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SOUTHWESTERN
PENNSYLVANIA
GROWTH

Alliance



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Harold D. Miller, *Director*

March 4, 2005

VIA FEDERAL EXPRESS

Stephen L. Johnson
Acting Administrator
United States Environmental Protection Agency
Ariel Rios Building, 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: Air Quality Designations and Classifications for the Fine
Particles (PM2.5) National Ambient Air Quality Standards,
70 FR 944 (January 5, 2005)
Petition for Stay of Effective Date

Dear Administrator Johnson:

The Southwestern Pennsylvania Growth Alliance ("Growth Alliance") hereby petitions you to stay the effective date of the fine particles (PM2.5) National Ambient Air Quality Standard ("PM2.5 NAAQS") nonattainment designation for the parts of Southwestern Pennsylvania described below. The grounds for this stay and the specific relief requested are as follows:

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MAR 10 2005

Division Director (3AP00)

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MAR 15 2005

Air Protection Division (3AP21)

1. Judy
2. Mark
3. Karen

1. Petitioner is the Southwestern Pennsylvania Growth Alliance (“Growth Alliance”), a ten-county partnership of public officials and private business leaders from Allegheny, Armstrong, Beaver, Butler, Fayette, Greene, Indiana, Lawrence, Washington and Westmoreland Counties and the City of Pittsburgh. A complete list of our members is attached in Exhibit A. The mission of the Growth Alliance is to identify problems and opportunities which are critical to the economic growth of the region and to seek support from state and federal officials in responding to those issues.

2. On January 5, 2005 EPA published in the Federal Register its initial air quality designations and classifications for the PM2.5 NAAQS.

3. The majority of Southwestern Pennsylvania municipalities were designated nonattainment areas in the Federal Register notice referred to above, including all or parts of nine of the ten counties which are members of the Growth Alliance, and the City of Pittsburgh. A map showing the PM2.5 NAAQS non-attainment areas in Southwestern Pennsylvania is attached hereto as Exhibit B.

4. The effective date of the PM2.5 NAAQS designations is April 5, 2005.

5. A PM2.5 NAAQS Implementation Rule* has not been proposed and, according to EPA’s regulatory agenda, it is not scheduled to be final until early 2006.** Moreover, no written guidance has been given to the states by EPA on how to

* As used herein, Implementation Rule means the plan which provides for implementation, maintenance and enforcement of the PM2.5 NAAQS pursuant to Section 110(a) of the Clean Air Act.

** Moreover, major implementing tools still have to be prepared. For example, Pennsylvania will need to create an inventory of PM2.5 sources.

conduct new source review in the PM2.5 NAAQS nonattainment areas prior to approval of implementation plans which the states are not required to finalize until 2008.*

6. Until a PM2.5 implementation plan has been approved for Pennsylvania pursuant to Section 110(a) of the Clean Air Act, including PM2.5 preconstruction review provisions, new sources that want to locate in Southwestern Pennsylvania and existing sources interested in expanding in Southwestern Pennsylvania will be unable to obtain construction permits under the Pennsylvania Air Pollution Control Act, Act of January 8, 1960, P.L. (1959) 2119, No. 787, as amended, 35 P.S. § 4001, or Article XXI of the Allegheny County Health Department's Rules and Regulations.** Moreover, several businesses in our member counties have pending permit applications which are in jeopardy of being delayed or sidetracked indefinitely. While 40 C.F.R. § 51, Appendix S, provides generic guidelines for nonattainment preconstruction review for major sources, this guidance is insufficient for the states, including Pennsylvania, to act specifically with respect to indirect or direct sources of PM2.5. Thus, for example, Pennsylvania, in the absence of an approved implementation plan or guidance from EPA, will not be able to establish emission offset ratios for PM2.5 (or its precursors) required by Section 173 (a) of the Clean Air Act. Pennsylvania will not even be able to make new source applicability determinations for modifications of sources of PM2.5 or its precursors to determine whether they are subject to new source review because they will not know what net increase in emissions will trigger that new source preconstruction review. See Exhibit C which is a copy of the New Source

*Federal Register, Vol. 69, No. 238, December 13, 2004.

**Also identified as County of Allegheny, Pennsylvania Ordinance No. 16782.

Review provisions of Chapter 127 of the Pennsylvania Department of Environmental Protection regulations entitled Construction, Modification, Reactivation and Operation of Sources.

7. The dilemma for our region is further compounded by the fact that the bulk of emissions causing nonattainment in Southwestern Pennsylvania come from out of state sources. Only a small portion of the total ambient PM_{2.5} is a result of local sources and those sources tend to be area fugitive dust and motor vehicles. See the Pittsburgh Air Quality Study ("PAQS") funded by EPA (<http://homer/cheme.cmu.edu>). A copy of the opening page of the PAQS on the internet is enclosed as Exhibit D. EPA's own research establishes that most of the precursors of fine particulate matter in Southwestern Pennsylvania do not originate here. See Exhibit E which contains the modeling projections for the CAIR Rule in 2015 prepared by EPA's Office of Air Quality Planning and Standards, Emissions, Monitoring and Analysis Division. Instead it is caused mostly by pollutants such as sulfur dioxide and nitrogen oxides originating from sources in upwind states.

8. EPA has a proposed rule, the Clean Air Interstate Rule ("CAIR"), which will reduce SO₂ and NO_x from out of state power plants and, if promulgated, will by itself result in the major Southwestern Pennsylvania nonattainment area coming into attainment with PM_{2.5} NAAQS by the year 2010. The only area that would not reach attainment with the implementation of the CAIR rule is the small nonattainment area surrounding the Liberty Borough monitor where, as EPA has recognized, nonattainment is the result of a single large source and for which a separate nonattainment area has been designated. See Exhibit E. However, it has been more than a year since CAIR was proposed and even if it is finalized immediately, it will come much too late to incorporate into the consideration of pending or new permit applications for new and expanded sources. Moreover, we understand it could be

several years before the rule is finalized and upwind reductions are implemented. Without this rule, there is little that can be done in Southwestern Pennsylvania to achieve attainment. Small reductions might be achieved through additional controls on local sources, but the impact of those reductions on attainment will be minimal at best because of the impact from out-of-state sources.

9. As a result of the PM2.5 NAAQS nonattainment designation and lack of guidance for new source review, there is now uncertainty as to air permit requirements and this will discourage new manufacturing businesses and expansion of existing businesses in Southwestern Pennsylvania. Thus, for example, if a business has a choice of locating or expanding a source of PM2.5 (or its precursors) in Southwestern Pennsylvania or in an area which is in attainment, their choice will clearly be weighted toward locating in the attainment area even if that location is such that it will contribute to PM2.5 nonattainment in Southwestern Pennsylvania.

10. Accordingly, in order to avoid this effective bar to economic growth in Southwestern Pennsylvania, the Growth Alliance requests that you stay the effective date of the new PM2.5 nonattainment designations in Southwestern Pennsylvania until EPA issues guidance which will permit new or expanding sources in Southwestern Pennsylvania to go through permitting while the CAIR and Pennsylvania's PM2.5 SIP revisions are being promulgated. In the interim until the CAIR rule is promulgated new sources emitting PM2.5 precursors will continue to be controlled by programs in place such as the NO_x and PM10 State Implementation Plans.

11. The limited relief we are requesting should not have any material effect on attaining PM2.5 NAAQS in Southwestern Pennsylvania. The CAIR rule, if promulgated, will result in attainment for the PM2.5 NAAQS in the major Southwestern Pennsylvania

nonattainment area because it will reduce precursor emissions from out-of-state sources which are causing nonattainment. Creating uncertainty for new sources which want to locate in Southwestern Pennsylvania will not.

12. On previous occasions, the EPA has stated that downwind areas should not be unfairly penalized for pollution generated elsewhere:

[I]t would be an odd or even absurd result for downwind areas unable to attain due to transport to be penalized for failure to address a problem that is beyond their ability to control... The EPA reads [the provisions of the Clean Air Act Amendments] to avoid arguably absurd or odd results and to, on balance, give effect to as much of Congress's manifest desire as possible. Requiring that upwind and downwind areas reduce their contribution to the nonattainment problem to the extent and as quickly as practicable, and avoiding penalizing the downwind areas for failure to do the impossible, constitutes a permissible balance.*

The Southwestern Pennsylvania region should not be penalized in this instance.

13. When Congress established the process and deadlines for EPA to promulgate air quality designations, it expected EPA would also, in a timely manner, provide the states with the necessary tools to continue to process permit applications through the nonattainment preconstruction review process. Halting the permit process by failing to provide those tools not only creates a dilemma for the permittee and stops economic growth in our region, but it also delays progress in achieving attainment because it makes it impossible to obtain the offsets which are essential to the attainment process. We believe this problem would be rectified by staying the effective date of the PM2.5 nonattainment designation for Southwestern Pennsylvania until guidance is issued which will permit Pennsylvania and Allegheny County to issue permits for new or expanding sources in the region.

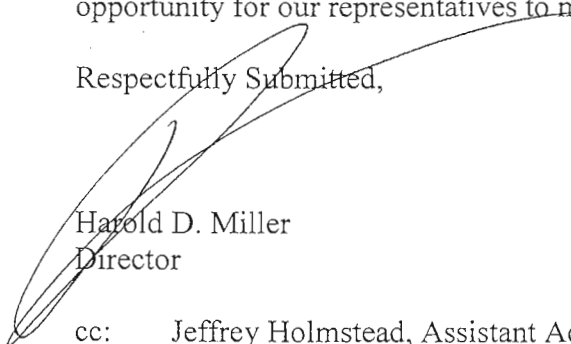
* Mary D. Nichols, Assistant Administrator for Air and Radiation, Ozone Attainment Dates for Areas Affected by Overwhelming Transport, September 1, 1994.

14. It will not be sufficient to allow the states to use PM10 as a surrogate for PM2.5 in the permitting process. PM10 is a completely different class of pollutant and its use as a surrogate will only create confusion, the potential for legal challenges and the possible reversal of permitting decisions once final rules are established. Moreover, there is no existing registry for PM10 emission reduction credits and, of course, none for PM2.5 credits.

15. The Growth Alliance supports efforts to maintain and improve air quality but we feel our members are being severely disadvantaged by a combination of regulatory actions and inactions with respect to the PM2.5 NAAQS designations and classifications.

Accordingly, we respectfully petition you to grant a stay of the effective date of the PM2.5 NAAQS nonattainment designations for Southwestern Pennsylvania until guidance is available to Pennsylvania which will permit new or expanding sources in Southwestern Pennsylvania to proceed through the permitting process. We would appreciate the opportunity for our representatives to meet with you to discuss this issue.

Respectfully Submitted,



Harold D. Miller
Director

cc: Jeffrey Holmstead, Assistant Administrator for Air and Radiation, Environmental Protection Agency
Members of the Growth Alliance
The Honorable George W. Bush, President of the United States
The Honorable Arlen Specter, U.S. Senate
The Honorable Rick Santorum, U.S. Senate
The Honorable Mike F. Doyle, U.S. Congress
The Honorable Phil English, U.S. Congress
The Honorable Melissa A. Hart, U.S. Congress
The Honorable Tim Murphy, U.S. Congress
The Honorable John P. Murtha, U.S. Congress
The Honorable Bill Shuster, U.S. Congress

The Honorable Kathleen McGinty, Secretary, PA Department of Environmental Protection

The Honorable Dennis Yablonsky, Secretary, PA Department of Community and Economic Development

Donald S. Welsh, Regional Administrator, Environmental Protection Agency

Judith Katz, Director, Air Protection Division, Environmental Protection Agency

Roger Westman, Allegheny County Health Department