



**GROUP AGAINST SMOG & POLLUTION**  
**1133 S. Braddock Avenue, Suite 1A**  
**Pittsburgh, PA 15218**  
**412-924-0604**  
**[www.gasp-pgh.org](http://www.gasp-pgh.org)**

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September 13, 2021

**VIA EMAIL ([alex@churchillborough.com](mailto:alex@churchillborough.com))**

Alex Graziani, Borough Manager  
Borough of Churchill  
2300 William Penn Highway  
Pittsburgh, PA 15235

**Re:   Redevelopment of George Westinghouse Research and Technology Park**

Dear Mr. Graziani:

I am writing to request the Borough of Churchill consider a potential issue Group Against Smog and Pollution identified recently concerning modeled air quality impacts associated with the proposed redevelopment of George Westinghouse Research and Technology Park. I attached a detailed explanation of the issue for your review.

As we discussed earlier, I am aware GASP is not eligible to participate directly in the Conditional Use proceedings scheduled for this evening. We are submitting this material simply as a community organization focused on protecting air quality across Southwest Pennsylvania.

Thank you in advance for your consideration of this matter.

Very truly yours,

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/s  
Rachel Filippini  
Executive Director

*attachment*

## **In regard to air dispersion modeling and emissions from construction activities during redevelopment of George Westinghouse Research and Technology Park**

Epsilon Associates' basis for not including construction emissions in the air dispersion modeling section(s) of its August 2021 Churchill Distribution Center Air Quality Modeling Report ("Report")<sup>1</sup> appears to include a significant misrepresentation and/or misinterpretation of federal regulations.<sup>2,3</sup> It is unclear how or if those federal regulations inform or control the required "environmental impact study identifying impacts to air quality" under Borough Code § 304-37.1(G) or other zoning and development Code provisions. Still, based on the following analysis, Borough authorities should strongly consider requiring revised air dispersion model results that include construction emissions.

GASP raises this matter based on Section 3.3 of the Report, which states that emissions from construction activities are not included in the Report's air dispersion modeling because "[c]onstruction will be temporary." To support this conclusion, Epsilon asserts, "EPA *typically* considers sources operating for less than two years in a given location as temporary,"<sup>4</sup> and that "40 CFR 52.21 paragraphs (k), (m), and (o) are not applicable to 'temporary' emissions."<sup>5</sup> This explanation involves a troublingly selective reading of those sources.

First, Epsilon's reference to what EPA "typically considers" appears in a June 19, 1978, notice in the *Federal Register* addressing "1977 Clean Air Act Prevention of Significant Air Quality Deterioration State Implementation Plan Requirements."<sup>6</sup> From this document, Epsilon relies on EPA's narrative interpretation of "temporary emissions" while ignoring the text of the regulation itself.<sup>7</sup> By the very nature of an explanatory section in a *Federal Register* rulemaking,

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<sup>1</sup> Report can be viewed online: <https://ecode360.com/documents/CH1558/public/616009855.pdf>.

<sup>2</sup> The Code of Federal Regulations ("C.F.R.") can be viewed online: <https://www.ecfr.gov/>.

<sup>3</sup> The full June 19, 1978, edition of the *Federal Register* can be viewed online: <https://www.govinfo.gov/content/pkg/FR-1978-06-19/pdf/FR-1978-06-19.pdf>.

<sup>4</sup> *Report*, at § 3.3, fn. 16 (emphasis added).

<sup>5</sup> *Report*, at § 3.3, fn. 17. While 40 C.F.R. § 52.21 is a lengthy regulation with many elaborate exemption rules, the reference in footnote 17 appears to be citing 40 C.F.R. § 52.21(i)(3), wherein "Source Impact Analysis," "Air Quality Analysis," and "Additional Impact Analyses" are not applicable to a "net emissions increase" that "[w]ould be temporary."

<sup>6</sup> 43 Fed. Reg. 26,380.

<sup>7</sup> 43 Fed. Reg. 26,380, 26,394. The text of the adopted amendments to Title 40, Part 52 of the Code of Federal Regulations appears on pages 26,403 through 26,410, which is not mentioned in the *Report*.

the interpretation and the text are inexorably linked. That is to say, the 1978 regulatory text provided an exemption from the “impact analyses” if “emissions . . . are of a temporary nature including but not limited to those from a pilot plant, a portable facility, construction, or exploration.”<sup>8</sup> The 1978 text Epsilon cited in the Report’s Footnote 16 is entirely appropriate to use when interpreting that 1978 regulation (but note the quote here is more inclusive of the original published notice than Footnote 16):

Temporary emissions include, but are not limited to, those from a pilot plant, portable facility, construction or exploration, Emissions occurring for less than 2 years at one location would generally be considered temporary. Emissions for longer periods of time might also be considered to be temporary (such as the emissions related to the construction of power plants or other large sources), but should be dealt with on a case-by-case basis.<sup>9</sup>

While this narrative’s age is not itself problematic, all such interpretations lose their value when the regulation they interpreted changes, which is precisely the case with 40 C.F.R. § 52.21(i)(3).

Emissions from “construction” are no longer called out specifically in the current version of 40 C.F.R. § 52.21(i)(3). The exemption is reduced exclusively to “temporary” emissions, and that word’s definition is clear: a “[t]emporary source’ means a new or modified source whose operating life is limited by a permit condition to no more than two years.”<sup>10,11</sup> With a revised regulation and clear definition, there is no basis to even consider interpretive guidance from the 1970’s; the plain text of the regulation must control.

Based on this analysis, that the “construction is *scheduled* to take less than two years”<sup>12</sup> becomes problematic. While the “two years” might seem familiar, the requirement that this period be “limited by a permit condition” is a very significant change from 1978. The regulatory approach goes from providing wide interpretive latitude to demanding a binding limit. Moreover, that there is such a change is the critical point.

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<sup>8</sup> 43 Fed. Reg. 26,380, 26,407.

<sup>9</sup> 43 Fed. Reg. 26,380, 26,394.

<sup>10</sup> Article XXI § 2101.20.

<sup>11</sup> Understanding that there might be confusion as to how an Allegheny County regulation provides the definition for a word in a federal regulation, the authority is based in the State Implementation Plan regulations. Specifically, 40 C.F.R. § 52.2020(c)(2) covers “EPA-Approved Allegheny County Health Department (ACHD) Regulations,” which include definitions contained in Article XXI § 2101.20.

<sup>12</sup> *Report*, at § 3.3 (emphasis added).

The applicability of an air quality permit or the practical and prudent options for applying a construction time limit to a Conditional Use or other zoning or development proceeding are not clear. Rather, Epsilon's failure to accurately represent the cited regulations should undercut any assertions about the emissions from construction activities and/or facilitate a reexamination of any assumptions made about the modeling and constructions emissions to this point.

Accepting that questions still might exist as to whether or not poorly reasoned interpretations of a few words matter in the Borough's proceedings, please consider that the Group Against Smog and Pollution does not take a position supporting or opposing the redevelopment question broadly. We submitted this comment hoping the Borough authorities will provide the community with the clearest picture possible of the impacts this or any development will have. It is our position that neither the Borough nor the public will have a complete picture of air quality impacts until there is a defined duration of construction activities and adequate modeling the covers includes construction emissions.