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December 20, 2002

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Mr. Donald S. Welsh
Regional Administrator
Region 3
U.S. Environmental Protection Agency
1650 Arch Street (3C G00)
Philadelphia, Pennsylvania 19103-2029

**Via Federal Express**

Re: The Early Action Compact for the
Eastern Panhandle Region of West Virginia

Dear Mr. Welsh:

Enclosed for your review is the Early Action Compact for the Eastern Panhandle Region of West Virginia approved and signed by all parties. It is based on the Frederick County and Winchester, Virginia, Early Action Compact. If you have any questions, please do not hesitate to contact me.

Very truly yours,

Leonard Knee/vls

Leonard Knee

LK/vls
Enclosure
cc: Robert Kramer (w/encl.) *(via Federal Express)*
Judy Katz (w/encl.) *(via Federal Express)*
Robert Crawford (w/o encl.)
Jane Peters (w/o encl.)
Norwood Bentley (w/o encl.)
Fred Durham (w/o encl.)

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**FINAL**

# The EARLY ACTION COMPACT

**for**

# The Eastern Panhandle Region of West Virginia

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## 1. BACKGROUND

### The National Ozone Standards

The Federal Clean Air Act is the comprehensive law that regulates airborne emissions from area, mobile, and stationary sources nationwide. This law authorizes the U.S. Environmental Protection Agency (EPA) to establish National Ambient Air Quality Standards (NAAQS) to protect public health and the environment. The EPA currently has two NAAQS for ozone, the 1-hour peak standard and 8-hour standard.

Areas formally declared in violation of the NAAQS and adjacent contributing areas are designated "nonattainment areas." Nonattainment areas must meet certain Clean Air Act requirements, such as:

- **Transportation Conformity** - Requires a demonstration that regional long-range transportation plans will not negatively impact air quality or federal transportation funds can be withheld.
- **New Source Review** - Requires a review of new or expanded industrial operations to minimize air pollution.
- **Rate of Progress Requirements** - A certain percentage of pollutants must be reduced each year.
- **10-year maintenance plan** after attainment that includes additional or continuing mandatory programs.

Another requirement obligates the state to develop and implement a prescriptive comprehensive clean air plan that mandates how the area will come into compliance with the standard. This plan and any revisions to it are known as will be incorporated in the State Implementation Plan (SIP).

### The 1-Hour Standard in the Region

An area must have a monitored hourly peak ozone concentration below 125 parts per billion (ppb) to meet the 1-hour ozone standard. If an area exceeds the standard more than three times in three years, it is subject to a nonattainment designation. The Eastern Panhandle Region (EPR) has never violated the 1-hour ozone standard.

### The 8-Hour Standard

Due to legal challenges to the new NAAQS and ensuing litigation, EPA has not formally designated any areas of the United States in violation of the 8-hour ozone NAAQS. The 8-hour NAAQS has been upheld by the Supreme Court and EPA anticipates nationwide designation of nonattainment areas in 2004. Based on recent monitoring data, it is probable that Berkeley and Jefferson counties will be designated a nonattainment area when formal designations occur.

The 8-hour ozone standard is found by averaging three years of the fourth highest 8-hour ozone levels in an area. This number, called the design value, must be lower than 85 parts per billion (ppb) to meet the standard. Attached as Exhibit A is the monitoring data currently available for the Eastern Panhandle area.

## 2. OZONE EARLY ACTION PROGRAM (OEAP)

EPR is voluntarily entering the OEAP process to expedite air cleanup for future public health and welfare.

**Protocol for OEAP**

The OEAP was developed according to protocol endorsed by EPA on June 19, 2002. The OEAP offers a more expeditious time line for achieving clean air than expected under EPA's 8-hour implementation rulemaking.

The principles of the OEAP to be executed by Local, State and EPA officials are:

- Early planning, implementation, and emission reductions leading to expeditious attainment and maintenance of the 8-hour ozone standard;
- Local control of the measures to be employed, with broad-based public input;
- State support to ensure technical integrity of the OEAP;
- Formal incorporation of the OEAP into the SIP;
- Deferral of the effective date of nonattainment designation and related requirements so long as all OEAP terms and milestones are met; and
- Safeguards to return areas to traditional SIP requirements should OEAP terms and/or milestones be unfulfilled, with appropriate credit given for emission reduction measures implemented.

EPR's OEAP has two principal components:

**The Program**

1. The Early Action Compact (EAC) – EAC is an agreement to prepare and implement an Early Action Plan (EAP). More specifically, the EAC sets measurable milestones for developing and implementing the EAP.

2. The Early Action Plan (EAP) – EAP serves as EPR's official air quality improvement plan, with quantified emission-reduction measures. The EAP will include all necessary elements of a comprehensive air quality plan and will be tailored to local needs and driven by local decisions. Moreover, the EAP will be incorporated into the formal SIP and the region will be legally required to carry out this plan just as in nonattainment areas. For example, development of the EAP will require the same scientific diligence and undergo the same scrutiny as the nonattainment areas' SIPs, so that the emission reduction strategies selected will be adequate to ensure the region stays in attainment of the 8-hour standard.

**OEAP Versus Traditional Nonattainment**

A major advantage of the region's participation in the OEAP is the flexibility afforded to the signatories in selecting emission reduction measures and programs that are best suited to local

needs and circumstances. Recognizing the varied social and economic characteristics of the region, not all measures can or should be implemented by every entity.

The primary differences between OEAP and the traditional nonattainment area process are:

- The OEAP allows for more local control in selecting emission-reduction measures.
- The OEAP provides deferral of nonattainment designation and related requirements, as long as Plan requirements and milestones are met. This would prevent any related stigma associated with a nonattainment designation.
- The OEAP is designed to achieve clean air faster than under the traditional SIP process.
- Should any milestones be missed in designing or implementing the EAP, the area would automatically revert to the traditional SIP requirements, with appropriate credit given for emission reduction measures already implemented.

**OEAP Timeline**

EPR's OEAP is intended to enable a local, proactive approach to ensuring attainment of the 8-hour ozone NAAQS, and so protect human health. Using the OEAP approach, the region could begin implementing by 2005 emission-reduction measures directed at attaining the 8-hour standard. This allows for a significantly earlier start than waiting for formal EPA nonattainment designation and it gives the local area more flexibility in choosing which emission reduction strategies to implement in order to bring about 8-hour ozone NAAQS attainment

**The Area Encompassed by the OEAP**

The EPR, which is comprised of the jurisdictions in West Virginia listed below, is the planning area for which the OEAP is designed:

Berkeley County
Jefferson County
City of Martinsburg

Some adjacent jurisdictions have been made aware of the process. Their participation in a voluntary manner will be pursued. However, it is understood that only signatory jurisdictions in the EAC will be eligible for the deferral of the nonattainment designation effective date and associated requirements. Adjacent jurisdictions include the following:

| Virginia | West Virginia | Maryland | Pennsylvania |
|---|---|---|---|
| Shenandoah County | Hampshire County | Washington County | Franklin County |
| Warren County | Hardy County | Allegany County | Fulton County |
| Clarke County | Morgan County | | |
| Frederick County | | | |
| City of Winchester | | | |

**Signatories And Their Responsibilities**

The individuals representing the parties that will sign this EAC are:

| | |
|---|---|
| City of Martinsburg | Mayor |
| County of Berkeley | President of the County Commission |
| County of Jefferson | President of the County Commission |
| United States Environmental Protection Agency (EPA) | Administrator, Region 3 |
| West Virginia Department of Environmental Protection (WVDEP) Division of Air Quality (WVDEP-DAQ) | Director |

The local entities listed above are the EPR compact members. The local entities whose representatives support and sign the EAC are committed to holding primary responsibility for the development and implementation of the EAP, and for maintaining communication with all parties. These commitments by local agencies are enumerated herein, along with the commitments of the WVDEP-DAQ and EPA.

**Work Group**

Each EPR compact member shall appoint one person to a working group to carry out the necessary functions of the Compact and to report to each member on actions that the Compact members should take. The working group shall not have any authority to act except when specifically authorized to do so by the EPR members.

**Costs**

The EPR compact members shall share all costs and expenses associated with this compact and with the preparation and implementation of the OEAP on an equal basis. Before any significant costs or expenses greater than $1000 are incurred, the Working Group shall obtain approval from each EPR member.

**Conditions for Modification or Early Termination, or Withdrawal**

Any signatory party may terminate its participation in the agreement at any time before formal incorporation of the OEAP into the SIP in 2004. Modifications to this agreement may occur at any time by mutual consent of all signatory parties before formal incorporation into the SIP in 2004. If a party's withdrawal from the agreement prevents remaining signatories from satisfying any of the terms and milestones of the original agreement, the agreement will be void and the area's nonattainment designation immediately effective. Once the OEAP is incorporated into the SIP, modification may occur only by agreement of all the parties, and by formal revisions of the SIP as the SIP is a legally binding state and federal agreement to carry out specific emission-reduction activities. Additional jurisdictions wanting to enter during OEAP development process will be allowed, upon approval by EPR members, provided they meet the qualifying criteria and EPA guidance.

## 3. EASTERN PANHANDLE REGION EARLY ACTION COMPACT

This EAC is among the local governments representing Berkeley County, Jefferson County, and the City of Martinsburg, (hereinafter referred to as the local governments), the WVDEP-DAQ and EPA. It is for the express purpose of developing and implementing a plan that will reduce ground-level ozone concentrations in the EPR to comply with the 8-hour ozone standard by December 31, 2007 and maintain that standard until at least 2012. Failure to meet that obligation results in immediate reversion to the traditional nonattainment process.

**General Provisions**

A. The signatory parties commit to develop, implement and maintain the EAP according to the EPA Protocol for EACs issued June 19, 2002 (supplemented per a letter dated October 18 , 2002 from Gregg Cooke, Regional Administrator, EPA Region 6, to Robert Huston, Texas Commission on Air Quality), and adhere to all terms and conditions stated in the guidelines.

B. If EPR does not meet all the terms of the EAC, including meeting agreed-upon milestones, then it will forfeit its participation and deferred effective date of its nonattainment designation, thus having an effective nonattainment designation and becoming subject to EPA's 8-hour ozone nonattainment implementation rules.

C. Any signatory party may terminate this agreement, prior to the EAP's formal incorporation into the SIP in 2004.

D. This agreement may be modified by mutual consent of all signatory parties, and where appropriate formal revision of the SIP.

E. The signature date of the EAC is the start date of the agreement's term and the agreement remains in effect until December 31, 2007.

**Local Government Responsibilities**

The local governments are entering into the EAC to develop and implement an EAP that will demonstrate attainment, by December 31, 2007, of the 8-hour ozone standard and continued maintenance of the standard until at least 2012. The local governments will develop the EAP in coordination with WVDEP-DAQ, EPA, stakeholders and the public. In this regard, the local area holds the primary responsibility for the development and implementation of the EAP, as well as for maintaining communication with all parties involved. With the assistance of WVDEP-DAQ, specific local commitments to the EAC and EAP are:

1. Drawing up the EAC, which embodies the requirements for EAP as outlined is Sections A to F of the Compact, including a timeline for milestones.

2. Completing and signing by all parties of the EAC by no later than December 31, 2002.

3. Identifying and describing local strategies being considered for inclusion in the EAP by no later than June 16, 2003.

4. Selecting local control strategies no later than January 31, 2004.

5. Submitting the final EAP to state and federal agencies no later than March 31, 2004.

6. Notifying parties as soon as possible of issues and developments, which may impact performance and progress towards milestones.

7. Notifying parties as soon as possible if any EAC milestones will be missed or have been missed.

8. Notifying parties as soon as possible if modification/termination to the EAC is to be requested.

**Milestones and Reporting**

1. Milestones

| **EAC/EAP Milestones (Responsible Party)** | |
|---|---|
| **December 31, 2002** | Signed EAC (All parties) |
| **May 31, 2003** | Initial modeling emissions inventory completed *(WVDEP-DAQ)* |
| | Conceptual modeling completed *(WVDEP-DAQ)* |
| | Base case modeling completed *(WVDEP-DAQ)* |
| **June 16, 2003** | Identify and describe local strategies being considered for inclusion in local clean air plans *(Local Governments)* |
| **June 30, 2003** | Semi-annual status reports to begin *(EPR & WVDEP-DAQ)* |
| **October 31, 2003** | Future year emissions inventory modeling completed *(WVDEP-DAQ)* |
| | Emissions inventory comparison and analysis completed *(WVDEP-DAQ)* |
| | Future case modeling completed *(WVDEP-DAQ)* |
| **January 31, 2004** | Attainment maintenance analysis completed *(WVDEP-DAQ)* |
| | One or more modeled control cases completed *(WVDEP-DAQ)* |
| | Local emission reduction strategies selected *(Local Governments)* |
| | Submission of preliminary EAP to WVDEP-DAQ and EPA *(Local Governments)* |
| **March 31, 2004** | Final revisions to modeled control cases completed *(WVDEP-DAQ)* |
| | Final revisions to local emission reduction strategies completed *(Local Governments)* |
| | Final revisions to attainment maintenance analysis completed *(WVDEP-DAQ)* |
| | Submission of final EAP to WVDEP-DAQ and EPA *(Local Governments)* |
| **December 31, 2004** | EAP adopted and incorporated into the SIP, SIP submitted to EPA *(WVDEP-DAQ)* |
| **December 31, 2005** | Local emission reduction strategies implemented no later than this date *(Implementing Agency)* |
| **June 30, 2006** | Semi-annual status reports on implementation of measures and assessment of air quality improvement begin on this date *(EPR & WVDEP-DAQ)* |
| **December 31, 2007** | Attainment of the 8-hour standard no later than this date *(All Parties)* |

2. Reporting

In order to facilitate self-evaluation and communication with EPA, WVDEP-DAQ, stakeholders, and the public, the EPR will assess and report progress towards milestones in a regular, public process, at least every six months, beginning with a biannual in June 2003.

**Emissions Inventories**

1. An **initial modeling emissions inventory** will be developed by **May 31, 2003**. This inventory will include:
    a. Emissions modeling data for a 1996, 1997 or 1999 episode, which will be representative of a typical ozone season event and meets EPA episode selection guidance;
    b. MOBILE6 data with link based Travel Demand Model (TDM) mobile data where available (HPMS elsewhere);
    c. NONROAD model data adjusted for local equipment populations and usage rates (if available);
    d. Area source data using best activity data available.

2. A 2007 **future year modeling emissions inventory** will be developed by **October 31, 2003**. This inventory will sufficiently account for projected future growth in ozone precursor emissions through 2007, particularly from stationary, non-road and on-road mobile sources.

3. Selection of specific episode inventories was partially determined by the conceptual model, which reflects an analysis of meteorological conditions typical of high ozone events. The conceptual model will be developed by **May 31, 2003**.

4. Emissions inventories will be compared and analyzed for trends in emission sources over time. The **emissions inventory comparison and analysis** will be completed by **May 31, 2003**.

**Modeling**

1. Regional photochemical modeling will be performed to provide a demonstration of attainment of the ozone standard through the local, state, and regional control strategies selected for the EAP. **Base case modeling** will be completed by **May 31, 2003** and **future case modeling** will be completed by **October 31, 2003**. One or more **modeled control cases** will be completed by **January 31, 2004**, with final revisions completed by **March 31, 2004**. All modeling:
    a. Will be SIP quality and perform within EPA's accepted margin of accuracy;
    b. Will be carefully documented;
    c. Will sufficiently account for projected future growth in ozone precursor emissions;

d. Will be accomplished by WVDEP-DAQ (through its agreement with the Virginia Department of the Environment) and reviewed by EPA;
e. Will be used to determine the effectiveness of NOx and/or VOC reductions. The control case(s) will be used to determine the relative effectiveness of different emission reduction strategies and to aid in the selection of appropriate emission reduction strategies.

**Emission Reduction Strategies**

1. All adopted Federal and State emission reduction strategies that have been or will be implemented by the December 31, 2007 attainment date will be included in base, future and control case modeling.
2. Additional local emission reduction strategies that are under consideration will be identified and described by June 16, 2003. Any additional strategies needed to demonstrate attainment for EPR will then be selected by January 31, 2004, with final revisions completed by March 31, 2004. The selected local strategies will be implemented as soon as practical, but no later that December 31, 2005.
3. Local emission reduction strategies will be specific, quantified, permanent and enforceable. The strategies will also include specific implementation dates and detailed documentation and reporting processes.
4. Voluntary strategies can play a supporting role in the EAP. If emission reductions from voluntary strategies are quantified and credit is taken for them in the EAP, those emission reductions will be enforceable. Additional strategies must be implemented to meet those quantified reduction requirements if quantified voluntary strategies fail. This is true for all quantified emission reductions.
5. Local emission reduction strategies will be designed and implemented by the community with stakeholder participation.
6. Local emission reduction strategies will be incorporated by the state into the SIP. In the event that the region desires to add, delete or substitute strategies after SIP submittal, the region will request a modification. EAP modifications will be treated as SIP revisions and facilitated by the state.

**Maintenance for Growth**

1. The EAP will include a component to address emissions growth at least five years beyond December 31, 2007, ensuring that the area will remain in attainment of the 8-hour standard during that period. Attainment maintenance analysis will be completed by January 31, 2004, with final revisions completed by March 31, 2004. The analysis will employ one or more of the following or any other appropriate techniques necessary to make such a demonstration:

- Attainment emissions budget evaluation for maintenance demonstration year showing that future emissions remain below the attainment budget for the area;
- Modeling analysis showing ozone levels below the 8-hour standard in 2012;
- An annual review of growth (especially mobile and stationary source) to ensure emission reduction strategies and growth assumptions are adequate;
- Identification and quantification of federal, state, and/or local measures indicating sufficient reductions to offset growth estimates.

2. A continuing planning process that includes modeling updates and modeling assumption verification (particularly growth assumptions) will be conducted concurrent with the tracking and reporting process for the EAP. This update and verification will be an ongoing process between the signatories, stakeholders and the public. Modeling updates and planning processes must consider and evaluate:

    - All relevant actual new point sources;
    - Impacts from potential new source growth; and
    - Future transportation patterns and their impact on air quality in a manner that is consistent with the most current adopted Long Range Transportation Plan and most current trend and projections of local motor vehicle emissions.

3. If the review of emissions growth in conjunction with the continuing planning process demonstrates that adopted emission reduction strategies are inadequate to address growth in emissions, additional measures will be added to the EAP.

4. In the event that the continuing planning process identifies the need to add, delete, or substitute emission reduction strategies after the EAP has been incorporated into the SIP, the local area will initiate, and VDEQ will facilitate a SIP revision to accommodate changes.

**Public Involvement**

1. Public involvement will be conducted in all stages of planning. Outreach to the public may include one more of the following techniques: public meetings and presentations, stakeholder meetings, websites, print advertising and radio.

2. Public education programs will be used to raise awareness regarding issues, opportunities for involvement in the planning process, implementation of emission reduction strategies, and any other issues important to the area.

3. Interested stakeholders will be involved in the planning process as early as possible. Planning meetings will be open to the public, with posted meeting times and locations. Plan drafts will be publicly available, and the drafting process will have sufficient opportunities for comment from all interested stakeholders.

4. Public comment on the proposed final plan will follow the normal SIP revision process as implemented by the State.

5. Semi-annual reports detailing, at a minimum, progress toward milestones, will be publicly presented and publicly available.

**The West Virginia Department of Environmental Protection - Division of Air Quality**
WVDEP-DAQ will provide support to areas throughout the planning and implementation process, including:

1. Development of emission inventories, modeling process, trend analysis and quantification and comparison of emission reduction strategies;

2. Necessary information on all Federal and State adopted emission reduction measures which affect the area;

3. Review of emissions inventory, modeling, and self-evaluation work;

4. Technical and strategic assistance, as appropriate, in the selection and implementation of emission reduction strategies;

5. Technical and planning assistance in developing and implementing processes to address the impact of emissions growth beyond the attainment date;

6. Maintenance of monitors and reporting and analysis of monitoring data;

7. Support for public education efforts;

8. Coordinate communication between local areas and EPA to facilitate continuing EPA review of local work;

9. Expeditious review of the locally developed plan, and if deemed adequate, propose modification of the SIP to adopt the early action plan;

10. Adoption of emission reduction strategies into the SIP as expeditiously as possible. The final complete SIP revision must be completed, adopted, and submitted by the state to EPA by 2004. The SIP revision will include a demonstration that the area will attain the 8-hour standard by December 31, 2007.

11. If EPA withdraws the deferred effective date, thereby triggering a nonattainment designation and applicable statutory requirements, the State will submit a nonattainment SIP to EPA within 1 year of the new effective date of the nonattainment designation.

WVDEP-DAQ does not currently possess the technical resources or expertise to perform the photochemical modeling, associated meteorological modeling or related emissions pre-processing. WVDEP-DAQ has obtained a verbal agreement in principle from the Virginia Department of Environmental Quality to perform the necessary air quality modeling for the WV Eastern Panhandle Region. This will be accomplished by including the West Virginia areas in the Winchester-Frederick County EAC modeling demonstration at a resolution sufficient to support an attainment demonstration for their local control strategy (in conjunction with applicable federal measures).WVDEP-DAQ's commitments in this agreement are specifically contingent on WVDEP-DAQ being able to secure air quality modeling services from the Virginia Department of Environmental Quality, and if necessary, the receipt by WVDEP-DAQ of additional funding to carry out its commitments.

**The Environmental Protection Agency**

1. The EPA will provide technical assistance to the state and local area in the development of the early action plan.

2. The EPA will move quickly to review and approve completed plans by no later than nine months after submission of the SIP revision by the state.

3. At the time of designations, EPA will defer the effective date of nonattainment designation and related requirements for participating areas that fail to meet the 8-hour ozone standard as long as all terms and milestones of the compact are being met, including submission of the early action SIP revision by 2004.

4. Provided that the monitors in the area reflect attainment by December 31, 2007, EPA will move expeditiously to designate the area as attainment and impose no additional requirements.

5. If at any time the area does not meet all the terms of this EAC, including meeting agreed-upon milestones, then it will forfeit its participation and its nonattainment designation (or redesignation if necessary) will become effective after EPA withdraws the deferred date.

6. If the area violates the standard as of December 31, 2007, and the area has had the effective date of its nonattainment designation deferred, the area will be designated nonattainment. EPA will take action to withdraw the deferred effective date, and the area's nonattainment designation will become effective.

7. No area will be allowed to renew their EAC after December 31, 2007, or initiate a new compact if it has previously forfeited its participation.

**Signatures**

This Compact may be executed in separate counterparts. The Compact is not effective unless signed by all parties.

**Signatures:**

| | |
|---|---|
| Mayor of City of Martinsburg | Date 12-20-02 |
| President of the Jefferson County Commission | Date 12/20/02 |
| President of Berkeley County Commission | Date 12/19/02 |
| Stephanie Timmermeyer, Director<br>Division of Air Quality | Date December 20, 2002 |
| EPA, Region III Administrator | Date 12/24/02 |

1085958

# EXHIBIT A

| MARTINSBURG | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | Date | Hour | 8-hr Average | 94-96 Average | Date | Hour | 8-hr Average | 95-97 Average | |
| | | | | | | | | | |
| | 05/02/2001 | 11 | 0.091 | | 08/03/2002 | 10 | 0.094 | | |
| | 05/03/2001 | 11 | 0.089 | | 09/10/2002 | 11 | 0.09 | | |
| | 05/04/2001 | 11 | 0.088 | | 07/02/2002 | 10 | 0.089 | | |
| 0.077 | 06/26/2001 | 11 | 0.088 | 0.088 | 08/21/2002 | 12 | 0.089 | 0.088 | 0.084 |
| | 05/01/2001 | 11 | 0.086 | | 06/10/2002 | 12 | 0.088 | | |
| | 06/13/2001 | 11 | 0.082 | | 07/01/2002 | 11 | 0.088 | | |
| | 09/19/2001 | 11 | 0.079 | | 06/21/2002 | 12 | 0.084 | | |
| | 06/20/2001 | 10 | 0.078 | | 08/13/2002 | 11 | 0.083 | | |
| | 05/10/2001 | 11 | 0.076 | | 08/14/2002 | 10 | 0.083 | | |
| | 08/09/2001 | 10 | 0.076 | | 06/25/2002 | 11 | 0.081 | | |