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#### **IX. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under State law and does

not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Authority:** U.S.C. 7401 *et seq.*

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping

requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 24, 2004.

**L. John Iani,**

*Regional Administrator, Region 10.*

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#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Parts 52 and 81**

[PA209-4301; FRL-7642-5]

#### **Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Hazelwood SO<sub>2</sub> Nonattainment and the Monongahela River Valley Unclassifiable Areas to Attainment and Approval of the Maintenance Plan**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. These SIP revisions include a regulation change to the allowable sulfur oxide emission limits for fuel burning equipment and a modeled demonstration of attainment of the national ambient air quality standards (NAAQS) for sulfur dioxide (SO<sub>2</sub>) in the Hazelwood nonattainment area and the Monongahela River Valley unclassifiable area located in the Allegheny Air Basin in Allegheny County, Pennsylvania. In addition, EPA is proposing to redesignate these areas to attainment of the NAAQS for SO<sub>2</sub> and to approve a combined maintenance plan for both areas as a SIP revision. These SIP revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) on behalf of the Allegheny County Health Department (ACHD). This action is being taken in accordance with the Clean Air Act (CAA).

**DATES:** Comments must be received on or before May 3, 2004.

**ADDRESSES:** Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to [morris.makeba@epa.gov](mailto:morris.makeba@epa.gov) or to <http://www.regulations.gov>, which is an alternative method for submitting

electronic comments to EPA. To submit comments, please follow the detailed instructions described in Part III of the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, PO Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; and the Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

**FOR FURTHER INFORMATION CONTACT:** Ellen Wentworth, (215) 814-2034, or by e-mail at [wentworth.ellen@epa.gov](mailto:wentworth.ellen@epa.gov).

**SUPPLEMENTARY INFORMATION:** On August 15, 2003, the PADEP, on behalf of the ACHD, submitted a SIP revision for SO<sub>2</sub> for Allegheny County, Pennsylvania. The SIP revision consisted of a change to ACHD's Article XXI, section 2104.03, pertaining to sulfur oxide emissions for fuel burning equipment; a modeled demonstration of attainment of the NAAQS for SO<sub>2</sub> in the Hazelwood nonattainment area and the Monongahela River Valley unclassifiable area of the Allegheny County Air Basin; and a request to redesignate these areas to attainment. The SIP revision also included a maintenance plan covering both of these areas which will ensure that attainment of the NAAQS for SO<sub>2</sub> will be maintained.

## I. Background

### *When Were These Areas Designated Nonattainment and Unclassifiable for SO<sub>2</sub>?*

EPA originally designated all of Allegheny County, Pennsylvania as nonattainment for SO<sub>2</sub> under section 107 of the CAA on March 3, 1978 (43 FR 8962). In a subsequent final rulemaking published on October 21, 1981 (46 FR 51607), EPA approved a request to redesignate portions of Allegheny County for SO<sub>2</sub>. As a result of this action, the area of the Allegheny County Air Basin within a two-mile radius of the Hazelwood monitor (the Hazelwood area) was designated nonattainment for SO<sub>2</sub>, and the area of the Allegheny County Air Basin within an eight-mile radius of the Duquesne Golf Association Club House in West Mifflin, excluding the Hazelwood nonattainment area, (the Monongahela River Valley area) was designated

unclassifiable for SO<sub>2</sub>. On November 15, 1990, the CAA amendments were enacted. Pursuant to section 107(d)(1)(C), the Hazelwood area was designated nonattainment for SO<sub>2</sub> and the Monongahela River Valley area was designated unclassifiable for SO<sub>2</sub> by operation of law. These designations are codified in 40 CFR part 81.339.

### *What are the Geographical Boundaries of the Hazelwood SO<sub>2</sub> Nonattainment Area and the Monongahela River Valley Unclassifiable Area?*

The Hazelwood SO<sub>2</sub> nonattainment area of the Allegheny County Air Basin is the area within a two-mile radius of the Hazelwood monitor. Surrounding this nonattainment area is the Monongahela River Valley unclassifiable area. It consists of that portion of Allegheny County within an eight-mile radius of the Duquesne Golf Association Clubhouse in West Mifflin, excluding the Hazelwood nonattainment area. These nonattainment and unclassifiable areas were consolidated into one aggregate area for the purposes of performing the modeled attainment demonstration and for the maintenance plan.

## II. Redesignation Evaluation

### *What Are the Criteria for Redesignation?*

Section 107(d)(3)(E) of the CAA, as amended, specifies five requirements that must be met to redesignate an area to attainment. They are as follows:

- (1) The area has attained the applicable NAAQS.
- (2) The area has a fully approved SIP under section 110(k).
- (3) The air quality improvement is permanent and enforceable.
- (4) The area has met all relevant requirements under section 110 and part D of the Act.
- (5) The area has a fully approved maintenance plan pursuant to section 175A.

### *Has the State Met the Criteria for Redesignation?*

The EPA has reviewed the redesignation request submitted by PADEP, on behalf of the ACHD, for the Hazelwood nonattainment area and the Monongahela River Valley unclassifiable area. EPA finds that the request meets the five requirements of section 107(d)(3)(E).

### *What Data Shows Attainment of the NAAQS for SO<sub>2</sub> in the Hazelwood Nonattainment Area and the Monongahela River Valley Unclassifiable Area?*

There are two components involved in making a demonstration that an area

is attaining the applicable NAAQS for SO<sub>2</sub>. The first component relies upon ambient air quality data. The second component relies upon supplemental EPA-approved air quality modeling. The ACHD and PADEP have quality-assured SO<sub>2</sub> ambient air monitoring data showing that the Hazelwood nonattainment area and the Monongahela River Valley unclassifiable area have attained the NAAQS for SO<sub>2</sub>. The County is currently operating three monitors within these areas, the Hazelwood, Liberty, and Glassport monitors. The Glassport monitor was previously proposed to be removed from continuous operation, and to be operated only during periods of scheduled desulfurization equipment outages. However, the ACHD has decided that the Glassport monitor will continue to operate on a continual basis. All of the monitors meet the requirements of 40 CFR parts 53 and 58, and are representative of the highest ambient concentrations.

The redesignation request for the Hazelwood and Monongahela River Valley areas is based upon air quality data for 1994–2000, as this was the most recent data at the time this redesignation request was initially prepared. The data was collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Air Quality Subsystem (AQS) of the Aerometric Information Retrieval System (AIRS). The annual primary NAAQS for SO<sub>2</sub> is 0.03 parts per million (ppm). The annual value is calculated as the arithmetic means of all 1-hour values over a calendar year. This standard has not been exceeded in Allegheny County since 1984. The daily primary 24-hr NAAQS is 0.14 ppm, and the 3-hr secondary NAAQS for SO<sub>2</sub> is 0.50 ppm. The daily value is calculated as the average 1-hour values over the consecutive 24-hour period of one day, and the 3-hour value is calculated as the average 1-hour value for successive non-overlapping 3-hour periods. Violations of the 24-hour and 3-hour standards occur when they are exceeded more than once in a calendar year. The most recent violations of the 24-hour and 3-hour standards occurred in 1993, when each standard was exceeded twice at the Hammerfield monitor in the Hazelwood area. An area is attaining the NAAQS for SO<sub>2</sub> if there is no more than one exceedance annually in accordance with 40 CFR part 50.4.

The air quality data for the monitoring sites submitted with this redesignation request shows that from 1994 through 2000 (through 1999 for Hammerfield, which was terminated in 2000), there

were no violations of the primary or secondary NAAQS for SO<sub>2</sub>. Only one exceedance has been recorded since 1993, a 24-hour exceedance at the Glassport monitor in 1999. The NAAQS was not exceeded again for the year, hence no violation occurred. EPA has also confirmed that quality-assured data shows that no violations occurred in 2001 through 2003. Therefore, the areas have attained and continue to attain the NAAQS for SO<sub>2</sub>. Air quality measurements used in this submittal were performed in accordance with the appropriate regulations and guidance documents including adherence to EPA quality assurance requirements. Monitoring procedures were determined in accordance with 40 CFR part 58.

Dispersion modeling is commonly used to demonstrate the SIP adequately provides for attainment and maintenance of the NAAQS for SO<sub>2</sub>. An air quality modeling demonstration of attainment for the SO<sub>2</sub> NAAQS for the Hazelwood nonattainment area and the surrounding Monongahela River Valley unclassifiable area was included in this submittal for approval as a SIP revision. The modeling analysis was performed according to the "Guideline on Air Quality Models," Appendix W to 40 CFR, part 51. The modeling demonstrates that the areas have attained and will maintain the standard under the operating scenarios allowed for in the SIP. A more detailed discussion of the modeling evaluation is included in the technical support document (TSD) prepared for this rulemaking. Because the areas have attained the NAAQS for SO<sub>2</sub> based upon the quality-assured data available during preparation of the August 15, 2003 submittal, and continue to attain the NAAQS, the first criterion of section 107(d)(3)(E) has been satisfied. The ACHD and PADEP have committed to continue monitoring in these areas in accordance with 40 CFR part 58.

*Is There a Fully Approved SIP Under Section 110(k) of the Act?*

The SIP for the area must be fully approved under section 110(k) of the Act and must satisfy all requirements that apply. The SIP for Southwestern Pennsylvania was fully approved by EPA on October 21, 1981 (46 FR 51607), and identified existing local control strategies to bring the area into compliance. Control strategies included coke oven gas desulfurization and source-specific emission requirements. On November 15, 1990, the CAA amendments were enacted. Pursuant to section 107(d)(1)(C), the Hazelwood area in Allegheny County, Pennsylvania, was designated nonattainment and the

Monongahela River Valley area in Allegheny County, Pennsylvania, was designated unclassifiable by operation of law. On August 18, 1995 (60 FR 43012), EPA approved a source-specific SIP revision for U.S. Steel Clairton Works in Allegheny County, implementing spare desulfurization equipment to be used in the event of a breakdown of the coke oven gas desulfurization process. The August 15, 2003 submittal which is the subject of this proposed rulemaking, includes an additional revision to the areas SO<sub>2</sub> emission limits. This revision to the ACHD Article XXI, Revision 46, section 2104.03, pertains to allowable sulfur oxide emission limits for fuel burning equipment. Specifically, the revision mandates that equipment firing only natural gas or liquefied petroleum gas (propane), or any combination thereof, will be limited to an SO<sub>2</sub> emission rate which is no greater than the current potential to emit (pte). In addition, the SIP revision limits processes and incinerators to the lesser of their current pte rate or 500 ppm SO<sub>2</sub> at any time in the effluent stack gas (volumetric basis). These amendments to the SO<sub>2</sub> emission limits for fuel burning equipment in Allegheny County were submitted to EPA for approval as SIP revisions concurrently with the redesignation request to meet the requirements of section 110(k) of the CAA. EPA is proposing approval of these further restrictions of emissions of SO<sub>2</sub> as a SIP revision.

*Is the Improvement in Air Quality Due to Permanent and Enforceable Measures?*

In order to redesignate an area, EPA must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP, applicable Federal air pollutant control regulations, and other permanent and enforceable reductions. Implementation of the SIP has led to decreased levels of pollutant emissions. These improvements are permanent and enforceable. Limits restricting hydrogen sulfide (H<sub>2</sub>S) content have been imposed under Article XXI of ACHD's regulations. Shenango, Inc., is required to meet a limit of 34 grains of hydrogen sulfide content per dry hundred cubic feet of coke oven gas, while U.S. Steel must meet a limit of 40. The coke oven gas standard of 50 grains H<sub>2</sub>S/100 dscf was in effect at the time of the nonattainment designation. The current limits of 34 and 40 grains H<sub>2</sub>S/100 dscf represent a 32 percent reduction in modeled SO<sub>2</sub> emissions from coke oven

gas usage at Shenango and a 20 percent reduction at U.S. Steel, respectively.

Permanent shutdown of many facilities in the nonattainment and unclassifiable areas has occurred. LTV Corporation permanently ceased operations of its Hazelwood coke production facility in 1998. LTV's South Side facility closed shortly after the time of designation. Unlike currently operating facilities which were modeled at their allowable emission rates, banked emissions were used in the modeling demonstration for the LTV facilities, which represent approximately a 65 percent reduction from LTV's former allowable emissions. Emissions from the Hazelwood coke facility were the primary cause of violations in the Hazelwood area, and consequently, the designation of nonattainment. Other facilities situated outside the nonattainment area but inside the unclassifiable area, such as U.S. Steel Duquesne, Homestead, and National Works, have also permanently ceased operations since the time of designation, with no banked emissions.

The decrease of coal and fuel oil usage has led to air quality enhancements. Numerous sources have restrictions on coal and oil, and their enforceable operating permits reflect that these sources are not capable of burning these fuels. Percent reduction in emissions can be estimated according to AP-42 emission factors. For example, a boiler switching from No. 2 fuel oil (containing 0.1% sulfur by weight) to natural gas corresponds to a change in emission factors from 0.1120 to 0.0006, in pounds of SO<sub>2</sub> per million Btu.

As mentioned previously, the August 15, 2003 submittal also includes revisions to the allowable sulfur oxide emission limits for fuel burning equipment. New allowable limits are to be implemented for boilers firing only natural gas and/or and liquefied petroleum gas (propane). These boilers will now have limits no greater than their current maximum pte values of SO<sub>2</sub>. This revision allows for more accurately modeled plumes, as it makes a natural gas boiler and a coal boiler of the same capacity more distinguishable by emission rates. Previously, boilers using only natural gas and propane were assigned the same allowable limits as boilers of the same size that used coal or fuel oil. Percent reduction due to this change is given by the change in emission factors, from 1.0 to 0.006, in pounds of SO<sub>2</sub> per million Btu.

Similarly, process and incinerator emission limits are being changed to current maximum pte values or, if lesser than pte, the previous value of 500 ppm SO<sub>2</sub> at any time in the effluent stack gas

(volumetric basis) is the allowable rate. The previous limit of 500 ppm SO<sub>2</sub> at any time in the effluent stack gas (dry volumetric basis) led to excessively high allowable rates for many processes in Allegheny County. For some sources, emissions calculated at maximum production rates were only a minute fraction of 500 ppm. Imposing the lower of maximum pte or 500 ppm translates to more realistic (and lower) emissions. Percent reduction due to this change varies greatly from process to process at the affected sources, from 0–99 percent, depending on the flow rate of the effluent stack gas and the type of process.

Attainment in the Hazelwood area is due to the permanent and enforceable measures and improvements listed above. As required by the attainment and maintenance plan, model runs have produced theoretical results of attainment for sources running at maximum possible capacities over five different years of meteorology.

*Does the State Meet the Applicable Requirements of Section 110 and Part D?*

The general SIP elements delineated in Section 110(a)(2) of Title I, part A, include but are not limited to the following: Submittal of a SIP that has been adopted by the state after reasonable notice and public hearing, provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality, implementation of a permit program, provisions for part C, Prevention of Significant Deterioration (PSD), and part D, New Source Review (NSR) permit programs, criteria for stationary source emission control measures, monitoring and reporting, and provisions for public and local agency participation. Upon approval of the additional revision to the areas SO<sub>2</sub> emission limits and the modeled attainment and maintenance demonstration submitted on August 15, 2003, EPA concludes that the Commonwealth's SIP for the Hazelwood nonattainment area and the Monongahela River Valley unclassifiable area will satisfy all of the section 110 and part D requirements of the CAA.

**1. Section 110 Requirements**

Section 110 of the CAA concerns the general provisions needed in a SIP. The applicable requirements of section 110, especially section 110(a)(2) have been satisfied by Allegheny County's portion of the Pennsylvania SIP approved in

1981 and by its subsequent amendments.

**2. Part D Requirements**

Part D contains general provisions that apply to all nonattainment plans in general, and certain sections that apply to specific pollutants. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas. EPA designated the Hazelwood area as nonattainment for SO<sub>2</sub> by operation of law (codified at 40 CFR part 81.339). For the Hazelwood area to be redesignated to attainment, the area must have met the applicable requirements of subpart 1 of part D of the CAA, specifically sections 172(c) and 176, and sections 191–192 of subpart 5 of part D.

**a. Subpart 1 of Part D—Section 172(c) Provisions**

Pennsylvania's August 15, 2003 SIP revision submittal for the Hazelwood and Monongahela areas fully complies with the part D requirements, as set forth in section 172(c) of the CAA. The plan complies with the requirements to implement RACM by providing for immediate attainment of the NAAQS for SO<sub>2</sub> through the emission limits and operating restrictions imposed on the contributing sources in the Pennsylvania SIP. Reasonable Further Progress (RFP) is achieved due to the immediate effect of the emission limits required by the plan. An inventory of the SO<sub>2</sub> emissions in the Hazelwood nonattainment area and the unclassifiable Monongahela River Valley area was provided in the submittal and found to be acceptable. The Federal requirements for NSR in nonattainment areas are contained in section 172(c)(5). EPA guidance indicates the permitting requirements of the part D NSR program for new major sources and major modifications shall be replaced by the PSD program's permitting requirements when an area has reached attainment and has been redesignated, provided that the PSD program will be fully effective immediately upon redesignation. The ACHD was originally delegated the authority to implement and enforce the provisions of 40 CFR 52.21 on behalf of EPA, on December 14, 1983 (48 FR 55625). The ACHD adopted the PSD requirements promulgated in 40 CFR 52.21, incorporating them by reference in its regulations as provided in Article XXI, section 2102.07. On March 26, 2003, EPA renewed the ACHD's existing delegation to implement and enforce the provisions of 40 CFR 52.21 as well as any future revisions to these regulations (68 FR 14617). Therefore, the permitting

requirements of the PSD program are fully effective in the Hazelwood area immediately upon its redesignation to attainment. The August 15, 2003 submittal provides for immediate attainment of the NAAQS for SO<sub>2</sub> through the emission limitations, operating requirements, and compliance schedules that are set forth in the Pennsylvania SIP. As stated previously, this submission complies with section 110(a)(2). All of the applicable provisions of section 110(a)(2) are satisfied by the August 15, 2003 submittal or they have already been approved by EPA. The modeling demonstration for the August 15, 2003 SIP submittal was conducted in accordance with EPA's "Guideline on Air Quality Models." The use of AERMOD was approved by EPA for use by ACHD in accordance with section 172(c)(8) of part D of the CAA.

Section 172(c)(9) of the CAA defines contingency measures as measures in a SIP which are to be implemented if an area fails to make RFP or fails to attain the NAAQS by the applicable attainment date, and shall consist of other control measures that are not included in the control strategy. However, the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, (57 FR 13498), states that SO<sub>2</sub> measures present special considerations because they are based upon what is necessary to attain the NAAQS. Because SO<sub>2</sub> control measures are well established and understood, they are far less prone to uncertainty. It would be unlikely for an area to implement the necessary emissions controls yet fail to attain the NAAQS for SO<sub>2</sub>. Therefore, for SO<sub>2</sub> programs, contingency measures mean that the state agency has the ability to identify sources of violations of the NAAQS for SO<sub>2</sub> and to undertake an aggressive followup for compliance and enforcement. Allegheny County has the necessary enforcement and compliance programs as well as the means to identify violators, thus satisfying the contingency measures requirement.

**b. Subpart 1 of Part D—Section 176 Conformity Requirements**

It was determined that the significant causes of nonattainment in this area were emissions from stationary facilities in the area and not from mobile or area sources. Because the SO<sub>2</sub> violations had been caused by industrial sources and motor vehicles were not an important contributor to the nonattainment problem, for conformity purposes, no quantitative analysis for transportation related SO<sub>2</sub> impacts is required. While section 176 provides that a State's

conformity revision must be consistent with Federal Conformity regulations promulgated by EPA, given the nature of the area's former nonattainment problem, it is reasonable to interpret those conformity requirements as not applying for purposes of evaluating the redesignation request.

#### c. Subpart 5 of Part D Requirements

Subpart 5 of part D addresses additional provisions for SO<sub>2</sub> nonattainment areas. Section 191(b) of the CAA Amendments requires any state containing an area designated nonattainment for SO<sub>2</sub> prior to enactment of the 1990 CAA Amendments, but lacking a fully approved SIP, to submit an implementation plan by May 15, 1992. EPA published a Notice of Final Rulemaking in the October 21, 1981 *Federal Register* (46 FR 51607), fully approving a SIP for the Hazelwood area to provide for attainment of the NAAQS in the area. This plan has been revised and supplemented by the August 15, 2003 submittal.

#### *Is There a Fully Approved Maintenance Plan Under Section 175A?*

Section 175A of the Act sets forth the necessary elements of a maintenance plan needed for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after EPA approves a redesignation to attainment. Eight years after the redesignation, Pennsylvania must submit a revised maintenance plan which demonstrates attainment for the 10 years following the initial 10-year period. To address potential future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems. Under section 175A(d), contingency provisions must include a requirement that the State will implement all control measures that were in the SIP prior to redesignation as an attainment area. EPA is proposing to approve the maintenance plan for the Hazelwood nonattainment area because EPA finds that the submittal meets the requirements of section 175A. The details of the maintenance plan requirements and how the submittal meets these requirements are detailed in the following paragraphs. A maintenance plan must contain the following elements: (1) An emissions inventory reflective of SO<sub>2</sub> emissions in the monitored attainment years, (2) a maintenance demonstration which is expected to provide adequate assurance

of maintenance over the initial 10-year period, (3) a commitment to continue monitoring in the area, (4) a method for verifying continued attainment, and (5) a contingency plan with specific indicators or triggers for implementation of the plan.

#### A. Maintenance Plan Requirements

##### 1. Emissions Inventory

For this maintenance plan, the emissions inventory is the modeled inventory of all sources affecting both the nonattainment and unclassifiable areas. The maintenance plan includes the 1999 emission inventory used to perform the modeling demonstration of attainment and maintenance. Emission rates are based on the maximum allowable amounts of SO<sub>2</sub> as determined by Article XXI of the SIP that could potentially be released into the ambient air. The modeled emission rates are appropriate for the demonstrations of attainment and maintenance. These values, along with the corresponding stack and building downwash parameters for each source, were input into the model. Model runs for five years of meteorological data were used to identify the maximum level of emissions in the area that will attain and maintain the NAAQS. Any future increases in emissions and/or significant changes to the stack configurations/parameters from those modeled in the attainment demonstration due to new or modifying stationary sources would be subject to new source review requirements including a demonstration that the NAAQS is protected.

##### 2. Maintenance Demonstration

Industrial facilities were the main cause of nonattainment in the area. The attainment demonstration was based upon maximum allowable emission levels for stationary sources impacting the nonattainment and unclassifiable area. As discussed previously, the attainment and maintenance demonstration was performed using air dispersion modeling in order to show that the attainment inventory attains the primary and secondary NAAQS for SO<sub>2</sub>. The American Meteorological Society/EPA Regulatory Model (AERMOD) was the model used for the demonstration. EPA approved the use of this model for this analysis since this model has only been proposed for inclusion in the "Guideline on Air Quality Models." The attainment inventory reflected the new emission limits contained in Article XXI which are discussed in section IV. C of this document. Based on the modeling analysis, the maximum annual SO<sub>2</sub>

average concentration predicted was 71.6 ug/m<sup>3</sup>, the second highest daily average was 344.7 ug/m<sup>3</sup>, and the second highest 3-hour average was 1248.8 ug/m<sup>3</sup>. These values are below the NAAQS for SO<sub>2</sub> standards of 80 ug/m<sup>3</sup>, 365 ug/m<sup>3</sup>, and 1300 ug/m<sup>3</sup>, respectively. Additional information on the air dispersion modeling performed for the maintenance demonstration can be found in the TSD prepared for this rulemaking, and the submittal itself.

Population has steadily decreased in the county since 1990 and this decline is expected to continue through 2020. Therefore, other sources of emissions related to population are expected to decline. Employment in manufacturing is expected to decrease significantly between 2002–2020. As a result of these factors, SO<sub>2</sub> emissions are expected to remain below the emission levels used to demonstrate attainment for the next 10 years and the area is expected to maintain the NAAQS for SO<sub>2</sub> for the next 10 years. Moreover, as noted previously, any future increases in emissions and/or significant changes to the stack configurations/parameters from those modeled in the attainment demonstration due to new or modifying stationary sources would be subject to NSR requirements (minor source NSR and PSD for major new sources and modifications) including a demonstration that the NAAQS is protected.

##### 3. Commitment To Continue Monitoring Air Quality

The maintenance plan commits to maintaining the ambient air quality monitors located at the areas of greatest concern which are the Hazelwood, Glassport, and Liberty Borough locations. These monitors will be maintained and operated in accordance with 40 CFR part 58. Before any monitors could be removed from continuous service, their removal would first be evaluated for any potential impairment to the SO<sub>2</sub> network.

##### 4. Verification of Continued Attainment

In addition to reviewing ambient air quality data in the Hazelwood and Monongahela River Valley areas, ACHD will periodically update their emissions inventory and will continue to examine the impact of any new major sources or modifications through its PSD program to ensure protection of the NAAQS. Furthermore, under the SIP-approved minor source NSR program, the air quality impact of new minor sources or modifications resulting in any increases in emissions and/or significant changes to the stack configurations/parameters from those modeled in the maintenance

demonstration would be evaluated to ensure protection and maintenance of the NAAQS in these areas.

#### 5. Contingency Plan

It is considered unlikely that an area would fail to attain the SO<sub>2</sub> standards after it has demonstrated, through modeling, that attainment is reached after the limits and restrictions are fully implemented and enforced.

Nonetheless, the ACHD will rely on air monitoring data to track future compliance with the NAAQS for SO<sub>2</sub>, and to determine the need to implement contingency measures. If an SO<sub>2</sub> exceedance occurs anywhere in the Hazelwood and Monongahela River Valley areas, the ACHD would first determine whether or not all of the affected sources are in compliance with their allowable SIP-approved limits. If any sources are found in violation of their allowable SIP-approved limits, the ACHD would take the appropriate action to bring any source(s) back into compliance. If all sources are found to be in compliance, the ACHD will evaluate the nature or cause of the exceedance and determine whether such an exceedance triggers the need for additional additional emission controls measures. If a violation of the NAAQS does occur, regulatory contingency measures to further reduce SO<sub>2</sub> will be adopted within 12 months of the violation. Those regulatory contingency measures will be implemented such that affected sources are in required to comply with their requirements within 12 months of their adoption. Possible contingency measures include: lowering the hydrogen sulfide grain loading for coke oven gas, specific plan limits for types or amounts of high sulfur fuel, and lower SO<sub>2</sub> emission limits.

#### B. Subsequent Maintenance Plan Revisions

A new maintenance plan must be submitted to EPA, as a SIP revision, within eight years of the redesignation of the nonattainment area, as required by section 175(A)(b). This subsequent maintenance plan must provide for the maintenance of the NAAQS for SO<sub>2</sub> for a period of 10 years after the expiration of the initial 10-year maintenance period. The PADEP must submit an updated maintenance plan within eight years of the final redesignation of these areas.

### III. Proposed Action

EPA is proposing to approve SIP revisions submitted on August 15, 2003 by the Commonwealth of Pennsylvania on behalf of the ACHD. These SIP revisions include a regulation change to

the allowable sulfur oxide emission limits for fuel burning equipment and a modeled demonstration of attainment of the NAAQS for SO<sub>2</sub> in the Hazelwood nonattainment area and the Monongahela River Valley unclassifiable area located in the Allegheny Air Basin in Allegheny County, Pennsylvania. In addition, EPA is proposing to redesignate these areas to attainment of the NAAQS for SO<sub>2</sub> and to approve a combined maintenance plan for both areas as a SIP revision. EPA has prepared a TSD in support of this proposed rulemaking. Copies are available, upon request, from the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting either electronic or written comments. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number PA209-4301 in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to [morris.makeba@epa.gov](mailto:morris.makeba@epa.gov) attention PA209-4301. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov,

EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to <http://www.regulations.gov>, then select "Environmental Protection Agency" at the top of the page and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document. For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

#### Submittal of CBI Comments

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in

accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

#### *Considerations When Preparing Comments to EPA*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

#### **IV. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this

proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of

the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

This proposed rule pertaining to a change to the allowable sulfur oxide emission limits for fuel burning equipment and a modeled demonstration of attainment of the NAAQS for SO<sub>2</sub> in the Hazelwood nonattainment area and the Monongahela River Valley unclassifiable area located in the Allegheny Air Basin in Allegheny County, Pennsylvania and the redesignation of these areas to attainment of the NAAQS for SO<sub>2</sub>, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### **List of Subjects**

##### *40 CFR Part 52*

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

##### *40 CFR Part 81*

Air pollution control, National parks, Wilderness areas.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: March 25, 2004.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

[FR Doc. 04-7471 Filed 4-1-04; 8:45 am]

**BILLING CODE 6560-50-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 257**

[FRL-7642-9]

### **Delaware and Maryland: Adequacy of State Solid Waste Landfill Permit Programs Under RCRA Subtitle D**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to approve Delaware's and Maryland's solid waste regulations which ensure that hazardous waste from conditionally exempt small quantity generators (CESQGs) will only be disposed of in accordance with EPA regulations. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving Delaware's and Maryland's regulations by an Immediate Final Rule. EPA did not make a proposal prior to the