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**Energy and Environment Cabinet
Department for Environmental Protection**

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Larry Wallace
U.S. Environmental Protection Agency
Office of Air Quality Planning and Standards
109 T.W. Alexander Drive
Mail Code: C539-01
Research Triangle Park, NC 27709

John Summerhays
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Mail Code: AR-18J
Chicago, IL 60604-3507

Re: Draft Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions

Dear Messrs. Summerhays and Wallace,

On behalf of the Commonwealth of Kentucky, the Division for Air Quality (Division) respectfully submits the following comments in response to EPA's "Draft Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions", published October 2013. The Division appreciates the opportunity to comment on the U.S. EPA's draft guidance document and urges U.S. EPA to make significant changes to the guidance so that it is within the scope and ability of state and local agencies to implement. To assist the U.S. EPA in improving the guidance document, the Division offers suggestions and details concerns through this letter.

The Division appreciates U.S. EPA's attempt to provide recommendations to state air pollution control agencies for approvable State Implementation Plan (SIP) submittals; however, the following statement in the preface of the document creates additional uncertainty to the state air agencies' obligations:

"The guidance is subject to change without further notice, and does not represent the culmination of any agency proceeding or a final interpretation by the EPA of any pre-existing statutory or regulatory requirements." (page iv)

As with other proposed guidance documents, the Division encourages U.S. EPA to definitively establish requirements through the proper regulatory process that includes adequate public participation. For our agency, Kentucky Revised Statute prohibits an agency from regulating by policy or guidance. (KRS 13A.130) Also, due to the U.S. EPA declaring that this guidance is non-binding and not a final agency action, the Division is uncertain of what conditions must be included in an approvable SIP submission.

Another Division concern previously communicated to the U.S. EPA is the appropriate use of modeling demonstrations. The Division adamantly opposes the use of modeling results to declare an area as nonattainment; rather, the Division finds that the proper use of modeling should be as an indicator of overall air quality and a predictive tool to determine the effectiveness of potential control strategies. Specifically, the Division expresses concern with the following sentence:

“Generally, the EPA expects that areas designated nonattainment based on modeling would not be able to be redesignated to attainment unless dispersion modeling indicates attainment has been achieved in the affected area.” (Page 43)

The Division appreciates U.S. EPA recognizing the significant reductions in SO₂ emissions that will result from compliance with the Mercury and Air Toxics Standards (MATS). Considering that the compliance date of MATS may be extended by the permitting authority until April 2016, the Division also commends U.S. EPA for acknowledging that nonattainment area (NAA) SIP's are approvable with less than 3 years of monitoring data, if the enforceable control measures will be operational prior to the October 2018 attainment date. Further, the Division recommends that U.S. EPA consider the data set for the monitor that was used in the NAA designation post MATS compliance.

To assist states in submitting an approvable NAA SIP, the Division requests U.S. EPA to provide a comprehensive list of national and regional control measures that can be included and approved for use by U.S. EPA. The guidance document recognizes the significant emissions reductions resulting from the federal Clean Air Interstate Rule (CAIR) [~50% reduction of SO₂ and NO_x in Kentucky since 2005]. However, the Division is uncertain if the CAIR requirements should be included in the NAA SIP.

Lastly, the Division appreciates U.S. EPA's efforts to streamline the SIP process in recent years. The Division expresses caution and concern with the possible increase in required SIP submissions and consequent approvals by EPA. Specifically, the Division encourages U.S. EPA to re-evaluate the following excerpt from the guidance document and recognize U.S. EPA's 45-day review and final authority for any and all Title V significant permit revisions:

“In these cases, so long as this provision of the Title V permit is submitted and approved as part of the SIP (rendering it permanent rather than subject to expiration after 5 years, and requiring affirmative EPA approval to change the emission limit), the EPA believes that this SO₂ limit could be considered an enforceable requirement that is creditable for SIP purposes. Although Title V permits have a finite life and are subject to renewal, the SO₂ limit would then be an applicable requirement that would need to be retained in the renewed permit unless an EPA-approved SIP revision (generally involving a suitable replacement limit) has allowed otherwise. If the state does not subject the source to the MATS rule SO₂ limit in this manner (or if the MATS limit is insufficient to provide for attainment) then the state must establish a suitable, enforceable SO₂ limit by other means.”

In closing, the Division appreciates the opportunity to comment on the U.S. EPA's “Draft Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions”. If you have any questions regarding the Division comments being provided, please contact Ms. Andrea Smith at (502) 564-3999 or andrea.smith@ky.gov

Sincerely,



Sean Alteri,
Director