

**TESTIMONY OF ALI MIRZAKHALILI  
UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON ENERGY AND COMMERCE  
SUBCOMMITTEE ON ENERGY AND POWER  
ON AN AMENDMENT TO THE CLEAN AIR ACT REGARDING AIR POLLUTION  
FROM OUTER CONTINENTAL SHELF ACTIVITIES**

**MAY 13, 2011**

**SUMMARY STATEMENT**

Delaware is concerned with the draft bill for the following four key reasons:

- 1) The proposed amendments will impede states' authority to regulate emissions and create unnecessary burdens on state agencies;
- 2) By restricting the consideration of air quality impacts solely to an onshore location in the corresponding onshore area, the proposed amendments does not sufficiently protect human health and the environment,
- 3) The proposed amendments shield a potentially significant portion of emissions from OCS activities from emission control requirements; and
- 4) The proposed amendments subvert our state's established procedures for due process and replace them with a potentially cumbersome and costly judicial review.

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Chairman Whitfield, Congressman Rush and Members of the Subcommittee, good morning and thank you for the opportunity to testify on this draft legislation to amend the Clean Air Act (CAA) regarding air pollution from Outer Continental Shelf (OCS) activities. My name is Ali Mirzakhali, and I am the Director of the Air Quality Division of Delaware's Department of Natural Resources and Environmental Control and the current Air Director Chair of Ozone Transport Commission. My professional background comprises more than 25 years of managing Delaware's air quality including many years of direct permitting of major and minor stationary sources. For the past 10 years I have been the director of Delaware's air quality program.

As you are aware, EPA has established health-based air quality standards (i.e., National Ambient Air Quality Standards, or NAAQS) for six ambient air pollutants – ozone, particulate matter, nitrogen dioxide, sulfur dioxide, carbon monoxide and lead. Despite the fact that Delaware's air quality has greatly improved over the past 10 years, all of Delaware is currently designated as nonattainment, or out of compliance, with regard to the 8-hour Ozone NAAQS, and our most populated county is designated nonattainment for the PM<sub>2.5</sub> NAAQS. Improvements in Delaware's air quality are due, in large part, to the successful implementation

of pollution control strategies for the stationary and area sources within our jurisdiction using the authorities granted to us in the CAA. Delaware's major and minor stationary sources, as well as smaller sources and activities, which we refer to as area sources, are now well controlled and collectively account for only 31 percent of our overall statewide emissions inventory. However, we still face the challenge of attaining and maintaining the health-based NAAQS. Our remaining opportunities for reducing emissions are largely related to mobile sources, both on-road and off-road, including offshore sources. Delaware has used the authority granted under the CAA to regulate the emissions associated with on-and-off-road and offshore sources in order to protect public health from harmful effects of air pollution. We have adopted California's Low Emission Vehicle standards and implemented a robust motor vehicle emissions inspection and maintenance (I&M) program. We rely on EPA's off-road standards to address the emissions associated with new engines and have utilized all available Diesel Emissions Reductions Act (DERA) funds to reduce the pollutants associated with older engines.

Relative to off-shore activities, Delaware has adopted a regulation that requires emission control of the crude oil ship lightering operations in the Delaware Bay. Crude oil ship lightering constituted the largest volatile organic compound emitting source in the State. In addition to promulgating emission control requirements we applied all land-based requirements, to include Title V operating permit requirements to the source. Additionally, Delaware requested and received delegation of the OCS program, in order to manage the emissions associated with this sector by applying the same requirements to the OCS source as we would to a source on shore through an effective permitting process that includes the ability to issue expedited permits. We find the existing authorities under the Clean Air Act appropriate, effective and workable.

Accordingly, we believe the proposed statutory amendments included in the draft bill would severely limit Delaware's authority to effectively regulate offshore sources of pollution. Moreover, we are concerned that the proposed constraints placed on states' rights and authorities will adversely affect our state's ability to protect public health and welfare from harmful effects of air pollution and adversely affect the local economy, particularly Delaware's large tourism industry.

In particular, we have four key concerns about the bill as drafted:

- 1) The proposed amendments will impede states' authority to regulate emissions and create unnecessary burdens on state agencies;
- 2) By restricting the consideration of air quality impacts solely to an onshore location in the corresponding onshore area, the proposed amendments does not sufficiently protect human health and the environment,
- 3) The proposed amendments shield a potentially significant portion of emissions from OCS activities from emission control requirements; and
- 4) The proposed amendments subvert our state's established procedures for due process and replace them with a potentially cumbersome and costly judicial review.

I will discuss each of these issues in more detail in a moment. But first, I need to make it clear that Delaware is interested in exploring its natural resources offshore and strongly support efforts to moving towards energy independence. In particular, we see a tremendous potential for

offshore wind and other clean energy sources off the coast of the Atlantic. The Delaware Department of Natural Resources and Environmental Control has proposed to the Department of Interior that states should have significant input into an exploration or leasing processes, including an ability to opt in or opt out of any OCS program at least within 75 miles of its shoreline. Delaware sees a potential for tremendous growth in future activities in the OCS and would like to maintain its authority to address areas of concern using state authorities. If not properly controlled such activities will have an adverse impact on Delaware's air quality that makes us enormously interested in the fate of these proceedings.

Delaware has historically taken the stance that, when possible, its businesses should work directly, and in cooperation, with the state on regulatory compliance and enforcement issues, rather than with the federal government. We believe it is important for states to take delegation of programs that affect them. The CAA provides for complementary roles for the various levels of government. EPA's role is best served in an oversight capacity. To this end, Delaware received from EPA full delegation of the OCS program on July 21, 2010, and immediately became the permitting authority for the first source to trigger OCS requirements in Delaware waters. We issued this permit on August 20, 2010, less than one month after receiving delegation and five months after receiving an administratively complete application from the source.

Delaware's OCS regulations apply land-based requirements to OCS sources, because OCS sources have the potential to adversely impact our air quality both over land and over

water, which is pertinent since our ocean is used heavily by both recreational boaters and commercial fishermen. We are also concerned with visibility impairment as tourism is Delaware's largest industry. Delaware's air quality is not only dependent on its local emissions, it is significantly impacted by transported pollution. The main transport is from the West, which is the predominant wind direction, but some of Delaware's worst air episodes occur when the wind comes from offshore. Sea breezes cause land-based emissions to "pile up" and combine with offshore emissions, resulting in unhealthy air quality in southern Delaware. In fact, Lewes, Delaware's second highest ozone reading in 2010 was due to an inshore flow that caused unhealthy air quality throughout southeastern Delaware, while areas to the west were clean.

Given the air quality challenges in Delaware, offshore emissions are extremely important to the state. As a result, expanded OCS activities must not cause increases in air pollution without appropriate emission controls. Delaware's land-based requirements are reasonable and appropriate. They are based upon technical feasibility and cost effectiveness. During its 40+ years of existence, Delaware's permitting program has built a record of making appropriate technology determinations and issuing timely permits.

Now, with respect to our perspectives on specific provisions of the draft bill, I offer the following:

First, Delaware believes this draft bill significantly impedes states' authority to regulate emissions and protect air quality and public health. We oppose any amendments that would

preclude or discourage our ability to accept delegation to be the primary authority to implement and enforce requirements for OCS sources that have an impact on our state's air quality.

Second, Delaware opposes the proposed amendment to CAA section 328(a)(1), which would require air quality impacts of any OCS source to be measured and determined solely with respect to the impacts at an onshore location in the corresponding onshore area. Instead, we support retaining the existing language in the CAA that provides for onshore and offshore sources to be treated the same. The proposed amendment would limit Delaware's ability to protect the NAAQS in the offshore areas of Delaware, leaving recreational and commercial users of our waters unprotected, and disregard potential visibility or other impacts of a Delaware OCS source on any neighboring state. Moreover, consideration of the effects of transported pollution on Delaware from OCS activities in neighboring states would be prohibited when those activities are undertaken. Further, this provision will only add to the complexity of the technical review and permit design by requiring complicated modeling analysis that may necessitate extensive pre-project monitoring to establish baselines relative to future impacts, as well as introducing an entirely new wrinkle in the applicability determinations. The applicability determinations are often the most controversial and time consuming element of the permitting process. This amendment therefore is contrary to the stated objective of this legislation.

Third, Delaware opposes section 328(a)(4)(C), which would establish that a drilling activity commences and ceases to exist based on when the owner commences and ceases the actual drilling operation. This would limit the installation of, or operation of, emission control

technology solely because these activities remain and operate in one location sporadically, or for relatively short durations. It is a misconception that sources that operate for a short duration of time do not significantly affect air quality. In Delaware we know this is not true. For example, in regulating our power plants we concluded that emission controls on peaking turbines that operate for only twenty hours per year are necessary and very cost effective. It is noteworthy that much of this discussion may be unnecessary if the proposed sources install and operate best available control technologies, which oil and gas exploration companies can certainly afford. Short duration emissions are important because many of our air quality problems, such as ozone and PM2.5, occur over a short duration. Ozone is based on an 8-hour average period, and PM2.5 is measured on a 24-hour average period. Uncontrolled sources operating for a single day can cause or contribute to exceedances of health based air quality standards. We believe the existing statutory language on this issue should be retained, giving the permitting authority the ability to evaluate and establish when a source commences and ceases operation, and determine control requirements based on a source-specific evaluation.

Finally, we oppose the new section 328(d), Permit Application, of draft bill. First, the language requires final agency action to be taken not later than 6 months after the date of filing of a complete application. While Delaware generally issues stationary source permits within 6 months, review times will vary, both within a state and among states, based in large part on the complexities of the source's application. Accordingly, we do not believe it is necessary or appropriate to set a permit review time limit in the bill. Imposing a time limit on the permitting agency is inconsistent with existing land based requirements and is unnecessary. This six month timeframe does not provide adequate time for permit drafting, review with sources, and public

participation and EPA comment in all instances and places a one-sided and one size fits all requirement on the permitting agency. Second, the new language at (2) and (3) subverts existing state due process procedures and forces an agency like ours to argue and defend its decisions in federal court. Although I am confident that we can aptly defend our permit decision in any court, the potential cost of such adjudication will serve as a disincentive for maintaining our delegation of this program. We believe such an outcome is again contrary to the stated goals of this discussion draft and would serve to discourage states from accepting delegation.

Once again, thank you for this opportunity to testify. I look forward to answering your questions.