



## **GROUP AGAINST SMOG & POLLUTION**

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April 10, 2017

### **VIA EMAIL**

Allegheny County Health Department  
Air Quality Program  
301 39th St., Bldg. 7  
Pittsburgh, PA 15201  
aqcomments@alleghenycounty.us

**Re: Comments of the Group Against Smog and Pollution Regarding the Proposed Revision to the Allegheny County Portion of the Pennsylvania State Implementation Plan and Attainment Demonstration for the Allegheny, PA SO<sub>2</sub> Nonattainment Area**

Dear Sir or Madam:

Please accept these comments regarding the March 2, 2017 Proposed Revision to the Allegheny County Portion of the Pennsylvania State Implementation Plan and Attainment Demonstration for the Allegheny, PA SO<sub>2</sub> Nonattainment Area (the “March 2, 2017 Draft SIP”). According to the notice posted on its website, the Allegheny County Health Department is accepting comments on the March 2, 2017 Draft SIP through April 11, 2017.

I am submitting these comments on behalf of the Group Against Smog and Pollution (“GASP”). Please note that GASP is also submitting comments separately with other groups. Thanks in advance for your consideration of these comments.

Very truly yours,

/s

John K. Baillie

**COMMENTS OF THE GROUP AGAINST SMOG AND POLLUTION  
REGARDING THE PROPOSED REVISION TO THE ALLEGHENY COUNTY  
PORTION OF THE PENNSYLVANIA STATE IMPLEMENTATION PLAN  
AND  
ATTAINMENT DEMONSTRATION FOR THE ALLEGHENY, PA  
SO<sub>2</sub> NONATTAINMENT AREA**

The United States Environmental Protection Agency (“EPA”) promulgated a National Ambient Air Quality Standard (“NAAQS”) for sulfur dioxide (“SO<sub>2</sub>”) in 2010 (the “2010 SO<sub>2</sub> Standard”).<sup>1</sup> In 2013, EPA designated a portion of Allegheny County as nonattainment for the 2010 SO<sub>2</sub> Standard (the “Allegheny County Nonattainment Area”).<sup>2</sup> As the state air agency having jurisdiction over the Allegheny County Nonattainment Area, the Allegheny County Health Department (“ACHD”) has the responsibility to prepare a state implementation plan (“SIP”), or propose revisions to Pennsylvania’s existing SIP, which will provide for attainment of the 2010 SO<sub>2</sub> Standard.<sup>3</sup>

These comments are regarding the draft SIP for the Allegheny County Nonattainment Area that ACHD published on March 2, 2017 (the “March 2, 2017 Draft SIP” or the “Draft SIP”).

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<sup>1</sup> Primary National Ambient Air Quality Standard for Sulfur Dioxide; Final Rule, 75 Fed. Reg. 35520 (June 22, 2010).

<sup>2</sup> Air Quality Designations for the 2010 Sulfur Dioxide (SO<sub>2</sub>) Primary National Ambient Air Quality Standard; Final Rule, 78 Fed. Reg. 47191 (Aug. 5, 2013).

<sup>3</sup> See 42 U.S.C. § 7502(b).

## I. THE MARCH 2, 2017 DRAFT SIP IS INCOMPLETE

### A. The March 2, 2017 Draft SIP Does Not Include Copies of the Permit Conditions or Consent Orders that are Necessary to Provide for Attainment of the 2010 SO<sub>2</sub> Standard

Section 172(c)(6) of the Clean Air Act requires that a SIP for a nonattainment area include “enforceable emission limitations, and such other control measures, means or techniques ... as may be necessary or appropriate to provide for attainment” of the NAAQS in the nonattainment area by the applicable attainment date.<sup>4</sup> Accordingly, EPA’s regulations concerning the required contents of a nonattainment SIP provide:

[e]mission limitations and other measures necessary for attainment and maintenance of any national standard, including any measures necessary to implement the requirements of subpart L must be adopted as rules and regulations enforceable by the State agency. Copies of all such rules and regulations must be submitted with the plan. Submittal of a plan setting forth proposed rules and regulations will not satisfy the requirements of this section nor will it be considered a timely submittal.<sup>5</sup>

The March 2, 2017 Draft SIP describes a control strategy that purportedly will provide for attainment of the 2010 SO<sub>2</sub> Standard; the control strategy relies principally on reduction in the sulfur content of the gas combusted by the facilities in U.S. Steel’s Mon Valley Works<sup>6</sup> and the possible construction of a new stack at U.S. Steel’s Edgar Thompson Works.<sup>7</sup> The Draft SIP states that “[f]ederal enforceability for limits and controls ... will be enforced through consent

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<sup>4</sup> 42 U.S.C. § 7502(c)(6).

<sup>5</sup> 40 C.F.R. § 51.281; *accord* 40 C.F.R. Part 51, Subpart BB, App. V, § 2.1(d) (requiring that a “copy of the actual regulation, or document submitted for approval and incorporation by reference into the plan,” including “indication of the changes made ...to the existing approved plan” be included in SO<sub>2</sub> SIPs submitted for EPA approval).

<sup>6</sup> *See* March 2, 2017 Draft SIP, at 8-9. The Mon Valley Works includes the Clairton Coke Works, the Edgar Thomson Plant, and the Irvin Plant.

<sup>7</sup> *Id.*, at 10. The March 2, 2017 Draft SIP purports to allow U.S. Steel to avoid constructing a new stack if it demonstrates that some other control measure will produce “equivalent or lower SO<sub>2</sub> impacts,” but does not specify what such control measures might be. *See id.*

orders and Title V permit conditions.”<sup>8</sup> However, the Draft SIP does not include copies of such consent orders or Title V permit conditions. For that reason, the Draft SIP is incomplete. The Draft SIP must be revised so that it includes the federally-enforceable permit conditions or consent orders that will provide for attainment of the 2010 SO<sub>2</sub> Standard.

**B. The March 2, 2017 Draft SIP Does Not Include Contingency Measures as Required by Section 172(c)(9) of the Clean Air Act**

Section 172(c)(9) of the Clean Air Act requires that a SIP for a nonattainment area:

provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or the Administrator [of the United States Environmental Protection Agency (“EPA”)].<sup>9</sup>

In its *Guidance for 1-Hour SO<sub>2</sub> Nonattainment Area SIP Submissions*, EPA confirms that nonattainment SIPs for the 2010 SO<sub>2</sub> Standard must include contingency measures:

in order for EPA to be able to approve the SIP, the contingency measures would need to be a fully adopted provision in the SIP that becomes effective where the area has failed to meet [“Reasonable Further Progress,”] or fails to attain the standard by the statutory attainment date.<sup>10</sup>

Because the Allegheny County Nonattainment Area could fail to attain the 2010 SO<sub>2</sub> Standard by the standard’s October 4, 2018 attainment date,<sup>11</sup> the SIP must include contingency

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<sup>8</sup> *Id.*, at 8.

<sup>9</sup> 42 U.S.C. § 7502(c)(9).

<sup>10</sup> Stephen D. Page, Director, United States Env’tl. Prot. Agency, Office of Air Quality Planning and Standards, *Guidance for 1-Hour SO<sub>2</sub> Nonattainment Area SIP Submissions* (Apr. 23, 2014), at 42, available at [https://www.epa.gov/sites/production/files/201606/documents/20140423guidance\\_nonattainment\\_sip.pdf](https://www.epa.gov/sites/production/files/201606/documents/20140423guidance_nonattainment_sip.pdf).

<sup>11</sup> To demonstrate attainment by October 4, 2018, SO<sub>2</sub> sources in the Allegheny County Nonattainment Area should have begun complying with the attainment strategy described in the Draft SIP by January 1, 2017, so that an attainment demonstration could be based on a full year’s worth of compliance information. *See id.*, at 10-11. At least one significant piece of that strategy – the new stack for the Riley Boilers at the Edgar Thomson Works – was not installed by January 1, 2017 (and has yet to be installed as of April 10, 2017). Accordingly, there is a real possibility that the compliance information needed to make a timely attainment demonstration for the Allegheny County Nonattainment Area will not be available.

measures. The fact that ACHD is working to ensure that SO<sub>2</sub> sources in the nonattainment area expeditiously implement controls to attain the standard by the statutory attainment date does not satisfy the requirement that the SIP include additional measures that will automatically take effect should such controls fail to provide attainment.

The requirement that the SIP include contingency measures could be satisfied if ACHD shows that it “has a comprehensive program to identify sources of violations of the 2010 SO<sub>2</sub> Standard and to undertake an ‘aggressive’ follow-up for compliance and enforcement, including expedited procedures for establishing enforcement consent agreements pending the adoption of the revised SIP.”<sup>12</sup> ACHD must revise the March 2, 2017 Draft SIP so that at the very least, it includes such a program.

## **II. THE PUBLIC MUST BE PROVIDED WITH AN OPPORTUNITY TO SUBMIT WRITTEN COMMENTS AND/OR A PUBLIC HEARING REGARDING A COMPLETE SIP**

Before submitting revisions to a SIP to EPA for its approval, ACHD must provide notice of the revisions to the public. ACHD must also provide the public with an opportunity to submit written comments (and request a public hearing) regarding the revisions.<sup>13</sup> An agency may not approve revisions to a SIP where such revisions have not been subject to public review and comment and a public hearing.<sup>14</sup>

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<sup>12</sup> *Id.*

<sup>13</sup> See 42 U.S.C. §7410(a); 40 C.F.R. § 51.102(a)(1); see also *Atlanta Env't Council v. United States Env't Prot. Agency*, 71 F.3d 1277, 1281 (11<sup>th</sup> Cir. 2013) (quoting *Sierra Club v. Tenn. Valley Auth.*, 430 F.3d 1337, 1346 (11<sup>th</sup> Cir. 2005): “[i]f a state wants to add, delete, or otherwise modify any SIP provision, it must submit the proposed change to EPA for approval.’ Before adopting and submitting the revision to the EPA, the state must hold public hearings and accept public comments”).

<sup>14</sup> See *Concerned Citizens of Bridesburg v. United States Env't Prot. Agency*, 836 F.2d 777, 788-89 (3d Cir. 1987) (determining that EPA could not revise provisions of a SIP without proposing the revisions to the affected state and giving the state the opportunity to publish the proposed revisions for public comment and hearing).

As discussed above, any new or revised emission limitations, control measures, or contingency measures that ACHD intends to rely on to attain the 2010 SO<sub>2</sub> Standard must be based on approved SIP revisions. Because the March 2, 2017 Draft SIP lacks critical required elements – specifically, as explained above, federally-enforceable emission limitations and contingency measures – the public has been deprived of the opportunity to review those enforceable limitations and contingency measures, submit meaningful written comments regarding those limitations and contingency measures, and request a public hearing regarding the enforceable limitations and contingency measures. ACHD must be required to publish a complete SIP that includes all required, federally-enforceable control measures, emission limitations, and contingency measures that will provide for attainment of the 2010 SO<sub>2</sub> Standard, and resubmit the SIP for public review and comment.