STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
89 Kings Highway
DOVER, DELAWARE 19901

Telephone: (302) 739 - 9000
Fax No.: (302) 739 - 3106

TESTIMONY OF SECRETARY COLLIN O'MARA BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON ENERGY AND POWER

OF THE HOUSE COMMITTEE ON ENERGY AND COMMERCE

ON AN AMENDMENT TO THE CLEAN AIR ACT REGARDING AIR POLLUTION FROM

NEW AND MODIFIED MAJOR SOURCES

MAY 21, 2014

Chairman Whitfield, Ranking Member Rush, and Members of the Subcommittee, my name is Collin O'Mara and I serve as Delaware's Secretary of Natural Resources and Environmental Control. I have served as past Chair of the Ozone Transport Commission, past Chair of the Regional Greenhouse Gas Initiative, and Chair of the Energy and Climate Subcommittee of the Environmental Council of the States. On behalf of Delaware Governor Jack Markell, I would like to thank you for the opportunity to discuss the discussion draft "Promoting New Manufacturing Act."

Delaware has a long proud history of manufacturing, which remains one of the largest drivers of our state economy. At the same time, we firmly believe that a strong economy and a healthy economy are not mutually exclusive—and that in fact a healthy environment can help

spur economic vitality. We have proven repeatedly in Delaware that we can accomplish both by providing air permits that achieve the most cost-effective reductions in emissions in a timely and predictable manner. Our approach in Delaware is simple: providing certainty to industry by articulating clear permitting requirements, delivering permits in an efficient and predictable manner, and, in many cases, providing financial incentives or other forms of support for adopting cleaner fuels, more energy efficient technologies, or state of the art pollution controls. We believe that a similar approach nationally, combined with many of the legislative ideas included in the "Manufacturing Jobs for America" effort, improved access to lower-cost and low-emission fuels (e.g. natural gas, etc.), integration of next generation energy technologies (e.g. combined heat and power or co-generation), and reforms to federal tax policy, has the greatest potential to promote domestic manufacturing.

Background: To ensure healthy air quality for every American, the U.S. Congress has provided state and local air pollution control agencies with the "primary responsibility" for implementation of the federal Clean Air Act. Our most important responsibility under the Act is to protect the health and welfare of citizens throughout the country from the harmful effects of air pollution. We have come a long way since Congress authorized the Clean Air Act. From the underground coalmine fires in Donora, Pennsylvania to restricted visibility in our National Parks, many severe air pollution problems have been corrected due to your actions. One key part of this success depends upon the New Source Review provisions of the Clean Air Act: the Nonattainment New Source Review pre-construction permitting program to improve areas that are not in attainment of a National Ambient Air Quality Standard (NAAQS) and the Prevention of Significant Deterioration (PSD) pre-construction permitting provisions which are designed to prevent other areas from slipping into non-attainment.

We believe the discussion draft of the Promoting New Manufacturing Act would significantly impede our progress to ensure healthy air for all Americans, while having the unintended consequence of exacerbating air quality and public health problems throughout the country. For this and several other reasons, which I will discuss below, we urge the committee to fundamentally restructure or reject the discussion draft legislation.

Before elaborating on our concerns, please allow me to make it clear that we agree with the major goal of this legislation—namely, to support American manufacturing by improving the efficiency and predictability of state and local permitting programs that affect manufacturing companies that wish to build major new facilities or make major modifications to existing facilities. But, put simply, this bill presumes a problem that does not exist: that EPA's failure to issue implementation guidance concurrently with new or revised NAAQS somehow impedes states' ability to issue pre-construction permits in a timely manner. This is not the case. As a state agency that has been issuing pre-construction and operating permits for nearly forty years through multiple revisions of various National Ambient Air Quality Standards, let me assure you that we are fully aware of the importance of the pre-construction permitting programs to industry, and we are fully able to issue permits to these sources in a timely manner.

I would like to share with you our experiences with pre-construction permitting in Delaware. Our permitting program spans well beyond major sources; in fact, we require permits for very small emission sources, such as emergency generators, dry cleaners, printing operations and small manufacturing. Accordingly, we have gained a tremendous amount of permitting experience for a wide range of manufacturing facilities. Part of this experience is due to the major source threshold for most facilities in Delaware is 25 tons per year of NOx or VOC, compared to 100 or 250 tons elsewhere. (This lower standard is required of Delaware because of our state's ongoing difficulties with meeting national ozone standards as a direct result of 90

percent of our pollution originating from out of state upwind sources and the corresponding non-attainment designations for ozone.)

Despite the lower permitting thresholds, my agency issues permits much more quickly that the one-year time limit requirement in the Clean Air Act. Once a major permit application has been deemed "complete," we routinely issue these permits within four to six months, including all public notice and hearing requirements and EPA review. Specifically, since 2011, Delaware has issued 120 construction permits in an average time of 128 days. We work extremely closely with industry, the public, and EPA to address pre-construction permitting issues as they arise and have always been able to resolve outstanding permit issues. There exists a wealth of guidance and tools that we have been able to use successfully in times of transition, such as the adoption of a new NAAQS. In fact, we have on occasion found that approaches that we developed during transition were more flexible and protective than those contained in the guidance issued later by EPA. The bottom line is this: To the extent EPA is tardy in issuing implementation guidance, we have always been able to work through problems without causing delays in the permitting process.

While we clearly prefer issuance of timely guidance, the underlying assumption in the legislation that permitting authorities are incapable of managing the pre-construction permitting process disregards decades of experience showing otherwise. For example, in 2005, Delaware completed a program we called "Value Stream Mapping," which included all minor source air construction permits, not just New Source Review. We found that it took on average 104.5 days (or three and a half months) to issue a minor source air construction permit – what we call a "natural minor" permit. After identifying waste and unnecessary bureaucratic delays, we reduced the processing time to 88 days, and today after further improvements, it takes on average just 72 days (or just more than two months) to issue these permits—a 31% reduction. Other states have

streamlined their permitting and have also achieved reductions in permit processing times. We believe that our permitting performance and that of other states demonstrates that more effective ways to reduce permit turnaround time and improve regulatory certainty exist, than the means proposed in the discussion draft.

With respect to the discussion draft bill, we offer the following major concerns:

Increases Air Pollution and Adversely Affects Public Health: As drafted, the legislation would likely cause substantial adverse health impacts by exempting sources from complying with health-based air quality standards. Under the Clean Air Act's New Source Review program, before a major source can construct, it must, among other things, conduct an air quality analysis of the expected emissions from the source on surrounding air quality. If the source's projected emissions would adversely affect ambient air quality, the source is required to mitigate those projected impacts before it can construct. This bill would allow sources to perform air quality analyses based on outdated standards that do not sufficiently protect public health, if EPA does not provide guidance for industry concurrently with the promulgation of a revised health-based NAAQS. This exemption would allow a source to pollute more than it is entitled to under the CAA, because EPA has not issued specific guidance with a fully promulgated revised NAAQS. The extra pollution means that public health will be further compromised, with disproportionate effects on those most vulnerable, including children, the infirm and the elderly. Additionally, the downwind states of the Ozone Transport Region would be most affected as the additional emissions would move states, which are already out of attainment due to cross-state air pollution, even further out of compliance after receiving even more pollution from their upwind neighbors., For these reasons, the legislation as drafted would unintentionally undermine the basic framework of the Clean Air Act—to protect public health of all Americans with an adequate margin of safety—and will undercut public confidence in

permitting programs that were designed to protect public health, because .regulatory agencies will be required allow harmful emissions in exceedance of a new NAAQS.

Reduces Certainty for both Manufactures and Regulators: In every conversation with local manufacturers in Delaware, we hear that regulatory certainty and predictability are essential components of corporate decisions to build or expand facilities. Under the discussion draft, new facilities may request permits with less stringency that a legally adopted NAAQS would typically require, setting up potential legal challenges and other liabilities. At the same time, regulatory agencies would have to present both regulated facilities and the public with draft permits that are not designed to protect the local population from exposures above the most recent established standard that EPA has determined is requisite to protect public health. Because new facilities permitted after a new NAAQS but before guidance issuance will not have achieved the Lowest Achievable Emission Rate by implementing best control technologies, they will be constant targets for more expensive upgrades when either the state needs additional reductions to meet State Implementation Plan obligations of federal unit or facility standards change. The prospect of returning to a recently permitted source for additional rounds of permitting and controls once the new guidance is promulgated, or at the time of Title V permitting, represents a potentially significant implementation cost and administrative burden for both the applicant and regulatory. The discussion draft also requires extensive additional reporting from EPA, which would in turn require state agencies to generate the underlying data for EPA to report to Congress, diverting the state's attention from issuing timely permits due to the additional administrative workload. This would further delay projects unnecessarily.

Increases Costs of Achieving Air Quality Standards: A central tenant of the Clean Air Act is that it is much cheaper for any new facility to meet a clearly defined regulatory standard if the necessary operational systems and pollution controls are designed into a facility's operations

from the beginning. To achieve the same level of reduction from an existing facility is often much more expensive because it requires after-the-fact retrofitting of systems with costly additional controls that were not incorporated into the original design. The legislation places both new facilities and existing facilities at risk of facing expensive future system upgrades as a result of future federal standards and/or additional reductions needed in the development of a State Implementation Plan to achieve NAAQS, while such reductions could have been achieved at a fraction of the price during design and construction of the facility.

Instead of reducing requirements for new facilities, we should focus on supporting upgrades that reduce the sources of pollution through adoption of cleaner fuels, integrate advanced control technologies, or improve operational efficiencies. In Delaware, we have established an Energy Efficiency Investment Fund, specifically for industrial facilities and commercial buildings, which provides grants and loans for projects that exceed regulatory requirements and achieve a quantifiable improvement in air quality. A similar approach through tax policy or other incentives, could achieve the desired outcome of this legislation more effectively.

Creates Inequitable Additional Costs for Both Established and Future Facilities: The bill as drafted would have the unintended consequence of transferring emission-reduction responsibilities from exempted sources to other sectors of the economy. This could occur in at least two ways. First, the most obvious impact would occur as a result of the new or modified facility being responsible only for analyzing air quality impacts based on an outdated air quality standard. The additional impacts that would have been identified had the air quality analysis properly been performed based on the newly revised standard would have to be addressed by other sources that apply for permits after EPA issues implementation guidance for the new NAAQS. In other words, because the first source would be allowed to emit more pollution than

would otherwise be allowed had EPA issued guidance at an earlier date, the sources that apply for permits after the guidance is issued would have to "make up" for that deficiency. This would be highly unfair to those other sources.

Second, the proposed changes to the Clean Air Act could also adversely affect existing facilities. Imagine a state or area that is marginally attaining a newly revised standard, but where the exempt facility would be allowed to further deteriorate the airshed by modeling based on an outdated standard, thus moving the entire area into nonattainment with the revised standard. The new nonattainment status would require sources in the entire area to meet an array of new air pollution requirements under the CAA, including new regulations for existing sources, transportation conformity determinations, offsets, and more restrictive Lowest Achievable Emission Rate controls for new sources. (These impacts would come on top of likely paying the additional health care costs associated with the poor air quality.) Thus, a very likely result of this bill would be to heap additional, costly pollution reduction requirements on already stressed existing sources, rather than allowing for the efficient installation of pollution controls while new sources are being constructed, which is the most cost-effective way to reduce pollution into the future. The missed opportunities for emissions reduction resulting from the exemption—i.e., the reductions lost by controlling only enough to meet an outdated standard—would have to be made up somehow by someone else as part of State Implementation Plan, likely at a much greater cost

In conclusion, Delaware does not believe the discussion draft bill as structured is the most effective means of supporting American manufacturing or ensuring timely issuance of permits. Delaware is among the smallest state in the nation and has one of the lowest budgets to address air pollution, yet we process air quality permits extremely efficiently in the absence of guidance whenever such a situation presents itself. If Congress seeks to expedite state permitting functions and issuance of guidance by EPA, we respectfully encourage Congress to provide

additional revenue to EPA and the state and local permitting agencies so that we have sufficient staff and resources to deliver permits efficiently and predictably. Further, we believe that the draft bill undercuts effective requirements of the Clean Air Act, which are crucial to obtaining healthy air quality and would increase harmful emissions, endangering the health of our citizens and increasing requirements on existing businesses that have weathered times of economic distress. Delaware supports promoting new manufacturing, but it believes that there are much more effective ways to achieve this outcome without exacerbating public health impacts and penalizing existing sources.

Chairman Whitfield and Ranking Member Rush, thank you again for this opportunity to testify. I look forward to your questions.