

Federal judge orders EPA to act on Delaware air pollution

Karl Baker, The News Journal
Sept. 4, 2017

A federal judge on Friday ordered The U.S. Environmental Protection Agency to take action within 90 days on a Delaware plan to reduce ozone-causing air pollution.

The order came as Judge Phyllis Hamilton denied EPA Administrator Scott Pruitt's motion for relief from a consent decree, which had mandated the EPA either approve or reject Delaware's plan to use "reasonably available technologies to control major sources" of ozone pollution by Sept. 29.

"EPA is hereby ORDERED to take final action on the Delaware (plan) ... within 90 days of the date of this order," Hamilton stated in her ruling in the U.S. District Court in California.

The EPA delegates authority to states to enforce certain parts of the federal Clean Air Act.

The judge's order was the latest action in a case involving a coalition of environmental groups, which in July 2016 had sued the EPA, alleging the federal agency failed to act on numerous states' air pollution plans.



The environmentalists in a statement said the "decision means Delaware is one step closer to having a plan in place that assures protections around the clock against smog."

"People in Delaware and across the country deserve clean air," said Robert Ukeiley, a senior attorney for one of the plaintiffs, the Center for Biological Diversity.

Pruitt, through EPA attorneys, argued the agency needed "adequate time" to review the state's regulatory plans, saying "there is good cause to at least extend the deadline for final action until February 28."

People vulnerable to the chemical ozone, which is produced after fossil fuel emissions react with sunlight, have been dealing with

poor air in New Castle County for much of the past decade, according to the American Lung Association.

The county endured an average of more than six high-ozone days each year, according to a 2017 report from the organization.

The Wilmington-Philadelphia area ranked second in the Northeast for days with elevated ozone pollution and soot from smokestacks, according to a separate study released in April by the Environment America Research & Policy Center.

Additionally, the EPA in May 2012 designated New Castle County and Sussex County as areas that have not met 2008 ground-level ozone standards.

State officials have pointed to out-of-state industrial facilities as the perpetrators of Delaware's pollution problems

The First State, by contrast, has taken decisive steps to curb air pollution, officials have said, which have resulted in an 80-percent reduction in the greenhouse gas nitrous oxide at the Indian River Power Plant in Millsboro since 2010.

In a separate ongoing dispute over who is at fault for high levels of air pollution, DNREC attorneys earlier this year said in a brief that Environmental Protection Agency officials were unreasonably lenient to out-of-state polluters.

The legal team for DNREC filed the brief as part of a petition challenging the federal agency's decision to extend the allowable time neighboring states have to curtail ozone pollution.

"EPA's justifications ... are not reasonable, are not based in sound logic, and should not be upheld by this court," DNREC's attorney said in the brief.