idea of going to the emergency room, so I am very proactive about my health. But any delay in cleaning up ozone pollution puts my health at risk, and denies me the ability to spend time outdoors without having serious health consequences. And I am not the only one; others affected by 9/11 or similar disasters, the elderly, young children, and people with asthma are all particularly sensitive to ozone pollution and need EPA to do its job. This is particularly important for the many people in Baltimore who live in older buildings in disrepair, where the indoor air pollution they must put up with adds to their vulnerability.

13. I am providing this statement to support Sierra Club's work to compel EPA to carry out its duties under the Clean Air Act to protect all Americans from ozone pollution, particularly those of us for whom ozone has enormous quality-of-life impacts.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 13 day of November, 2018.



Barbara Einzig

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

CHESAPEAKE BAY FOUNDATION,
INC., *et al.*,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, *et al.*,

Respondents.

Case No. 18-1287

(consolidated with Case Nos.
18-1285 and 18-1301)

DECLARATION OF HUDA FASHHO

I, Huda Fashho, hereby declare and state as follows:

1. This declaration is based on my personal knowledge. I am over the age of eighteen (18) and suffer no legal incapacity.
2. The Sierra Club is a non-profit membership organization.
3. I am the Director of Member Care at the Sierra Club. I have had this position for seven years.
4. In this role, I manage Sierra Club's customer service functions related to members, including maintaining an accurate list of members and managing the organization's member databases.

5. When an individual becomes a member of the Sierra Club, his or her current residential address is recorded in our membership database. The database entry reflecting the member's residential address is verified and updated as needed.

6. The Sierra Club currently has 802,945 members, including state membership numbers as follows:

- Connecticut – 11,288 members
- Delaware – 2,374 members
- District of Columbia – 2,951 members
- Indiana – 10,462 members
- Kentucky – 6,302 members
- Maryland – 17,636 members
- New Jersey – 21,190 members
- New York – 51,304 members
- Ohio – 22,414 members
- Pennsylvania – 31,526 members
- Virginia – 19,992 members
- West Virginia – 2,595 members

7. Sierra Club members have a strong interest in protecting air quality and in protecting wild places and their ambient environment from the effects of air pollution.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 7 day of March 2019.



Huda Fashho

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

CHESAPEAKE BAY FOUNDATION,
INC., *et al.*,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, *et al.*,

Respondents.

Case No. 18-1285

(consolidated with Case Nos.
18-1287 and 18-1301)

DECLARATION OF LISA FELDT

I, Lisa Feldt, hereby declare and state as follows:

1. This declaration is based on my personal knowledge, information, and belief. I am over the age of 18 and competent to testify.
2. I am the Vice President of Environmental Protection and Restoration (EPR) at the Chesapeake Bay Foundation (CBF) based in Annapolis, Maryland.
3. I have held the position of Vice President of Environmental Protection and Restoration since July of 2018. In my current position, I am responsible for overseeing the activities of the EPR department, which operates throughout the Chesapeake Bay watershed. These activities include advocacy and lobbying at state legislatures, community outreach and engagement, policy analysis and development, and watershed restoration (for example, construction and seeding of

oyster reefs and planting of forested riparian buffers). Because of my position and responsibility, I am familiar with CBF's mission, organization, and activities, as well as the environmental interests and concerns of our members.

4. CBF is a regional, nonprofit, nonpartisan, public-interest advocacy organization with members throughout the Chesapeake Bay region. As of February 2019, CBF has more than 295,114 total members and e-subscribers, including 110,480 in Maryland; 6,129 in Delaware; 6,386 in the District of Columbia; 1,364 in West Virginia; 17,309 in New York; 89,583 in Virginia; 42,541 in Pennsylvania; and 21,322 members and e-subscribers outside the Chesapeake Bay watershed.

5. CBF maintains offices in Annapolis and Easton, MD; Richmond and Virginia Beach, VA; Harrisburg, PA; and Washington, DC. CBF operates several environmental education centers on the Chesapeake Bay: Karen Noonan Center, Crocherson, MD; Port Isobel, Tangier, VA; Smith Island, Tylerton, MD; Fox Island, Crisfield, MD; and the Arthur Sherwood Environmental Education Center, Annapolis, MD. CBF also maintains oyster restoration centers in Shady Side, Maryland and Gloucester Point, Virginia.

6. CBF's environmental restoration efforts involve land- and water-based projects to improve water quality. These projects are coordinated and installed by CBF staff, along with partners and volunteers, and include tree plantings, riparian

buffers, submerged aquatic vegetation plantings, and a substantial oyster restoration effort.

7. CBF's oyster restoration team conducts numerous activities to improve the oyster population and water quality in Chesapeake Bay, including an oyster gardening program, an oyster shell recycling effort, and the restoration of oyster reefs in Maryland and Virginia Waters. See <http://www.cbf.org/how-we-save-the-bay/programs-initiatives/maryland/oyster-restoration/>. For example, at CBF's Oyster Restoration Center in Shady Side, Maryland, several large tanks are used to grow juvenile oysters, or spat. These juvenile oysters are later placed onto sanctuary reefs by CBF's restoration vessel, *Patricia Campbell*. In 2017, CBF produced and planted 27.7 million spat. See <http://www.cbf.org/document-library/cbf-publications-brochures-articles/morc-annual-report.pdf>. CBF's efforts to re-establish oyster reefs in Maryland and Virginia cost \$801,968 in 2017. Poor water quality—caused by excess nitrogen, phosphorus, and sediment pollution—harms oysters and other aquatic life and directly impacts CBF's oyster restoration efforts. See <http://www.cbf.org/about-the-bay/maps/pollution/dead-zones.html>.

8. CBF is the only independent organization dedicated solely to restoring and protecting the Chesapeake Bay and its tributary rivers. Our goal is to improve water quality through the implementation of the Chesapeake Bay Clean Water Blueprint. The Blueprint refers to the Chesapeake Bay Total Maximum Daily Load

(TMDL), issued by the United States Environmental Protection Agency (EPA) in December of 2010, and state-developed Watershed Implementation Plans (WIPs) which outline Bay jurisdictions' strategies to meet the goals of the TMDL. The Bay jurisdictions are Maryland, Pennsylvania, Virginia, Delaware, West Virginia, New York, and the District of Columbia. CBF and others we represented sued EPA to ensure development and implementation of the Bay TMDL. *Fowler v. EPA*, No. 1:09-C-00005-CKK, 2009 U.S. Dist. LEXIS 132084 (D.D.C. 2009).

9. The Chesapeake Bay TMDL set pollution reduction targets for the Bay's three primary pollutants: nitrogen, phosphorus, and sediment. These targets represent the pollution limits necessary to meet water quality standards. The pollution limits were further divided by Bay jurisdiction and by major river basin.

10. When the Bay TMDL was established in 2010, the EPA identified the atmospheric deposition of nitrogen as contributing one-third of the entire nitrogen input to the Bay watershed. *See* Chesapeake Bay TMDL, Appendix L: Setting the Chesapeake Bay Atmospheric Nitrogen Deposition Allocations, at L-2 (Dec. 29, 2010), *available at* https://www.epa.gov/sites/production/files/2015-02/documents/appendix_l_atmos_n_deposition_allocations_final.pdf. Atmospheric loads of nitrogen come from nitrogen oxides (NO_x) and ammonia (NH₃). The principle sources of NO_x are industrial-sized boilers, like those at power plants, and internal combustion engines from mobile sources. *Id.* at L-2.

11. CBF's interest in improving the water quality of the Chesapeake Bay is intertwined with regional air quality issues. The Chesapeake Bay airshed is 570,000 square miles, stretching from Canada in the north, to South Carolina in the south, and to Indiana and Kentucky in the west. The airshed is almost nine times larger than the area of the watershed. *Id.* at L-4.

12. I understand that the states of Maryland and Delaware submitted Clean Air Act petitions to the EPA requesting that the EPA find that emissions of NO_x from coal-fired electric generating units in upwind states are significantly interfering with Maryland's and Delaware's ability to attain and maintain the ozone National Ambient Air Quality Standards. One of CBF's key priorities is ensuring a reduction in NO_x, a precursor pollutant to ozone and a contributor to atmospheric deposition of nitrogen. Reducing NO_x emissions in the airshed will improve both the air and water quality of the Chesapeake Bay region. When EPA failed to timely respond to Maryland's Clean Air Act section 126 petition, CBF and partner groups filed suit in federal district court to compel EPA to respond. *State of Maryland v. Pruitt, et al.*, Memorandum Opinion on Motions for Summary Judgment, Case No. 1:17-cv-02873-JKB (D. Md. filed June 13, 2018).

13. CBF has expended significant resources and time investigating regional air pollution to better understand how the interstate transport of NO_x affect the Chesapeake Bay. These resources include a substantial amount of policy,

advocacy, and scientific staff time. CBF recognizes the importance of participating in public comment and hearing processes related to EPA and state agency air pollution regulation and seeks to contribute its unique expertise and interests to such proceedings. For example, CBF has drafted public comment letters and engaged in the state of Maryland's rulemaking process for NOx emission limits for municipal waste combustors. CBF hired an air modeling expert to illustrate how NOx emissions from stationary sources will contribute nitrogen to the Bay watershed and submitted this information during state and federal public comment processes. CBF also hired an engineer to evaluate NOx sources within the Bay watershed and to review proposed air pollution regulations and permits. In addition, CBF hired a human health expert to evaluate the costs associated with air pollution in the Bay region.

14. At the federal level, CBF has submitted comment letters to EPA regarding EPA actions that will impact air quality in the Bay region, including the following recent rulemakings: a proposed rule to repeal and replace the Clean Power Plan and revise the New Source Review program, 83 Fed. Reg. 44,746 (Aug. 31, 2018); a proposed rule to freeze corporate average fuel economy standards for passenger cars and light trucks, 83 Fed. Reg. 42,986 (Aug. 24, 2018); and a proposed repeal of emission requirements for glider vehicles, 82 Fed. Reg. 53,442 (Nov. 16, 2017).

15. CBF has been active in the public participation processes related to the

regulation of interstate ozone pollution. For example, CBF submitted a public comment letter on the Clean Air Act section 176A petition submitted by Maryland and eight other northeast states to add nine upwind, midwestern states to the Ozone Transport Region. *See Response to December 9, 2013, Clean Air Act Section 176A Petition from Connecticut et al.*, 82 Fed. Reg. 6,509 (Jan. 19, 2017) (comment letter at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2016-0596-0115>). CBF representatives testified at the public hearing on EPA's proposed denial of the 176A petition held on April 13, 2017. CBF also submitted a joint *amicus curiae* brief to the D.C. Circuit Court of Appeals opposing EPA's denial of the 176A petition. *Amicus Curiae* Brief of Chesapeake Bay Foundation, Inc. and Sierra Club in Support of Petitioners' Request for Vacatur, Doc. No. 1732276, *State of New York, et al., v. EPA*, No. 17-1273 (D.C. Cir. filed Dec. 26, 2017).

16. More recently, CBF joined a coalition of environmental and public health organizations on a comment letter on EPA's proposed rule relieving all states of further "good neighbor" obligations under the 2008 ozone air quality standards. *See Determination Regarding Good Neighbor Obligations for the 2008 Ozone National Ambient Air Quality Standard*, 83 Fed. Reg. 31,915 (Jul. 10, 2018) (comment letter at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2018-0225-0319>). We also joined other environmental organizations in filing a Petition for Review on EPA's final rulemaking for the "good neighbor"

obligations. *State of New York, et al. v. EPA*, No. 19-1019 (D.C. Cir. filed on Jan. 30, 2019).

17. In the present case, CBF joined Sierra Club, Environmental Integrity Project, and Chesapeake Climate Action Network to submit a joint comment letter urging EPA to reverse its proposed denial of Maryland's and Delaware's 126 petitions. *See Response to Clean Air Act Section 126(b) Petitions from Delaware and Maryland*, 83 Fed. Reg. 26,666 (June 8, 2018) (comment letter at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2018-0295-0080>).

18. Reducing nitrogen oxide pollution, a precursor pollutant to ozone and a contributor to the atmospheric deposition of nitrogen, is a priority for the Chesapeake Bay Foundation. EPA's denial of Maryland's and Delaware's Clean Air Act 126 petitions harms the interests of CBF and its members because it condones harmful and preventable impacts to the Chesapeake Bay watershed, airshed, and public health from the excess NO_x pollution from the upwind sources identified in the petitions.

19. In addition, EPA's decision to deny Maryland and Delaware's petitions will disproportionately harm environmental justice communities within the Chesapeake Bay watershed. CBF is committed to protecting the interests and health of such communities.

20. A favorable decision from the D.C. Circuit Court of Appeals finding

EPA's denial of the petitions unlawful would require EPA to reconsider its denial and the pollution reduction remedies requested by the petitions. A favorable decision and reconsideration would contribute to CBF's organizational goals of improving water quality and supporting the Bay Blueprint and would advance the interests of its members who rely on and value clean air and clean water throughout the watershed.

I declare under penalty of perjury and based on personal knowledge that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 25th day of March, 2019.



Lisa Feldt

DECLARATION OF JAMES ALFRED TYLER FRAKES

I, James Alfred Tyler Frakes, declare:

1. I am over 18 years of age. The information in this declaration is based on my personal knowledge or public information in government records.

2. I am a dues-paying member of the Adirondack Council ("Council"). This declaration is submitted in support of the petition for review filed by the Council and other parties in the United States Court of Appeals for the District of Columbia Circuit captioned *Chesapeake Bay Foundation, Inc., et al. v. United States Environmental Protection Agency, et al.*, No. 18-1287 (consolidated with *State of Maryland v. United States Environmental Protection Agency*, No. 18-1285, and *State of Delaware Department of Natural Resources v. United States Environmental Protection Agency*, No. 18-1301).

3. I live in Plattsburgh in Clinton County, in the state of New York. I enjoy outdoor pursuits such as nature photography, camping, hiking, fishing, mountain climbing, golfing, gardening, sailing in Essex and Clinton counties and in the Adirondack Park. I plan to engage in these activities in the future. For example, I climbed Whiteface Mountain in 2016 and plan to climb other Adirondack Mountains in the future. I work in Essex County in Elizabethtown, NY, where I routinely exercise outdoors during the work week.

4. I have asthma. I was diagnosed with asthma in 1994. I frequently experience tightness in my chest, shortness of breath, difficulty catching my breath, wheezing and coughing while attempting to exercise outdoors. My symptoms are worst when ground-level ozone levels are high in the Northeast. Ozone levels appear to be the highest around Essex County when the weather is warm or hot and the wind is out of the west or southwest.

5. Elevated ozone pollution levels adversely affect my ability to participate in the outdoor activities that I enjoy. In general, the activities that would otherwise be excellent methods for maintaining my health and stamina. I spend money on medication such as rescue inhalers to reduce the symptoms of asthma, and routinely see a physician for advice on controlling the symptoms. I use rescue inhalers containing the prescription drug Albuterol.

6. In addition to harming my health and causing me to postpone or avoid activities that I enjoy, ground-level ozone can also cause poor visibility, impairing my ability to photograph nature in the Adirondacks. It also impairs my ability to enjoy mountain vistas.

7. I understand that ground-level ozone pollution forms when nitrogen-based air pollution is affected by heat and sunlight.

8. I also understand that nitrogen-based air pollution can mix with cloud water and form acid rain, acid snow and acid fog, and also falls from the sky as dry particles. All of these pollutants are known under the collective term of “acid rain.”

9. I understand that the Maryland Department of the Environment, on behalf of the State of Maryland, filed a petition under Section 126 of the Clean Air Act (“Section 126”) to the Environmental Protection Agency, requesting that EPA make a finding that 36 electric generating units (“EGUs”), at 19 coal-fired power plants located in five upwind states, are emitting nitrogen oxides (“NOx”) that significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone National Ambient Air Quality Standards (“NAAQS”) in Maryland and require reductions in those emissions. I further understand that the Delaware Department of Natural Resources filed petitions under Section 126 requesting EPA to make a finding that three coal-fired power plants in upwind states emit NOx that significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone National Ambient Air Quality

Standards (“NAAQS”) in Delaware and that EPA require reductions in those emissions. I understand that EPA denied the Maryland and Delaware petitions on October 5, 2018. 83 Fed. Reg. 50,444.

10. I understand that emissions of NOx from the EGUs identified in Maryland’s and Delaware’s petitions exacerbate air pollution not only in those states, but in numerous other downwind states, including portions of New York State that contain Adirondack Park.

11. I understand that ozone levels in Essex County, NY, have exceeded the national, health-based air quality standards several times in recent years, according to state and federal records. I understand that the atmospheric science research station where those pollution levels were recorded is located on Whiteface Mountain.

12. I understand that acid rain falls on the Adirondack Mountains daily.

13. I understand that most of the nitrogen pollution affecting the Adirondacks, Essex County and Clinton County comes from upwind power plants, including those emitted by the generating units listed in Maryland’s and Delaware’s petition.

14. I understand that, according to EPA, ozone pollution can cause serious health problems including inflammation of the airways, difficult breathing, coughing, lung irritation and respiratory illnesses that require medication or can cause permanent lung damage. EPA says people with asthma, like me, are likely to be affected by exposure to ozone.

15. I understand that if emissions of NOx from the power plants identified in the Section 126 petitions were controlled as Maryland and Delaware demand, pollution in areas of the Park where I work and engage in recreational activities, and where I use and enjoy the natural environment, would also be decreased. Therefore, were the Court to set aside EPA’s denial of

the states' Section 126 petitions, there is a likelihood that the harms that I suffer from air pollution would be lessened.

I declare that the foregoing is true and correct.

Date:

3/13/19

Signed:



**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

CHESAPEAKE BAY FOUNDATION,
INC., *et al.*,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, *et al.*,

Respondents.

Case No. 18-1287

(consolidated with Case No. 18-1285)

DECLARATION OF RODETTE JONES

I, Rodette Jones, hereby declare and state as follows:

1. I am over 18 years of age, competent to testify, and have personal knowledge of the facts stated herein.
2. I reside at 4243 Pascal Avenue, Baltimore MD, 21226. I have lived in Baltimore for over 50 years, and at my current address since 1997.
3. I am a member of Chesapeake Bay Foundation because I value clean air, clean water, and a healthy environment.
4. I enjoy outdoor activities such as gardening and walking with my dogs, which I do every day.
5. I frequently suffer from respiratory infections when air quality is poor. I have had two to three respiratory infections in the past two years, and I have had to

miss work in order to receive medical care from a doctor. These respiratory infections have led to bronchitis at least twice in the past two years.

6. I am a community activist in the Curtis Bay neighborhood of Baltimore, where I have long been involved with the fight for a healthy environment and clean air.

7. My community engagement began when a new waste incinerator was proposed to be placed in my community, Curtis Bay. I volunteered with United Workers to oppose this project. I attended rallies and protests, lead petitions in the community, and met with state officials at Maryland Department of the Environment to express my opposition to this polluting project. Our community efforts where ultimately successful, and the project was not built in Curtis Bay.

8. I am also engaged in the efforts to phase out the BRESKO Trash Incinerator in South Baltimore. Instead of making upgrades to the incinerator, we should be looking for ways to recycle waste instead of burning it. I have attended rallies, in partnership with many Baltimore groups including CBF, to demand clean air at the Maryland Department of the Environment during the state's regulatory process to reduce nitrogen oxide pollution from the plant last fall.

9. I have also volunteered with the Chesapeake Climate Action Network over the expansion of crude oil trains into Baltimore. I attended protests, and engaged the city council in support of their efforts to limit the number of crude oil trains

entering Baltimore through Curtis Bay. These trains pose a health and safety risk because of the emissions from the trains, and the potential for explosion with no warning for residents to evacuate.

10. I am currently the manager of the Filbert Street Garden in Curtis Bay. The Community Garden provides plots to members for a fee to grow their own vegetables and fruit. We also grow vegetables and fruit and sell the produce at a farm stand to provide fresh fruits and vegetables to the community. The Community Garden is also used for education programs with the Curtis Bay Elementary School. Students come to the garden to tend to vegetables and learn about gardening. The garden is a hub for the community. We host community events like movie nights, Easter egg hunts, art in the garden, and other similar events to get community members out in the garden.

11. I am in the garden on a daily basis to tend to the chickens, ducks, bees, and goats. I go to the garden because no one else will feed the animals if I don't, and it is never clear how long the air quality will be unhealthy. I know that being outside on poor air quality days is bad for my health, but I have to feed in the animals in the garden. I am concerned that poor air quality could be affecting the plants and animals in the garden.

12. Johns Hopkins has installed an air quality monitor in the community garden.

13. My work at the community level to improve air quality in Baltimore and Curtis Bay is made more difficult by the EPA's decision to allow upwind power plants to continue to emit pollution that ultimately ends up in Maryland.

14. I understand that poor air quality is often the result of high levels of ozone pollution and that ozone is formed by air pollution from power plants in states "upwind" from Maryland.

15. I am aware of the adverse health effects associated with ozone pollution and I am concerned about my health as well as the health of my family, friends, and the environment.

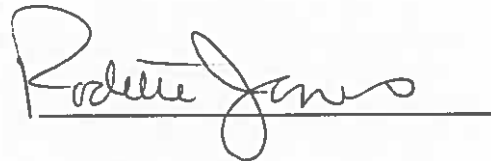
16. I understand that the Clean Air Act Petitions filed by the State of Maryland and the State of Delaware asked the Environmental Protection Agency (EPA) to reduce the amount of harmful air pollution that is transported from upwind power plants into downwind states, including Maryland.

17. I understand that EPA finalized its denial of Maryland's and Delaware's petitions. I am aware that the lawsuit filed by CBF and other groups asks the court to review EPA's decision and decide whether EPA's decision was justified and complied with the law. I support CBF's challenge to this rule because I value clean air, and the EPA's decision deprives myself and my community of healthy, breathable air.

I declare under penalty of perjury and based on personal knowledge that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 18 day of March, 2019.

Date: 3/18/2018

A handwritten signature in cursive script, reading "Rodette Jones", written over a horizontal line.

Rodette Jones

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

CHESAPEAKE BAY FOUNDATION,
INC., *et al.*,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, *et al.*,

Respondents.

Case No. 18-1287

(consolidated with Case Nos.
18-1285 and 18-1301)

DECLARATION OF MARK KRESOWIK

I, Mark Kresowik, hereby declare and state as follows:

1. This declaration is based on my personal knowledge. I am over the age of eighteen (18) and suffer no legal incapacity.
2. I am the Deputy Regional Director, Eastern Region for the Beyond Coal Campaign (“Campaign”) based in Washington, D.C. The Campaign is a project of the Sierra Club. I am responsible for overseeing the Campaign’s operations in several Eastern states, including states suffering from unsafe levels of ground-level ozone pollution.
3. I have been working at the Sierra Club since 2006. In my position, I am responsible for directing the activities of the Beyond Coal Campaign throughout the Northeast and Mid-Atlantic. These activities include community outreach, public

education, lobbying, and litigation. In order to perform the responsibilities of my job, my staff and I interact on a daily basis with the Sierra Club's members in states throughout the Northeast and Mid-Atlantic. Because of my position and responsibilities, and through my regular interaction with members, I am familiar with the Sierra Club's purpose, organization, and activities, and with the environmental interests and concerns of Sierra Club members.

4. The Sierra Club is a national, non-profit organization incorporated under the laws of California, with its principal place of business in Oakland, California. The Club's purposes are to explore, enjoy, and protect the wild places of the Earth; to practice and promote the responsible use of the Earth's ecosystems and resources; to educate and enlist humanity in the protection and restoration of the quality of the natural and human environment; and to use all lawful means to carry out these objectives. Sierra Club members are greatly concerned about air quality, and the Club has a long history of involvement in air quality related activities on both the local and national levels.

5. I understand that the state of Maryland submitted a petition to the U.S. Environmental Protection Agency ("EPA") requesting that EPA find that emissions of nitrogen oxides from thirty-six coal units in five states upwind of Maryland are significantly interfering with Maryland's ability to attain and maintain the 2008 ozone National Ambient Air Quality Standard. I also understand that the state of Delaware submitted petitions to the EPA requesting that EPA find that emissions of nitrogen oxides

from the Harrison coal-fired power plant in West Virginia, the Homer City coal-fired power plant in Pennsylvania, and the Conemaugh coal-fired power plant in Pennsylvania are significantly interfering with Delaware's ability to attain and maintain the 2008 and 2015 ozone National Ambient Air Quality Standards. I understand that EPA published a notice of final action denying all four of these petitions on October 5, 2018.

6. Ensuring that such ozone precursor pollution is reduced, air quality improved, and issues involving interstate transportation of air pollution are resolved, is a critical priority for Sierra Club, in keeping with its organizational purposes.

7. Sierra Club has expended significant resources addressing air pollution issues, particularly those issues related to ozone. For example, Sierra Club has sought to inform the public about the health impacts of ozone air pollution, including increased asthma, using larger-than-life-size constructions of asthma inhalers at public events where we discuss the issue with members of the public. Similarly, Sierra Club has worked extensively on interstate air pollution transport issues, particularly those concerning ozone impacts in downwind states flowing from power plant emissions in upwind states, educating the public and seeking solutions to these pollution problems. In Maryland, Sierra Club participated in a lengthy stakeholder process regarding the development of nitrogen oxide regulations for coal-fired power plants and submitted formal comments on the state's proposed regulations, which have now been finalized.

8. Addressing and resolving interstate ozone pollution transport is a priority for the Sierra Club. A court order vacating EPA's denial of the Maryland and Delaware petitions described above would help the Sierra Club fulfill its organizational objectives, and would advance the interests of its members.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 1st day of March 2019.

A handwritten signature in black ink, appearing to read 'Mark Kresowik', written over a horizontal line.

Mark Kresowik

DECLARATION OF JOSEPH O. MINOTT

I, Joseph O. Minott, declare and state as follows:

1. This declaration is based on my personal knowledge. I am over the age of eighteen (18) and suffer no legal incapacity. I submit this declaration in support of Clean Air Council's ("CAC's") lawsuit challenging U.S. Environmental Protection Agency's ("EPA's") decision denying the Clean Air Act section 126 interstate transport petitions filed by Delaware and Maryland, identifying excess emissions of the pollution that causes ozone, that continue from certain power plant sources in Pennsylvania, causing Delaware and Maryland to be unable to attain the 2008 National Ambient Air Quality Standards ("NAAQS") for ozone.

2. I am CAC's Executive Director and Chief Counsel. I have served in this position for thirty-two (32) years. Before serving as Executive Director, I was a staff attorney at CAC for four years. My position at CAC makes me responsible for achieving CAC's goals and mission, and requires me to be up to date on CAC's program activities and membership.

3. The Delaware Valley Citizen's Council for Clean Air, now known as Clean Air Council, or CAC, was established in 1967. CAC is a 501(c)(3) non-profit, membership organization incorporated in Pennsylvania and headquartered at 135 South 19th Street, Suite 300, Philadelphia, Pennsylvania 19103.

4. CAC works to achieve its mission, which includes protecting everyone's right to breathe clean air, through advocacy and legal action. Among CAC's programmatic activities is its Public Health initiative, which includes advocating for clean air in urban areas. CAC's work includes a focus on ensuring that national standards for health damaging air pollutants like ground-level ozone are met.

5. I understand from my reading and work with CAC that ground level ozone smog irritates the respiratory system, reduces lung function, inflames and damages the cells that line your lungs, making them more susceptible to infections, asthma and aggravated asthma, and aggravating chronic lung disease. Ozone smog also can cause permanent lung damage.

6. CAC currently has nearly 9,000 members in the Mid-Atlantic region. Of those members, most live in the Philadelphia area. In Pennsylvania, Philadelphia is currently designated nonattainment for the 2008 ozone standard and the 2015 ozone standard.

7. Because of my work with CAC, I am aware that EPA is required by the Clean Air Act to ensure that sources in upwind states, like the coal-fired power plants in the Commonwealth of Pennsylvania where I live, control their air emissions sufficiently so as to eliminate significant contributions of air pollution to downwind states like Maryland and Delaware, such that those states can meet the

National Ambient Air Quality Standards (“NAAQS”) for ozone. I understand that states can file petitions seeking pollution controls from specific sources upwind in other states, and that significantly contribute to the nonattainment problems faced by the downwind petitioning states. The statute requires that if such petitions are granted, the named sources must decrease the identified emissions, or cease operating within three months of the decision.

8. I am further aware that the states of Maryland and Delaware filed petitions in 2016 seeking reductions from, among other sources, units at the Homer City, Keystone, Montour, Brunner Island, and Conemaugh power plants in Pennsylvania, and presenting evidence that they are significantly contributing to downwind nonattainment in Maryland and Delaware.

9. I further understand that the Delaware and Maryland petitions presented evidence showing that the named plants have in place pollution controls that can enable additional pollution reductions beyond what they are currently achieving. I further understand that, if further air pollution emissions reductions were achieved by the sources identified in the Maryland and Delaware petitions, I would experience cleaner air where I live in Pennsylvania.

10. In addition to my professional role at CAC, I also have been a CAC member for over twenty (20) years. I am sixty-four (64) years old. I have been

a resident of Philadelphia or its suburbs for forty-five (45) years.

11. I suffer from a chronic medical condition called sarcoidosis, which causes shortness of breath, wheezing, and chest pain. The symptoms of sarcoidosis are aggravated by ground-level ozone and ozone smog. I am therefore directly impacted by EPA's decision to deny the Maryland and Delaware interstate transport petitions, as it means that the identified power plants in Pennsylvania, upwind from my work and my home, will not be required to achieve additional emissions reductions of the pollutants that cause ozone smog. That will prolong my exposure to higher concentrations of ozone that aggravate my condition.

12. I do not own a car, so I walk around Philadelphia on a daily basis. I also enjoy running when the air is clean enough, but I must curtail my running during periods of high concentrations of ground level ozone. I also enjoy simply being outdoors, particularly in the summer months, but I must curtail that activity as well when the ozone is at unhealthy levels.

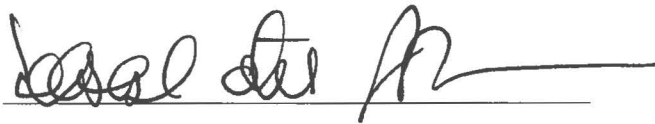
13. I have children and two small grandchildren who visit me in Philadelphia on a regular basis from their homes in New York and Philadelphia. I am concerned about their health on days when the ozone exceeds the ozone NAAQS.

14. CAC supports timely implementation of both the 2008 and the 2015 ozone standards, including the grant of the Maryland and Delaware ozone transport

petitions, and opposes any attempt by the EPA to postpone or avoid the steps towards their full implementation, including by denying the Maryland and Delaware petitions. I therefore support this litigation, as CAC's Executive Director, and as a member of CAC, in order to alleviate my own and my children's and grandchildren's continued exposure to unhealthful levels of ground-level ozone.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 23 day of March, 2019.

A handwritten signature in black ink, appearing to read "Joseph O. Minott", followed by a long horizontal line extending to the right.

Joseph O. Minott, Esq.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

CHESAPEAKE BAY FOUNDATION,
INC., *et al.*,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, *et al.*,

Respondents.

Case No. 18-1287

(consolidated with Case Nos.
18-1285 and 18-1301)

DECLARATION OF ERIC SCHAEFFER

I, Eric Schaeffer, declare and state as follows:

1. I am over 21 years of age and suffer from no impairment or disability affecting my ability to give truthful testimony. I have personal knowledge of the facts set forth below.
2. I am the Executive Director of the Environmental Integrity Project (“EIP”). I founded the organization in 2002, and have served as the Executive Director since then.
3. EIP is a non-profit organization based in Washington, D.C., dedicated to ensuring the effective enforcement of state and federal environmental laws to protect public health and the environment. EIP’s offices are located at 1000 Vermont Avenue, NW, Suite 1100, Washington D.C., 20005, and 1206 San Antonio, Suite 200, Austin, TX 78701.
4. EIP was specifically founded to advocate for the effective enforcement of environmental laws pertaining to large sources of air pollution, including power plants, due to their significant

impacts on public health and the environment and the political pressures that can come into play in regulating and enforcing against these facilities.

5. As part of its mission to protect public health and the environment from the negative effects of air pollution, EIP has invested substantial time and effort documenting how air pollution caused by coal-fired power plants threatens human health and the environment. For example, in June 2012, EIP published a report with Professor Jonathan Levy of the Boston University School of Public Health, detailing how the social costs associated with the premature deaths of citizens living near certain coal-fired power plants outweigh the value of the energy these plants produce. EIP uses information like this to educate the public and help ensure large pollution sources comply with state and federal environmental laws.

6. In addition to informing the public about power-plant emissions through reports, EIP represents citizens and groups, on a pro bono basis, whose recreational, health, aesthetic and other environmental interests are harmed by coal-fired power plants in their communities. For example, EIP advocates on their behalf by reviewing permits required under the Clean Air Act - including "Title V" permits - and challenging them when necessary, and by bringing enforcement actions when plants violate conditions of state-issued permits or federal law. EIP also submits comments – on behalf of EIP and on behalf of other organizations - during public comment periods held on the issuance or renewal of pollution permits for power plants and/or the development of new pollution standards for power plants. EIP staff regularly speak at public hearings as part of these efforts.

7. Over the years, EIP has invested substantial time and effort advocating for strong and health-protective limits for emissions of nitrogen oxides (NOx) from large power plants in Maryland, with a particular focus on large NOx sources in the Baltimore area. EIP participated

in the public processes as Maryland developed new NOx emission limits for Maryland's fleet of coal-fired power plants, including submitting written comments and speaking at public meetings and/or hearings on the importance of setting strong, health-protective standards. In addition, EIP expended substantial time and effort in 2016, 2017, and 2018 participating in a public stakeholder process as Maryland develop new NOx emission limits for the two large municipal waste combustors (MWCs) located in the state, focusing on the MWC that is a larger source of NOx emissions and is located in Baltimore City. In this process, EIP has advocated from the strongest possible NOx limits in extensive written comments, in-person comments at public meetings held by the Maryland Department of the Environment (MDE), and in testimony at a public hearing in front of the Baltimore City Council.

8. EIP has also invested substantial time and effort seeking strong air pollution permits, with enforceable emissions standards and monitoring requirements, for large air pollution sources in Maryland, including coal-fired power plants. Much of this work has focused on Title V operating permits, which must be renewed every five years. The permit renewal process must include an opportunity for members of the public to submit comments on legal deficiencies in a proposed renewal permit. EIP has submitted written comments during this process on renewals over the last few years for coal plants in Maryland including the Morgantown, Dickerson, and Chalk Point plants and the Fort Smallwood complex, which houses two separate plants. We also submitted petitions to the U.S. Environmental Protection Agency (EPA) to object to the proposed Title V permits for the Morgantown plant in Newburg, Maryland and the Fort Smallwood complex in Anne Arundel County. And because EPA almost never timely responds to these petitions unless prompted by a lawsuit, EIP has often filed "deadline" suits to force EPA

to comply with the Clean Air Act's 60-day deadline for responding to a Title V petition. We did this for the Morgantown and Fort Smallwood permits.

9. I am aware that the State of Maryland submitted a Good Neighbor Petition to EPA in November of 2016 under Section 126 of the federal Clean Air Act, requesting, among other things, that EPA order 36 coal-fired electrical generating units located in five upwind states to meet more stringent limits on their emissions of NO_x during ozone season. I am also aware that EPA denied Maryland's petition in 2018.

10. From my previous work at EPA and my work with EIP, I know that power plants can emit massive amounts of NO_x. I also know that NO_x can have adverse respiratory effects, including causing or worsening asthma, on its own and as a "precursor" pollutant that contributes to the formation of ozone and particulate matter. Particulate matter exposure can also cause or contribute to heart attacks, irregular heartbeat, and premature death in people with heart or lung disease. Thus, EPA's refusal to order the owners of the 36 coal units that are the subject of Maryland's petition to reduce their NO_x emissions during ozone season exposes the individuals and community groups that EIP represents to greater air pollution — and harms their health, recreational, aesthetic and other interests.

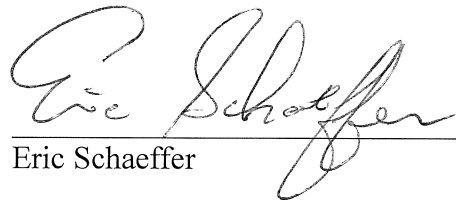
11. EPA's denial of Maryland's petition harms EIP's mission of protecting the public from and educating the public about excess pollution from large power plants, especially those that adversely affect air quality in Maryland.

12. I am aware that EPA's decision denying Maryland's petition has been appealed by the State of Maryland and others, including EIP and other not-for-profit organizations. If the Court issues an order setting aside EPA's unlawful denial of Maryland's petition and directing further action in accordance with the requirements of the Clean Air Act, it is more likely that the 36 coal

units that are the subject of Maryland's petition will be required to reduce their NOx emissions. This will support EIP's efforts to protect the public and the environment from air pollution from power plants.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge, belief, and recollection, pursuant to 28 U.S.C. § 1746.

Executed on this 21 day of March, 2019.


Eric Schaeffer

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

CHESAPEAKE BAY FOUNDATION,
INC., *et al.*,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, *et al.*,

Respondents.

Case No. 18-1287

(consolidated with Case Nos.
18-1285 and 18-1301)

DECLARATION OF SHARMAN STEPHENSON

I, Sharman Stephenson, hereby declare and state as follows:

1. This declaration is based on my personal knowledge. I am over the age of eighteen (18) and suffer no legal incapacity.

2. I joined Sierra Club in 2009 and have a lifetime membership. I became a member because I have always been concerned about protecting the natural world. My mother instilled in me a deep appreciation for nature and the environment at an early age and I have spent my life enjoying outdoor activities such as gardening, hiking, and camping. I am also a member of the Nature Conservancy.

3. I am 68 years old and have lived at 502 Riverview Avenue, Claymont, Delaware 19703 in New Castle County for about 20 years. I am retired.

4. I have struggled with upper respiratory issues all my life. I had to receive weekly shots to control my asthma until I was in my mid-thirties. I also have other allergies that make dealing with bad air quality and outdoor allergens difficult. While I no longer suffer from asthma attacks, I worry that prolonged poor or worsening air quality could exacerbate my respiratory problems.

5. I am an avid gardener, often spending several hours outside each day when the weather is nice. I also enjoy taking walks in the park and feeding the birds.

6. However, because of my respiratory problems, I pay close attention to the air quality reports on the local news, especially in the summer during ozone season. If air quality in my area is poor on certain days, I purposely restrict my outdoor time on those days so as not to trigger my allergies. If I spend too much time outdoors when the air quality is bad, my sinuses get irritated and I often develop a cough. It frustrates me that poor air quality reduces my enjoyment of nature and ability to engage in the outdoor activities that I love.

7. I also have two young grandchildren under the age of three—one lives in Delaware and one in Maryland—and I worry about how poor air quality may negatively affect their health and enjoyment of the outdoors.

8. I understand that Delaware filed Clean Air Act petitions asking the U.S. Environmental Protection Agency (EPA) to find that emissions from three

coal plants in Pennsylvania (Conemaugh and Homer City) and West Virginia (Harrison) are impeding Delaware's ability to achieve and maintain safe levels of ozone. I also understand that Maryland submitted a petition asking EPA to find that a number of coal plants in Indiana, Kentucky, Ohio, Pennsylvania, and West Virginia are impairing downwind air quality by failing to operate their installed pollution controls.

9. I also understand that EPA on October 5, 2018, published a final response to these petitions, denying all of them. EPA's denial of the Delaware and Maryland petitions prolongs my and my grandchildren's exposure to unsafe levels of ozone and continues to impair my ability to engage in the outdoor activities that I enjoy.

10. I want the world to be a better place for my grandchildren so that they can develop the same enjoyment of nature as I have. If Sierra Club and the states of Delaware and Maryland are successful in their litigation to compel EPA to grant these Clean Air Act petitions, I would be able to better engage in and enjoy the things that I love, such as gardening and spending time outdoors with my grandchildren.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 20th day of January, 2019.


Sharman Stephenson

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

CHESAPEAKE BAY FOUNDATION,
INC., *et al.*,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, *et al.*,

Respondents.

Case No. 18-1287

(consolidated with Case Nos.
18-1285 and 18-1301)

DECLARATION OF JOHN STITH

I, John Stith, declare:

1. I am Director of Database Marketing and Analytics at the Environmental Defense Fund (“EDF”). I have had this position for more than thirteen years. I am over 18 years of age. I have personal knowledge of the matters set forth herein and, if called to testify, I would testify to the truth of these facts. I submit this declaration in support of EDF’s appearance in the above-captioned case challenging the U.S. Environmental Protection Agency’s (“EPA’s”) denial of the State of Maryland and the State of Delaware’s Clean Air Action Section 126(b) petitions.

2. My duties include maintaining an accurate list of members. My colleagues and I provide information to members, acknowledge gifts and volunteer actions, and manage the organization's member databases. My work requires me to be familiar with EDF's purposes, staffing, activities, and membership.

3. EDF is a membership organization incorporated under the laws of the State of New York. It is recognized as a not-for-profit corporation under section 501(c)(3) of the United States Internal Revenue Code. EDF has U.S. offices in Austin, TX; New York, NY; Washington, D.C.; Boston, MA; San Francisco and Sacramento, CA; Raleigh, NC; Boulder, CO; and, Bentonville, AR.

4. EDF relies on science, economics, and law to protect and restore the quality of our air, water, and other natural resources, and to support policies that mitigate the impacts of climate change.

5. Through its programs aimed at protecting human health, EDF has long pursued initiatives at the state and national levels designed to reduce emissions and ambient levels of air pollution, including ground-level ozone and other pollution for which national ambient air quality standards are set under the Clean Air Act. EDF has been involved in previous efforts to reduce ozone pollution and the interstate transport of ozone pollution.

6. I understand that EPA has denied a Clean Air Act Section 126(b) petition filed by the State of Maryland, requesting that EPA require 36 electric

generating units (“EGUs”), at 19 coal-fired power plants located in five upwind states, to turn on existing pollution controls in order to reduce nitrogen oxide (“NOx”) pollution that significantly contributes to nonattainment or interferes with maintenance of the 2008 and 2015 ozone standards in Maryland. I also understand that EPA has denied three Section 126(b) petitions filed by the State of Delaware requesting EPA to require three power plants to fully operate existing modern pollution controls in order to reduce dangerous ozone-forming pollution.

7. EDF has a strong organizational interest—and a strong interest that is based in its members’ health, environmental, recreational, aesthetic, professional, educational, and economic interests—in reducing the ground-level ozone addressed by Maryland and Delaware’s Section 126(b) petitions.

8. When an individual becomes a member of EDF, his or her current residential address is recorded in our membership database. The database entry reflecting the member’s residential address is verified or updated as needed. The database is maintained in the regular course of business and each entry reflecting a member’s residential address and membership status is promptly updated to reflect changes. I obtained the information about our membership discussed below from our membership database.

9. EDF has over 463,000 members in the United States, and we have members in all 50 states and the District of Columbia. These members likewise

have a strong interest in protecting human health and the environment from air pollution. A significant number of these members reside in areas affected by Maryland and Delaware's Section 126(b) petitions including Maryland (12,292 members), Indiana (6,086 members), Kentucky (3,011 members), Ohio (14,311 members), Pennsylvania (21,672 members), West Virginia (1,697 members), Connecticut (8,540 members), the District of Columbia (1,937 members), Delaware (1,579 members), New Jersey (14,868 members), New York (41,076 members), and Virginia (12,974 members). These areas include upwind areas near the EGUs that are the subject of Maryland and Delaware's petitions as well as downwind areas where ozone levels would decrease if NO_x emissions were controlled as requested.

10. I understand that if emissions of NO_x from the EGUs identified in Maryland and Delaware's Section 126(b) petitions were controlled as requested, NO_x emissions or ozone pollution in the areas identified above would decrease. Therefore, there is a likelihood that the harms EDF members suffer from air pollution would be lessened should the remedy requested by Maryland and Delaware in their Section 126(b) petitions be implemented.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Washington, D.C. on November 14, 2018.



John Stith

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

CHESAPEAKE BAY
FOUNDATION, INC., *et al.*,

Petitioners,

v.

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY, *et al.*,

Respondents.

Case No. 18-1287

(consolidated with Case No. 18-1285)

DECLARATION OF WILLIAM TEMMINK

I, William Temmink, declare and state as follows:

1. I am over 21 years of age and suffer from no impairment or disability affecting my ability to give truthful testimony. I have personal knowledge of the facts set forth below.
2. I live at 425 Latimer Road, Joppatowne, Maryland 21085. I moved to this house 14 years ago because of its location on the Gunpowder River. I bought my house because of its proximity to the water.
3. I am active in my community on environmental issues, especially related to climate change. I am very concerned that emissions of greenhouse gases are causing the atmosphere to warm at an alarming rate. I spend much

of my time volunteering for organizations that work to limit greenhouse gas emissions from coal plants and other sources. I am a current member and former Vice President of Harford County Climate Action, a grassroots group that advocates for clean energy and energy efficiency in order to fight global warming. I became involved with the Chesapeake Climate Action Network (CCAN) through my involvement with Harford County Climate Action and have been a member of CCAN since March 2013. I have donated to CCAN, participated in numerous CCAN events, and signed dozens of online petitions circulated by CCAN.

4. In addition to greenhouse gases, I know that coal plants emit other harmful air pollutants including nitrogen oxides (NO_x). I know that NO_x is a precursor to ground-level ozone, which is a common air pollutant that the EPA regulates under the Clean Air Act.

5. I live in an area with some of the highest ozone levels in the state of Maryland. I live approximately two miles from the Edgewood ozone monitor in Harford County, which registered ozone levels during the 2014-2016 period that exceed current federal standards and were, during this period, tied for the second highest in the state.

6. I am concerned about the effects that air pollution can have on health. I have had allergies and other respiratory problems since returning to

Maryland from Louisiana about 15 years ago. I do not know the exact cause of these respiratory issues but I have noticed that they have gotten worse in the past decade that I have lived in Joppatowne. I take a number of medications daily to help control my coughing, sneezing, and sore throat. The medicine alleviates my symptoms but does not eliminate them entirely. While rare, my respiratory issues can be so bad that I avoid going outside for the day.

7. I often notice haze and fog over the Gunpowder River, although it is hard to differentiate between the two. The haze gets worse as you approach Baltimore and you can often see colors in the sky that appear to be a result of air pollution. I am concerned about the effects of this air pollution. In particular, I wonder whether the air pollution that I see is making my daily respiratory issues worse.

8. In addition to contributing to air pollution, I know that NO_x emissions can fall to the earth's surface through a process known as atmospheric deposition. I know that excess nitrogen in surface waters can lead to algal blooms, some of which produce chemicals that are toxic to fish. I am aware that, when alga decomposes, it sucks oxygen from the water and can create dead zones where fish and other aquatic animals can die.

9. I am an avid fisherman and I fish at least once a week when conditions are good. I own a kayak and take it out on the water occasionally. Mariner Point Park is located across the street from my house and I walk around the park about three to four days per week, depending on the weather and my health. It used to be my preferred fishing spot.

10. In December 2016, there was a fish kill in the Gunpowder and Bird Rivers, and tens of thousands of fish died. I read that this fish kill was due to the presence of toxic algae. As a result of this fish kill, I stopped fishing entirely for about six months and since then I have avoided areas such as Mariner Point Park where most of the fish were killed. Since the fish kill two years ago, I have only fished from Mariner Point Park once. Based on my conversations with other fishermen at the park, large fish do not seem to have returned to the area. While I understand that it is difficult to attribute any one algal bloom to an increase in nitrogen and other nutrients in a particular waterway, I also understand that nitrogen deposition has been found to contribute to an overall increase in harmful algae blooms, which in turn increases the number of fish kills.

11. I understand that the Clean Air Act Petition filed by the State of Maryland asked the U.S. Environmental Protection Agency (EPA) to reduce

the amount of harmful air pollution that is transported from upwind power plants into downwind states, including Maryland.

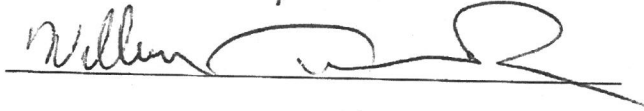
12. I understand that, in 2018, EPA finalized its denial of Maryland's petition. I am aware that the lawsuit filed by CCAN and other groups asks the court to review EPA's decision and decide whether that decision was justified and complied with the law.

10. I would benefit in several ways if the lawsuit brought by CCAN and others is successful and the EPA were required to reconsider its decision or to order the coal plants in upwind states to reduce their NOx emissions.

First, less nitrogen pollution deposited onto surface waters could result in fewer toxic algal blooms which could lead to fewer fish kills like the one in December 2016 that caused me to stop fishing for six months. I would enjoy fishing more and worry less about the effects of pollution of nitrogen deposition on fish if I knew that EPA had issued the order requested in Maryland's petition. Second, it is possible that my respiratory issues, which have gotten worse over the ten years that I have lived in Joppatowne, would be alleviated if NOx and ground-level ozone pollution in my area were reduced.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge, belief, and recollection.

Executed on this 7 day of March, 2019.

A handwritten signature in black ink, appearing to read 'William Temmink', written over a horizontal line.

William Temmink

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

CHESAPEAKE BAY
FOUNDATION, INC., *et al.*,

Petitioners,

v.

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY, *et al.*,

Respondents.

Case No. 18-1287

(consolidated with Case No. 18-1285)

DECLARATION OF MICHAEL TIDWELL

I, Michael Tidwell, declare and state as follows:

1. I am over 21 years of age and suffer from no impairment or disability affecting my ability to give truthful testimony. I have personal knowledge of the facts set forth below.
2. I am the founder and executive director of the Chesapeake Climate Action Network (CCAN).
3. CCAN is a grassroots non-profit organization dedicated to raising awareness of the health and environmental impacts of global warming, and promoting the transition to clean energy generation and use in the mid-Atlantic region—specifically Maryland, Virginia, and Washington, DC.

4. A centerpiece of our organizational mission at CCAN is to educate and mobilize citizens in order to create a societal switch towards clean-energy solutions and away from fossil-fuel energy generation.
5. CCAN's efforts to transition to clean energy include ensuring that fossil-fuel-powered facilities, such as coal-fired power plants, do not threaten public health or the environment through emissions of air pollutants such as nitrogen oxides (NOx) or the creation of ground-level ozone.
6. CCAN's efforts include educating the public as to the risks associated with pollution from coal plants and other large pollution sources and advocating for the reduction or elimination of such pollution through the adoption of more protective standards. CCAN and our members have devoted considerable time, effort, and other resources to seeking reductions in emissions from electricity-generating plants located in Maryland. For example, in 2015, the Maryland Department of the Environment (MDE) finalized a new set of lower emission limits for NOx pollution for several coal-fired plants located in Maryland pursuant to the Reasonably Available Control Technology (RACT) requirements of the federal Clean Air Act's provisions for ozone nonattainment areas. CCAN participated in the public process as MDE established these limits, including providing testimony at two public meetings in support of strong standards.

7. CCAN also participated in a public stakeholder process as MDE developed regulations setting new, lower NO_x limits for Maryland's two energy-generating municipal waste combustors (incinerators) from 2016 through 2018. CCAN advocated for strong new NO_x limits for the incinerator located in Baltimore City, which emits more than twice the NO_x per year than the state's other incinerator. On this topic, CCAN has submitted written comments to MDE, testified before the Baltimore City Council, and testified before MDE itself.
8. In addition to seeking more protective pollution standards, CCAN and our members advocate for strong, enforceable air pollution permits that properly incorporate emission limits and require monitoring sufficient to assure compliance with these limits. CCAN has participated in the Clean Air Act Title V permitting process for multiple coal-fired power plants in Maryland by submitting written comments during the public comment period and, if the permit is not revised to address deficiencies, asking the U.S. Environmental Protection Agency (EPA) to object to the permit. CCAN has participated in this process for multiple Maryland coal plants including the Charles P. Crane plant in Baltimore County, the Chalk Point plant in Prince George's County, the Morgantown plant in Charles County, the Dickerson plant in Montgomery County, and the Fort Smallwood

Complex in Anne Arundel County, which houses the Brandon Shores and Wagner generating stations.

9. CCAN has more than 62,000 members, including 21,010 in Maryland, 8,123 in the District of Columbia, 22,830 in West Virginia, and 367 in West Virginia. CCAN is concerned about the effects of NO_x pollution from coal-fired power plants—plants located within and outside of Maryland—on the health of CCAN members and on the environment in which they live. On behalf of our members, CCAN is dedicated to preventing future harm to the environment and public health from dangerous air pollutants. More specifically, CCAN is concerned about the NO_x pollution from the 36 coal units that are the subject of Maryland's Good Neighbor Petition.

10. As CCAN's director, I know that CCAN members live, exercise, work, raise children, garden, fish, and/or recreate in areas of Maryland that are affected by NO_x emissions from the 36 coal-fired electric generating units that are the subject of Maryland's Good Neighbor Petition. More specifically, I know that CCAN has members who live and recreate in these areas who have concerns about the dangers of inhaling NO_x and/or ground-level ozone resulting from the emissions of pollutants from these units. Similarly, I know that we have members who fish and garden in these areas

and are concerned about the effects of NOx pollution on the physical environment, which affects their ability to enjoy it.

11. I am aware that coal-fired power plants emit large quantities of NOx and that NOx, by itself, can cause or worsen asthma. I am also aware that NOx contributes to the formation of ground-level ozone, which can also cause or worsen asthma. I understand that NOx emissions from these units can fall to the earth's surface through a process known as atmospheric deposition. Excess nitrogen in surface waters can lead to algal blooms which block sunlight from reaching underwater grasses. When these grasses decompose, they leach oxygen from the water and create dead zones which can harm fish and other aquatic animals.

12. CCAN and our members frequently participate in public meetings and hearings relating to potential new pollution standards for large electricity-generating plants, especially coal plants. As stated above, CCAN has participated in public meetings and hearings as new NOx emissions limits have been developed for coal plants and incinerators in Maryland.

13. As CCAN's director, I am aware that Maryland submitted a Good Neighbor Petition to the EPA in November 2016 under Section 126 of the federal Clean Air Act, requesting that the EPA order 36 coal units located in five upwind states to reduce their NOx pollution during ozone season, which

starts on May 1 and ends on September 30. I know that Maryland did this because NOx emissions from these units are contributing to ground-level ozone concentrations within Maryland.

14. I understand that EPA finalized its denial of Maryland's petition in 2018. I am aware that the appeal filed by CCAN and other groups asks the court to review EPA's decision and decide whether EPA's decision was justified and complied with the law.

15. If the appeal brought by CCAN and others is successful, the plants housing the 36 coal units that are the subject of Maryland's Good Neighbor Petition may be required to more effectively limit NOx pollution from these units. This will increase CCAN's members' use and enjoyment of areas affected by pollution from the 36 coal units and benefit CCAN's members' health by reducing their exposure to pollution from these units.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge, belief, and recollection.

Executed on this 11 day of March, 2019.


Michael Tidwell

DECLARATION OF NICHOLAS ZUWIALA-ROGERS

I, Nicholas Zuwiala-Rogers, hereby declare and state:

1. This declaration is based on my personal knowledge. I am over the age of eighteen (18) and suffer no legal incapacity. I am a member of Clean Air Council (“CAC”). I submit this declaration in support of the CAC’s lawsuit challenging U.S. Environmental Protection Agency’s (“EPA’s”) decision denying the Clean Air Act section 126 interstate transport petitions filed by Delaware and Maryland, identifying excess emissions of the pollution that causes ozone and that continue from certain power plant sources in Pennsylvania.

2. I currently reside at 2333 S. Carlisle Street, Philadelphia, Pennsylvania 19145. I have lived in Philadelphia for over thirteen years.

3. I run, bike, and walk throughout east, central, and northeast Pennsylvania. I spend approximately ten hours a week outdoors recreating. I am also a competitive cyclist. I regularly compete in bike races (approximately five times a year) throughout southeastern Pennsylvania. Accordingly, I breathe whatever air pollution is present in the ambient air in these areas. I am aware particularly that high ozone levels which occur in the summer months in Pennsylvania can cause respiratory symptoms in people with asthma and other respiratory problems.

4. I am an asthmatic. I have had asthma since I was a child. I use my inhaler most weekends as a precautionary measure and suffer from aggravated asthma occasionally throughout the year. I have acute asthma attacks that are triggered by poor outdoor air quality, particularly on bad ozone days which occur most often in the summer, and especially while I am exercising.

5. As a member of CAC, I am aware that EPA is required to ensure that sources in upwind states, like the coal-fired power plants in the Commonwealth of Pennsylvania where I live, control their air emissions sufficiently so as to eliminate significant contributions of air pollution to downwind states like Maryland and Delaware such that they can meet the National Ambient Air Quality Standards (“NAAQS”) for ozone. EPA’s fulfillment of that mandate will not only ensure cleaner air further downwind in those states, but also will improve the air quality where I live, work, and recreate, because it will require further air pollution controls at sources upwind from me in Pennsylvania, including the Homer City and Conemaugh power plants.

6. As a member of CAC, I am further aware that EPA has denied petitions from the states of Maryland and Delaware, seeking reductions from, among other sources, units at the Homer City, Keystone, Montour, Brunner Island, and Conemaugh power plants, that are needed so that Maryland and

Delaware can meet the 2008 ozone NAAQS. I bike in areas downwind from these plants, throughout Pennsylvania.

7. I understand that the Delaware and Maryland petitions presented evidence showing that these plants have pollution controls that enable additional pollution reductions beyond what they are currently achieving. I further understand that, if further air pollution emissions reductions were achieved by the sources identified in the Maryland and Delaware petitions, I would experience cleaner air where I live in Pennsylvania, because further limiting those emissions upwind from where I live and bike will mean less exposure to unhealthy ozone levels for me when I am outside, generally, and when biking in the summer months.

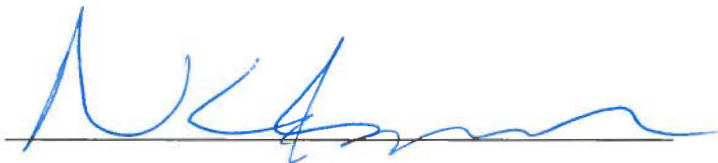
8. I understand that EPA's decision to deny the air transport petitions means that those sources do not immediately have to take steps to further reduce their air pollution, and so the EPA decision will prolong my exposure to unhealthy levels of ozone, exacerbating my asthma and putting my health in danger particularly while I engage in cycling and other outdoor recreation.

9. I understand further that the CAC has brought a lawsuit challenging EPA's decision to deny the Delaware and Maryland petitions, and that a court order vacating or otherwise stopping that decision will mean that the named coal-

fired power plant sources in Pennsylvania will need to further control their emissions, within three months of that decision, or stop operating. That will benefit my interest in breathing cleaner air and avoiding ozone-induced asthma attacks when I am cycling and otherwise recreating outdoors in Pennsylvania. I therefore support CAC bringing this action.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 27th day of March, 2019.



Nicholas Zuwiala-Rogers