



## **APPENDIX B-4**

### **Redacted Consent Order and Agreement for Seward**

**Bureau of Air Quality  
Department of Environmental Protection**

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COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In The Matter Of:

Seward Generation, LLC	:	SO <sub>2</sub> 1 hour NAAQS
Seward Generation Station	:	Nonattainment;
595 Plant Road	:	Indiana County and
New Florence, PA 15944	:	Portions of Armstrong County
	:	

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement ("COA") is entered into this 31 day of October, 2017 by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department" or "DEP") and Seward Generation, LLC ("Seward").

A. ~~The Department is the agency with the duty and authority to administer and enforce the Air Pollution Control Act, Act of January 8, 1960, P.L. 2119 (1959), as amended, 35 P.S. § 4001 et seq. ("APCA"); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P. L. 177, as amended, 71 P.S. § 510-17; and the rules and regulations promulgated thereunder.~~

B. ~~Seward is a limited liability company authorized to do business in Pennsylvania, with a mailing address of 11 Lloyd Avenue, Latrobe, PA 15650.~~

C. ~~Seward owns the Seward Generating Station ("Seward Station"), a waste coal-fired, steam electrical generation station located at 595 Plant Road, Indiana County, New Florence, PA 15944.~~

D. ~~NRG Maintenance Services, LLC ("NRG") operates the Seward Station under a contract with Seward.~~

E. ~~The Seward Station is presently covered by Title V Operating Permit No. 32-00040, which expires on February 11, 2018.~~

F. ~~The Seward Station presently includes the following sulfur dioxide (SO<sub>2</sub>) emitting sources (“SO<sub>2</sub> Emitting Sources”):~~

- ~~• CFB Boiler 1 (Source ID 034) nominally rated at 2,532 MMBTU/HR; and~~
- ~~• CFB Boiler 2 (Source ID 035) nominally rated at 2,532 MMBTU/HR.~~

G. ~~Each of the SO<sub>2</sub> Emitting Sources described in Paragraph F, above, is an air contamination source as that term is defined in Section 3 of the APCA, 35 P.S. § 4003.~~

**Background of Requirements for Commonwealth to Submit Revision to State Implementation Plan (SIP):**

H. ~~On June 22, 2010, the United States Environmental Protection Agency (EPA) promulgated a revised primary (health-based) national ambient air quality standard (NAAQS) for Sulfur Dioxide (SO<sub>2</sub>). See 75 FR 35520, June 22, 2010 (hereinafter “2010 1-Hour SO<sub>2</sub> NAAQS”). Specifically, the EPA established a new 1-hour standard at a level of 75 parts per billion (ppb), which is met at an ambient air quality monitoring site when the 3-year average of the annual 99<sup>th</sup> percentile of 1-hour daily maximum concentrations is less than or equal to 75 ppb. These revised SO<sub>2</sub> standards became effective on August 23, 2010.~~

I. ~~On August 5, 2013, at 78 FR 47191, the EPA designated all of Indiana County and Plumcreek Township, South Bend Township, and Elderton Borough in Armstrong County as being in nonattainment for the 2010 1-Hour SO<sub>2</sub> NAAQS (“Indiana nonattainment area”). The designations took effect October 4, 2013.~~

J. ~~Pursuant to Section 191 of the Clean Air Act (CAA), 42 U.S.C. § 7514, the Commonwealth of Pennsylvania was required to develop and submit to EPA a State Implementation Plan revision (“SIP revision”) to address the Indiana nonattainment area within~~



18 months (April 4, 2015) from the effective date of the 2010 1-Hour SO<sub>2</sub> NAAQS nonattainment designations. Specific statutory requirements for a SIP submittal can be found in Section 172(c) of the CAA, 42 U.S.C. § 7502(c).

K. On March 18, 2016, effective April 18, 2016, the EPA published a final action to find that Pennsylvania failed to submit a SIP to satisfy nonattainment area planning requirements of the CAA for the 2010 1-Hour SO<sub>2</sub> NAAQS. 81 FR 14736. *See also* 81 FR 22025 (April 14, 2016). (This action corrects that listing to clarify that the Indiana, Pennsylvania nonattainment area for the 2010 SO<sub>2</sub> NAAQS consists of the entirety of Indiana County and part of Armstrong County.) The EPA's finding of "failure to submit" triggered deadlines for EPA to impose sanctions if Pennsylvania does not submit a SIP addressing those requirements and for the EPA to promulgate a Federal Implementation Plan (FIP) to address any outstanding SIP requirements.

L. If a state has not submitted a SIP revision and the EPA has not found it to be complete on or before 18 months (Oct. 18, 2017) after the effective date of the findings, the offsets sanction identified under Section 179(b)(2) and 40 CFR § 52.31(d) will apply. If a state has not submitted a SIP Revision and the EPA has not found it to be complete on or before 24 months (April 18, 2018) after the effective date of the findings, the highway funding sanction identified under Section 179(b)(1) and 40 CFR § 52.31(d) will apply. Additionally, such a finding also triggers an obligation under CAA Section 110(c)(1)(A) for the EPA to promulgate a FIP no later than 2 years from the finding of failure to submit, if the affected state has not submitted, and the EPA has not approved, the required SIP submittal.

M. The SIP revision is subject to a public comment period and opportunity for a public hearing.

N. ~~Because the SO<sub>2</sub> Emitting Sources are point sources located in the Indiana nonattainment area with SO<sub>2</sub> emissions that are reasonably expected to contribute to nonattainment of the area, they were included in atmospheric dispersion modeling for demonstration of attainment per Appendix W to 40 C.F.R. Part 51 and in accordance with Guidance for 1-Hour Sulfur Dioxide (SO<sub>2</sub>) Nonattainment Area State Implementation Plans (SIP) Submissions.~~

O. ~~On behalf of Seward and three other NRG-operated power plants in the Indiana Nonattainment Area (Homer City Generating Station, Keystone Generating Station, and Conemaugh Generating Station), NRG has caused air dispersion modeling to be performed for the Indiana Nonattainment Area in two ways:~~

- ~~1. Using the guideline model AERMOD ("AERMOD Modeling"); and~~
- ~~2. Using the guideline model AERMOD together with AIRMOIST software ("AERMOD/AIRMOIST Modeling").~~

P. ~~DEP has reviewed the modeling for the Indiana Nonattainment Area, identified in Paragraph O, above. Both the AERMOD Modeling and AERMOD/AERMOIST Modeling show that the Indiana Nonattainment Area would achieve modeled attainment of the 2010 1-hour SO<sub>2</sub> NAAQS with the current SO<sub>2</sub> emissions limitations for the Seward SO<sub>2</sub> Emitting Sources, the Conemaugh SO<sub>2</sub> Emitting Sources, and the Homer City SO<sub>2</sub> Emitting Sources. The AERMOD Modeling and AERMOD/AERMOIST Modeling show that changes to the currently permitted emissions limits for the Keystone Station are needed to achieve modeled attainment of the 2010 1-hour SO<sub>2</sub> NAAQS.~~

Q. ~~Both the AERMOD Modeling and AERMOD/AERMOIST Modeling will be included in the SIP revision. EPA is expected to accept only one of these models.~~

R. ~~Contingency measures are a required component of the SIP revision pursuant to Section 172(c)(9) of the CAA.~~

S. ~~Based upon the modeling identified in Paragraph O, above, the emission limits for the Seward Station do not change from the limits specified in Title V Operating Permit No. 32-00040.~~

### ORDER

After full and complete negotiation of all matters set forth in this Consent Order and Agreement and upon mutual exchange of covenants contained herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by Seward as follows:

1. ~~**Authority.** This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Sections 4 and 10.1 of the APCA, 35 P.S. §§ 4004 and 4010.1, and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.~~

2. ~~**Findings.**~~

a. ~~Seward agrees that the findings in Paragraphs A through S are true and correct, and, in any matter or proceeding involving Seward and the Department, Seward shall not challenge the accuracy or validity of these findings.~~

b. ~~The parties do not authorize any other persons to use the findings in this COA in any matter or proceeding.~~

3. **Required Action.**

a. **Contingency Measures.** Upon execution of this COA, if SO<sub>2</sub> emissions from the combined SO<sub>2</sub> Emitting Sources at the Seward Station exceed 99% of the SO<sub>2</sub> emission limits set forth in Title V Operating Permit 32-00040, Seward shall, within 48 hours, undertake a

full system audit of the SO<sub>2</sub> Emitting Sources, and will submit a written report to the Department within 15 days. A malfunction report prepared pursuant to Title V Operating Permit 32-00040, Section C, Condition 014 shall satisfy this requirement. The full system audit shall consist of a review of the parameters routinely monitored by the Continuous Emissions Monitoring Systems and the Digital Data Acquisition Systems installed on the SO<sub>2</sub> Emitting Sources and their control devices to determine whether or not the units and control devices were operating in accordance with specifications set forth in the approved plan approval application and good air pollution control practices. If the SO<sub>2</sub> Emitting Sources and their control devices were not operating in accordance with specifications set forth in the approved plan approval application and good air pollution control practices, then Seward shall identify corrective actions to be implemented to ensure that the limits in Title V Operating Permit 32-00040 are not exceeded. Only one audit in a seven-operating day period is required if combined SO<sub>2</sub> emissions from the SO<sub>2</sub> Emitting Sources exceed 99% of the SO<sub>2</sub> emission limits in Title V Operating Permit 32-00040. The audit and associated records shall be maintained on site.

b. Upon execution of this COA, if the Strongstown monitor (AIRS ID 42-063-0004) measures a 1-hour concentration exceeding 75 ppb (which constitutes a daily exceedance of the 1-hour SO<sub>2</sub> NAAQS), the Department will notify Seward both verbally and in writing. Seward shall identify whether any of the SO<sub>2</sub> Emitting Sources at the Seward Station were running at the time of the exceedance, and within a reasonable time period leading up to the exceedance, not to exceed 24 hours. If any of the SO<sub>2</sub> Emitting Sources at the Seward Station were running at the time of the exceedance, and within a reasonable time period leading up to the exceedance, not to exceed 24 hours, Seward must then analyze the meteorological data on the day the daily exceedance occurred to ensure that the daily exceedance was not due to SO<sub>2</sub> emissions



from the Seward Station. The meteorological data analysis should include trajectories run at three different heights (one at stack height and two more within the boundary layer) by the National Oceanic and Atmospheric Administration's Hysplit program or an equivalent program, and an analysis of Johnstown Airport's meteorological data and modeled upper air data using the National Weather Service's Bufkit or equivalent program. The overall goal of the meteorological data analysis is to investigate if emissions from any of the Seward Station could have potentially mixed down to the Strongstown SO<sub>2</sub> monitor. Seward's finding must be submitted in writing to the Department within 30 days of being notified of the exceedance. In lieu of performing this meteorological analysis for the Seward Station alone, meteorological analysis for Seward and one or more of the power plants in the Indiana Nonattainment Area may be submitted, provided that the analysis is designed to investigate if emissions from the Seward Station could have potentially mixed down to the Strongstown SO<sub>2</sub> monitor.

~~4. Stipulated Civil Penalties.~~

~~a. In the event Seward fails to comply in a timely manner with any provision of Paragraph 3. above, Seward shall be in violation of this COA and, in addition to other applicable remedies, shall pay a civil penalty in the amount of \$500 per day that any of the provisions of Paragraph 3 remain unfulfilled.~~

~~b. Stipulated civil penalty payments shall be payable within 15 days of notification by the Department that they are due. Payments shall be made by corporate check or the like payable to the Commonwealth of Pennsylvania—Clean Air Fund and sent to Mark Gorog, PE, Regional Air Quality Program Manager, Pennsylvania Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, along with a transmittal of penalty form, a copy of which is attached.~~

e. ~~Any payment under this paragraph shall neither waive Seward's duty to meet its obligations under this COA, nor preclude the Department from commencing an action to compel Seward's compliance with the terms and conditions of this COA. The payment resolves only Seward's liability for civil penalties arising from the violation of this COA for which the payment is made.~~

5. **~~Additional Remedies.~~**

a. ~~In the event Seward fails to comply with any provision of this COA, the Department may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including an action to enforce this COA.~~

b. ~~The remedies provided by this paragraph and Paragraphs 3 and 4 are cumulative, and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy. The payment of a stipulated civil penalty, however, shall preclude any further assessment of civil penalties for the violation for which the stipulated civil penalty is paid.~~

6. **~~Reservation of Rights.~~** ~~The Department reserves the right to require additional measures to achieve compliance with applicable law. Seward reserves the right to challenge any action which the Department may take to require those measures.~~

7. **~~Liability of Operator.~~** ~~Seward shall be liable for any violations of this COA, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors.~~

8. ~~Transfer of Site.~~

a. ~~The duties and obligations under this COA shall not be modified, diminished, terminated, or otherwise altered by the transfer of any legal or equitable interest in the Seward Station or any part thereof.~~

b. ~~If Seward intends to transfer any legal or equitable interest in the Seward Station, Seward shall serve a copy of this COA upon the prospective transferee of the legal and equitable interest at least 30 days prior to the contemplated transfer and shall simultaneously inform the Southwest Regional Office of the Department of such intent.~~

9. ~~Correspondence with Department.~~ All correspondence with the Department concerning this COA shall be addressed to:

Mark Gorog, PE  
Regional Air Quality Program Manager  
Pennsylvania Department of Environmental Protection  
400 Waterfront Drive  
Pittsburgh, PA 15222-4745  
Phone: (412) 442-4000  
Fax: (412) 442-4194

10. ~~Correspondence with Seward.~~ All correspondence with Seward concerning this COA shall be addressed to:

James F. Panaro  
Executive Vice President  
Seward Generation, LLC  
11 Lloyd Avenue  
Latrobe, PA 15650  
Phone: (814) 446-6700

With a copy to:

R. Christopher Anderson  
General Counsel and Corporate Secretary  
Robindale Energy & Associated Companies  
11 Lloyd Avenue, Suite 200  
Latrobe, PA 15650  
Phone: (724) 879-4264 x104

And:

Stephen C. Smith  
Of Counsel  
~~Stephoe & Johnson PLLC~~  
11 Grandview Circle, Suite 200  
Canonsburg, PA 15317  
Phone: 724-873-3186

~~Seward shall notify the Department whenever there is a change in the contact person's name, title, or address. Service of any notice or any legal process for any purpose under this COA, including its enforcement, may be made by mailing a copy by first class mail to the above address.~~

11: ~~**Severability.** The paragraphs of this COA shall be severable, and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the parties.~~

12: ~~**Entire Agreement.** This COA shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.~~

13: ~~**Attorney Fees.** The parties shall bear their respective attorney fees, expenses and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this COA.~~

14: ~~**Modifications.** No changes, additions, modifications, or amendments of this COA shall be effective unless they are set out in writing and signed by the parties hereto.~~

15: ~~**Titles.** A title used at the beginning of any paragraph of this COA may be used to aid in the construction of that paragraph, but shall not be treated as controlling.~~



16. ~~This COA shall not be considered as a limitation or abridgment of the Department's rights and duties to take action as necessary to implement emergency control strategies under Section 6.2 of the APCA, 35 P.S. § 4006.2, nor Seward's rights to challenge such actions.~~

17. ~~**Counterparts.** This Consent Order and Agreement may be signed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. Facsimile signatures or those transmitted by electronic means shall be valid and effective.~~

18. ~~This COA does not grant a variance from any requirement of the APCA; the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; or any regulations promulgated under either of these statutes; nor does it purport to modify any requirement of Pennsylvania's State Implementation Plan as approved under the Section 110 of the Clean Air Act, 42 U.S.C. § 7410.~~

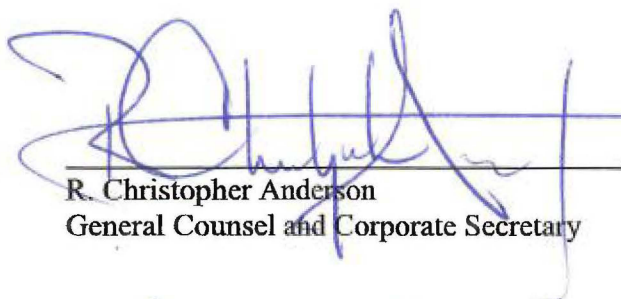
19. ~~**Termination.** Seward's obligations under this of COA shall terminate upon the earlier of: (i) issuance of an air quality operating permit (Title V Renewal) for the Seward Station; which incorporates the provisions of an EPA approved State Implementation Plan pertaining to the Seward Station, or (ii) redesignation of the Indiana Nonattainment Area to attainment.~~

IN WITNESS WHEREOF, the parties hereto have caused this COA to be executed by their duly authorized representatives. The undersigned representatives of Seward certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this COA on behalf of Seward; that Seward consents to the entry of this COA as a final ORDER of the Department; and that Seward hereby knowingly waives its rights to appeal this COA and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provision of law.

FOR SEWARD GENERATION, LLC:



James F. Panaro  
Executive Vice President



R. Christopher Anderson  
General Counsel and Corporate Secretary



Stephen C. Smith  
Attorney for Seward Generation, LLC

FOR THE COMMONWEALTH OF  
PENNSYLVANIA, DEPARTMENT  
OF ENVIRONMENTAL PROTECTION:



Mark Gorog, P.E.  
Southwest Region  
Air Quality Program



Michael J. Heilman  
Assistant Regional Counsel