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TESTIMONY OF ALI MIRZAKHALILI

ON "H.R. 4775, OZONE STANDARDS IMPLEMENTATION ACT OF 2016"

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES

ENERGY AND COMMERCE SUBCOMMITTEE ON ENERGY AND POWER

APRIL 14, 2016

Chairman Whitfield, Ranking Member Rush, and Members of the Subcommittee, my name is Ali Mirzakhalili and I serve as Delaware's Director of Air Quality. I also serve as Chairman of the Ozone Transport Commission's (OTC) Stationary and Area Sources Committee and Co-Chair of National Association of Clean Air Agencies' (NACAA) Permitting and New Source Review Committee. In addition, I am the immediate past Chair of the Mid-Atlantic Regional Air Management Association (MARAMA). Thank you for the opportunity to testify on H.R. 4775, the Ozone Standards Implementation Act of 2016.

Since the Clean Air Act was last amended over 25 years ago, it has prevented literally hundreds of thousands of premature deaths, as well as averted millions of incidences of morbidity, including, for example, heart disease, chronic bronchitis and asthma. The health benefits associated with this landmark legislation have far outweighed the costs of reducing

pollution by more than 30 to 1. Moreover, we have accrued these health benefits over the same period as our nation's gross domestic product has grown. It is fair to say that the Clean Air Act has not only been one of our nation's most effective environmental statutes, it will likely go down in history as one of the most effective domestic laws ever passed.

Accordingly, it is imperative that consideration of any significant amendments to the Act be deliberate and thoughtful, and ensure that the fundamental tenets of the legislation—protection of public health and welfare—remain intact. Unfortunately, after reviewing H.R. 4775, Delaware has concluded that it cannot support this bill. I believe the bill substantially weakens the existing Clean Air Act by delaying important deadlines and considerably altering the process for setting health-based National Ambient Air Quality Standards (NAAQS). My perspective is based on over three decades of struggle to bring healthful air to Delaware citizens, notwithstanding the fact that our state is downwind of most others and subject to significant air pollution transport. I would like to spend the next few minutes sharing my perspective with you.

One of my primary concerns with H.R. 4775 is Section 3(b), which would revise the criteria in the Act for establishing health-based NAAQS by allowing the consideration of "technological feasibility" in determining the level of the standards. I believe this provision could unravel the entire framework of the Clean Air Act.

Congress and the courts, including the United States Supreme Court, have been very clear over the past several decades on the issue of setting the NAAQS. Under the existing Clean Air Act, EPA is required to set NAAQS solely on the basis of health so that communities will know whether or not the air they are breathing is safe. Costs and other factors, such as

"technological feasibility," have never been allowed to be considered in these critically important decisions. Once the health-based standards are set, the Act appropriately allows costs and other factors, including technological feasibility, to be considered as states develop implementation strategies to meet these standards. By removing this important "firewall" separating the setting of the standards from their implementation, the public will never know what level of air quality is truly safe. Imagine an oncologist discovering, through the best medical tests, that her patient has cancer but, because the treatment is not "feasible," she tells the patient he simply has a bad case of the flu. The diagnosis is not dependent on the feasibility of the treatment.

I am also very troubled by Section 2 of the bill, which would delay deadlines for implementation of the 2015 ozone standard by up to eight years. By arbitrarily extending the compliance deadlines, it would leave the old, outdated ozone standard in effect. This action would not only provide citizens with a false sense of "health" security, but also unnecessarily subjects them to serious health and welfare problems, including premature mortality. According to EPA, every year of delay in meeting the 2015 ozone standards can cause hundreds of premature deaths, on top of many thousands of morbidity and related impacts. Under this provision, my seven-year-old son would not be afforded the protection of the revised ozone standard until he is about to enter college. This is just wrong. To make matters worse, Section 3(a) would permanently lengthen the NAAQS review cycle from five years to 10 and, in fact, bar EPA from completing any review of the ozone standard before October 26, 2025.

I am also concerned with Section 3(d) of H.R. 4775, which appears to reward the regulated community—with no consideration for the health of our citizens—for EPA delays in publishing important guidelines. The bill would allow industries to meet preconstruction permit requirements based upon outdated standards if EPA were unable or unwilling to publish its rules and guidance at the same time it promulgated its health-based standards. While states have long urged EPA to expedite its process for issuing guidance to accompany new or revised health-based air quality standards, these delays have not significantly interfered with our ability to work with industry to comply with important permitting requirements. One way for Congress to overcome these delays is to ensure that EPA has sufficient resources to do its job. Additionally, the amnesty provided to sources that submit a "complete application" prior to the designation under Section 2(b)(1) is contrary to long-standing practices; moreover, the exemption is so open-ended that it appears permanent and thus subject to abuse.

The provisions in Sections 3(f) and (g) of the bill are also troubling because they would weaken the "progress" requirements of the Clean Air Act. By allowing states, under the guise of "economic feasibility" and "technological achievability," to circumvent these important requirements, it will seriously interfere with Delaware's and other downwind states' ability to provide our citizens with clean air. Economic feasibility is already addressed under Section 172(c)(1) of the Clean Air Act under the definition of "reasonably available control technology." In Delaware, we are meeting all of our deadlines and taking our responsibilities seriously. We fully expect the same from others.

Finally, the proposed amendments to Section 319(b)(1)(B) appear to be an attempt to allow rebranding of poor air quality by excluding data that may have been caused by inversions,

hot days or dry days. The implication is that air quality professionals only need to concern themselves with providing good air quality on good days.

In conclusion, the proposed legislation would undercut requirements of the Clean Air Act that are crucial to obtaining healthy air quality as expeditiously as practicable. Further, the proposed amendments would wholly change the thrust of the Clean Air Act from expeditious protection of public health to one of delay. Delaware supports efficient and expeditious implementation of National Ambient Air Quality Standards. H.R. 4775, however, would weaken and delay public health protection. My state, therefore, must oppose this bill. If Congress were to amend the Clean Air Act, I would urge you to instead consider amendments to directly address climate change, control legacy fleets and grandfathered sources, and strengthen the "good-neighbor" provisions dealing with air pollution transport.

Thank you for the opportunity to testify. I am happy to answer any of your questions.