



Western Regional Air Partnership

January 18, 2002

Ms. Lydia Wegman
Director, Air Quality Strategies and Standards Division
U.S. Environmental Protection Agency
Office of Air Quality Planning and Standards
Research Triangle Park, NC 27711

Dear Ms. Wegman:

The regional haze regulations established numerous requirements that western states and tribes must address in their respective state and tribal implementation plans, due to EPA as early as December 31, 2003. As the co-chairs of the WRAP Initiatives and Technical Oversight Committees, we are writing to convey a number of questions related to the regional haze regulations which we have identified as requiring EPA feedback, and to provide recommendations regarding these areas of uncertainty.

The assistance of you and your staff in working with WRAP members to answer these questions would be greatly appreciated. Specifically, we would like to initiate some discussion of these issues, to be followed by a documentation by EPA of your answers to the questions. We would also like to request that EPA maintain a docket of these and subsequent questions and answers in a format which will be accessible to the states and tribes in all the Regional Planning Organizations.

The following is our list of questions and preliminary recommendations. Some are directly related to the Section 309 SIPs and TIPs and apply only to western states and tribes, while others relate to the Section 308 SIPs and TIPs that states and tribes across the country must submit. The questions listed under "SIP Timing and Coordination" are among the highest priority, given that the answers may bear on state and tribal decisions to submit plans under Section 309 or 308.

Guidance Documents

1. States are required to establish reasonable progress goals, taking into consideration the statutory factors contained in the Clean Air Act and reiterated in the regional haze rule. EPA has indicated that applicable guidance exists on how to assess these factors. We suggest EPA provide a list of all applicable guidance, along with information on plans to develop any additional guidance in the future.

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SIP Timing and Coordination

2. Recognizing that non-attainment designations are dependent on monitoring data supplied by states, what is EPA's best current knowledge regarding the expected submission of PM2.5 monitoring data from the states in the WRAP region, and thus the expected attainment/non-attainment designation dates for the states?
3. The variable timing of SIP deadlines under section 308 raises questions with respect to integration with the 2008 deadline for the second 309 SIPs. Our understanding is as follows:
 - a. It is the intent of the Act that PM 2.5 attainment designations be the regulatory "driver" of Regional Haze SIP deadlines. Thus, in no case should a state be required to submit a section 308 SIP before PM2.5 attainment designations have been made. (However, in the event that the PM2.5 standards are not implemented, as a result of litigation or other factors, we believe that regional haze programs should continue to be required).
 - b. For states that submit section 309 SIPs in 2003 (covering Class I areas on the Colorado Plateau) and that commit to address other Class I areas under 309(g), the SIP deadline for all other applicable Class I areas will be 2008.
 - c. For the four states in the contiguous WRAP region which are not eligible for section 309 (Washington, Montana, North Dakota, and South Dakota), the initial regional haze SIPs due 1 year after PM2.5 attainment designations will be "committal" SIPs; and the deadline for the "core" SIP will be 2008, as the latest deadline applicable in the regional planning organization.

Does EPA concur with this interpretation of the rule?

4. Will the baseline years for air quality modeling be harmonized between the PM2.5 and Regional Haze programs?
5. What kind of showing of interstate impact to mandatory federal class I areas in another state is needed to qualify for participation in a regional planning group? For example, does Washington have to show an impact on South Dakota for both states to be in the same group, or is it acceptable if Washington impacts Idaho, which impacts Wyoming, which impacts South Dakota?

We do not believe that each state in a regional planning group should have to demonstrate a direct impact on every other state in the group. Imposing such a requirement would fragment each RPO into a patchwork of interstate regions, with some states belonging to more than one region, and would unnecessarily complicate the regional planning process.

6. Under section 309, a SIP revision is due within one year of a plan update if that update shows that the state is making inadequate progress and the problem is caused by sources within the state. However, if the problem is caused by sources in another state, no deadline for the SIP revision is indicated under section 309. In such cases, does EPA concur that the deadline for both the contributing state(s) and the receiving state to submit a SIP revision will be the due date of each state's next periodic revision (i.e., 5 years)?
7. The Tribal Authority Rule (TAR) allows tribes to submit TIPs on different time frames than states. Does U.S. EPA agree that tribes may submit TIPs under section 309 after December 31, 2003, and that tribes have the option of implementing only certain elements of 309 if they are reasonably severable? (The basis of this understanding was laid out in Attachment F of the Annex.) Once a TIP is submitted, does the flexibility regarding timing, as provided in the TAR, continue to apply?
8. Can states and tribes submitting plans under Section 308, including those in the transport region which elect not to implement 309, opt into the SO₂ market trading program via their first SIPs and TIPs under Section 308? (We understand that actual emission trading for sources in those states and tribes could not commence until such SIPs were approved).

We recognize that this question raises complex analytical and policy questions, in addition to the facial interpretation of the haze rule, and would like to pursue further discussion on the possibility of enlarging the SO₂ emissions market, and the mechanisms for doing so.

Trans-boundary Impacts

9. The regional haze regulations require states to determine their share of emission reductions needed to achieve reasonable progress goals for the class I areas impacted by their emissions. We urge EPA to work with STAPPA, WESTAR, and other interested state and tribal entities to determine how to interpret and implement this requirement.

10. It is our understanding that a state may submit one implementation plan for all class I areas outside the state and impacted by the state (rather than separate plans for each affected area), and that the deadline for the plan would be that deadline otherwise applicable to the submitting state, rather than the deadline applicable in the outside states in which the class I areas are located. Does EPA concur?
11. For the purposes of modeling visibility improvement for the Section 309 SIPs/TIPs, the WRAP oversight committees plan to assume that all transport region states achieve emissions reductions comparable to those anticipated under section 309 and that the other WRAP states make SO₂ reductions that approximate or exceed BART. The purpose of this is solely to ensure that the modeling done for 309 provides a realistic estimate of the expected visibility improvement at class I areas due to implementation of the regional haze rule; it does not in any way imply that states which do not opt for section 309 would nonetheless be required to implement the strategies contained in section 309. Does EPA foresee any problems with this approach?
12. In their assessment of reasonable progress, states and tribes in the region will need to know what emission reductions to expect from other states and tribes. Due to the small number of BART eligible sources on tribal lands (less than 5?), the magnitude of their emission reductions should probably not be a critical factor in the 308/309 decision process. For BART-eligible sources on tribal lands, however, will EPA issue FIPs if a tribe does not develop a TIP, and, if so, what schedule will EPA follow relative to the required schedule for SIPs?
13. How does the federal government intend to work with other countries to address and account for visibility impairment caused by their emissions, most notably Canada and Mexico? In evaluating state compliance with the regional haze rule, does EPA expect to work with states and tribes to evaluate the impact of international emissions? Are there other ways in which EPA may help in this area? We recognize that through a grant to the Western Governors' Association, EPA is already providing much needed support for the development of Mexican emission inventories, and the WRAP is utilizing these inventories in its modeling.

Interpretation of Certain Provisions of §309

14. For some programs that are required under 309 (mobile sources, fire emissions, renewable energy and energy efficiency, road dust) states and tribes may not have all statutory and regulatory authority needed for implementation by December 31, 2003.

Also, some of these programs do not lend themselves to a regulatory program. For example, some 309 states may not be able to finalize new or revised smoke management plans or dust control rules before December 2003 because of the time needed to promulgate rules once the technical work is done.

We would like to engage in discussion of possible mechanisms to address this situation, including the use of binding, enforceable commitments in SIPs to develop regulations by dates certain, parallel processing of SIP elements, and other strategies.

15. Our reading of the regulation is that any mobile source emissions budgets that may be established under Section 309 will not be utilized for transportation conformity purposes. We are further assuming that emissions above the level established in visibility-related mobile source budgets would be addressed through a periodic revision to the applicable regional haze SIP and not through the conformity process. Does EPA concur with this interpretation?
16. Section 309 requires a projection of visibility improvement for the most and least impaired days. The WRAP is planning to project improvement on the most impaired days and to make a showing of at least "maintenance" of visibility for the least impaired days (as opposed to improvement on the least impaired days). Does EPA foresee any problems with this approach?

General Regional Haze Rule Issues

17. Most tribes do not have the resources to do their own analyses regarding the identification and quantification of control measures for regional haze TIPs. What assistance can EPA provide to individual tribes? What mechanisms (e.g., direct assistance, §103 Grants, contractual assistance, grants to inter-tribal consortia) does EPA plan to utilize for these purposes?
18. Given that the Regional Haze Rule does not apply to non-mandatory (state or tribally designated) class I areas, EPA committed in the Rule preamble to ensure tribal interests were represented in regional planning organizations, and in particular to encourage consideration of visibility impacts to tribal locations (64 Fed. Reg. 35759). We would appreciate receiving EPA's evaluation of whether such consideration is effectively happening.

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19. The regional haze regulations require that emissions limitations and control measures must be enforceable (see page 35737), while reasonable progress goals are not (see pages 35733 and 35766). We request EPA's interpretation regarding whether the remaining major SIP components, such as modeling assumptions, program goals, and projected inventories are enforceable or simply must be approvable as part of the plan. Such components are necessary to make a SIP complete, but are not federally enforceable in the same way as specific control measures and commitments to limit emissions.

The WRAP is appreciative of the ongoing efforts of OAQPS and regional EPA staff as we work together to implement the regional haze rule. We look forward to discussing these issues with you. Patrick Cummins and Bill Grantham will call your staff to arrange an initial meeting.

Sincerely,



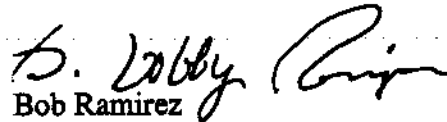
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