

Appendix 16: **Public Participation**

New Jersey certifies that the requirements of 40 C.F.R. §51.102(a) and (d) for public hearings and notice have been met. A public hearing on the proposed State Implementation Plan (SIP) revision was offered on May 17, 2021, in accordance with the provisions of Section 110(a)(2) of the Clean Air Act, 42 U.S.C. §7410; 40 C.F.R. §51.102(a), the Air Pollution Control Act (1954), N.J.S.A. 26:2C-1 et seq., and the Administrative Procedure Act, N.J.S.A. 52:14 B-1 et seq. A public hearing on the proposed SIP was scheduled to be held on June 29, 2021, at 10:00 AM if requested. No public hearing was requested by June 3, 2021; therefore, the public hearing was cancelled. Written comments relevant to the proposal were accepted until July 18, 2021. Notice of the proposed SIP, availability and the public hearing was published on the NJDEP's website and sent out on two NJDEP air quality email notification systems on May 18, 2021. In addition, interested parties not on the NJDEP's email notification lists were emailed the notice, along with air quality contacts from other states, air quality regional organizations and the United States Environmental Protection Agency (USEPA). Additional notification also consisted of emailing the notice to contacts at public libraries throughout the State and to NJDEP's three regional Compliance and Enforcement offices. These notices were issued at least 30 days prior to the date of the potential public hearing and close of comment period.

Attachment 1 contains documentation of the public notice including:

1. The public notice posted on the website announcing the availability of the proposed SIP revision and the request for a public hearing;
2. The NJDEP website postings; and
3. The NJDEP email notification.

During comment period, comments were received on the proposed SIP revision. The following person submitted written comments:

1. Peter R. Spinney
174 Andover Sparta Rd.
Newton, NJ 07860

The submitted comments and the State's responses are summarized below. After each comment is the name of the commenter and their affiliation(s).

1. **Comment:** Because the proposed SO₂ Attainment Area designations are both related to power plants in Pennsylvania, over which New Jersey has no control, what are the regulatory liabilities to New Jersey should these plants be reactivated and SO₂ non-attainment once again occur? (Peter Spinney)

Response:

The 1988 designation of portions of Warren County to nonattainment for sulfur dioxide (SO₂) was primarily caused by emissions from the coal-fired units at Martins Creek Power Plant and to a lesser extent the two coal-fired units Portland Power Plant, located in Pennsylvania. However, reactivation of these coal-fired units with SO₂ air emission rates sufficient to cause SO₂ nonattainment is not possible due to more stringent air pollution emission control requirements for the facilities.

The coal units are permanently shutdown and cannot resume operations without going through a full regulatory review. The two coal-fired units at Martins Creek Power Plant were shutdown in September of 2007. Their retirement was part of a legally binding agreement reached on October 10, 2003, between Pennsylvania Power and Light (PPL)/Lower Mount Bethel Energy LLC, the Pennsylvania Department of Environmental Protection (PADEP), and the New Jersey Department of Environmental Protection (NJDEP). Subsequently, the boiler building and stack that vents the sulfur dioxide emissions from these units have been removed from the site.

While the Portland coal-fired units' boiler building and emission stacks have not been physically removed, the units have been shutdown since June of 2014. The shutdown was the result of New Jersey's legal action against Portland Power Plant and its petition to the USEPA under Section 126 of the Clean Air Act. A May 15, 2013, Consent Decree filed in the U.S. District Court for the Eastern District of Pennsylvania by NRG Energy (owner of Portland Power Plant), New Jersey, and Connecticut resulted in the permanent shutdown of the two coal-fired units. The significant reduction in both allowable and actual SO₂ emissions as a result of the consent decree and shutdowns at these plants is shown in Tables 2 and 3 of this Redesignation Request and Limited Maintenance Plan.

Additionally, the current federal and state air permitting requirements in place now are now more stringent than when these units were originally constructed and operated. Since any new or reactivated combustion unit would be considered a "new source" in a regulatory sense, USEPA's Prevention of Significant Deterioration (PSD) permitting requirements would apply. The PSD permitting requirements are specified in 40 CFR 52.21 (available at <https://www.ecfr.gov/cgi-bin/text-idx?rgn=div8&node=40:3.0.1.1.1.1.1.19>). These permitting requirements apply to new and modified major sources in attainment or unclassifiable area. Pursuant to the PSD rules, a new or modified source that is subject to the rule must obtain a preconstruction permit and demonstrate compliance with the PSD permit program requirements specified in 40 CFR 52.21. The PSD rules require that the applicant will install Best Available Control Technology (BACT), conduct air quality impact analysis that demonstrate compliance with National Ambient Air Quality Standards (NAAQS) and PSD increments, and review the impact of the new or modified source on Class I areas and on soil, vegetation and visibility.

In addition to the federal requirements, the reactivated combustion unit would also be subjected to the Pennsylvania's air permit requirements.. The state requirements are specified in Pennsylvania's air permit rule 25 PA Code Chapter 127 (available at [25 Pa. Code Chapter 127. Construction, Modification, Reactivation And Operation Of Sources \(pacodeandbulletin.gov\)](http://www.pacodeandbulletin.gov)) which states that a person may not cause or permit the construction or modification of an air contamination source, the reactivation of an air contamination source after the source has been out of operation or production for 1 year or more, or the installation of an air cleaning device on an air contamination source, unless the construction, modification, reactivation or installation has been approved by the Department.

Both the federal and state air permit programs require extensive analysis of air emissions and their impact on the surrounding area. These requirements will ensure any

new emissions from sources in Pennsylvania will not cause or interfere with the attainment or maintenance of the SO₂ NAAQS in Warren County, New Jersey.

The permitting process described above did not exist in the 1950s and early 1960s when these two power plant's coal-fired units were constructed and began operations. Congress had not yet passed the Clean Air Act (1970) and there was no federal or state regulatory review of their SO₂ emissions and their impact on air quality. This is no longer the case.

2. **Comment:** What are the regulatory liabilities of not officially claiming attainment? (Peter Spinney)

Response:

A redesignation from nonattainment to attainment is an acknowledgement that the existing air quality is in compliance with the NAAQS and is projected to be in compliance for at least 10 more years. A nonattainment designation requires States to develop State Implementation Plans and implement measures to improve air quality and meet the standard. Under the Clean Air Act, the USEPA may impose certain sanctions on states with nonattainment areas that fail to meet certain obligations. Potential sanctions include the loss of federal highway funding. Currently, this is not a concern for New Jersey regarding SO₂ because the USEPA issued a Clean Data Determination (CDD) that found the Warren County Nonattainment area is currently attaining the SO₂ NAAQS. In addition, New Jersey compared the modeling results from a 1999 study and the modeling results from a 2018 study. A comparison of these studies shows significant improvements in SO₂ air quality in the area (see Tables 4 and 5 of this Redesignation Request and Limited Maintenance Plan). However, the area remains under a "nonattainment" designation until a Redesignation to Attainment plan is approved by the USEPA.

There are different permitting programs applicable to a business locating to an area designated nonattainment (referred to as Nonattainment New Source Review or NNSR) as compared to an attainment area PSD. If Warren County, New Jersey is not designated to attainment, an emission source located in Warren County would be subject to N.J.A.C. 7:27-18, Emission Offset Rules (available at <https://www.nj.gov/dep/agm/currentrules/Sub18.pdf>) as applicable. The offset rule is designed to ensure that industrial growth and development may occur even in the areas where the ambient air quality does not meet NAAQS. These rules also impose conditions upon growth and development to ensure that new construction modification of sources of air contaminant emissions do not result in increased emissions that could cause a NAAQS violation. To obtain a permit that complies with the Emission Offset Rule, an applicant must show that the Lowest Achievable Emission Rate (LAER) control technology is installed, certify that all major sources owned and operated by the applicant in the state are in compliance with all applicable state and federal regulations, conduct alternative siting analysis which demonstrates that the benefits of the proposed construction or modification outweigh its environmental and social costs, and secure creditable emission reductions to offset increased emissions. This process is referred to as the NNSR permitting process. There is no loss of air quality protection between a permitting program for nonattainment areas and a permitting program for unclassified/attainment areas.

New Jersey and Pennsylvania's PSD programs are designed to prevent significant deterioration of air quality in attainment areas, such as the portions of Warren County after it is redesignated. However, the NNSR permitting process is more rigorous than the PSD permitting process. Considering that all of New Jersey is in attainment for SO₂ and only a portion of Warren County is designated nonattainment, this may be a factor when a business is looking to locate within New Jersey. Therefore, there could be an economic and regulatory disadvantage to the municipalities within the Warren County nonattainment area for encouraging new businesses to open in their area. USEPA approval of New Jersey's redesignation request will put all of Warren County on a level playing field with an attainment designation and provide a consistent permitting process throughout the county and state.

NJDEP Initiated Changes

1. Administrative correction changes to Figure 1:

The change to Figure 1 included revising a typo in the legend. The previous legend included incorrect referenced numbers for UTM northing. The legend has been corrected to read:

"Sulfur Dioxide Nonattainment Area (includes Belvidere Town; Harmony Township; Oxford Township; White Township; the portion of Liberty Township south of UTM northing 4,522,000 and west of UTM easting 505,000 and the portion of Mansfield Township west of UTM easting 505,000)

*Nonattainment of the National Primary (Health) and Secondary (Welfare) Standards"