

January 7, 2003

Ms. Lydia Wegman
Director, Air Quality Strategies and Standards Division
U. S. Environmental Protection Agency
Office of Air Quality Planning & Standards
Research Triangle Park, NC 2771

Dear Ms. Wegman:

Over the course of 2002, the WRAP has moved steadily toward completing the policy development and technical analysis needed by states and tribes that are preparing their plans under section 309 of the Regional Haze Rule. Much of this work will also be applicable to states and tribes preparing their plans under section 308.

In a January 18, 2002 letter to you we submitted 19 questions related to EPA interpretations of various parts of the Regional Haze Rule. We have not yet received responses to all those questions and are writing at this time to see how we can work with EPA to get those remaining questions answered. Attached is a consolidated list of questions to which we would like responses from EPA, including outstanding questions from the January 18th letter and other questions that have come up over the course of this past year. Although all of these questions are important, we have grouped them in priority order.

We understand that EPA's planned response to the American Cornrowers case is to revise the BART provisions of the regional haze rule and to pursue a statutory change to the regional haze plan submittal deadlines currently set out in TEA-21. We understand that EPA will pursue this change to TEA-21 when the legislation comes up for reauthorization in 2003 in an effort to harmonize SIP submittal dates. We appreciate that the outcome of these two actions may affect EPA's response to some of our questions.

In our January letter, we requested that EPA maintain a "docket" of all questions and answers in a format accessible to states and tribes. We'd like to reiterate that request and suggest that you include the various letters you have sent to WRAP or WRAP members in 2002 along with responses to the questions attached to this letter.

As you know, the WRAP has initiated its “STIP II” project, designed to develop a prototype 309 SIP/TIP that can be used by 309 states and tribes. Similarly, the WRAP is developing a regional technical support document that reflects the technical work the WRAP forums have completed in support of Section 309 plans. These efforts reflect our commitment to multi-jurisdiction regional planning for regional haze and close coordination of state, tribal, and EPA activities.

It is important that EPA work with us in this effort to ensure consistent EPA regional review of haze plans developed through the WRAP. Because of the 2003 submittal date for 309 SIPs, we need EPA to address the issues of 309 states that may not have all the statutory or regulatory authority they will need to fully implement their 309 SIPs before December 31, 2003.

With respect to tribes, we understand that TIPs are encouraged but not required by the 2003 deadline, and that EPA may utilize Federal Implementation Plans where necessary and appropriate. In order to realistically evaluate when and whether to submit a TIP, tribes must have a clearer idea of EPA’s views on what comprises an approvable TIP, and of the prospects for Regional Haze FIPs. Therefore both states and tribes need EPA to participate fully in the STIP II project in order to provide input on the 309 plans as these plans are finalized over the next year.

In that regard we are pleased that EPA representatives from EPA regions 6, 8, 9 and 10 have been identified to work with the STIP II workgroup. Although the initial emphasis of this effort addresses 309 questions, we are expecting to sustain discussions in a small workgroup environment to resolve the other outstanding questions as well.

We look forward to continuing to work with you and others at EPA as we move forward on developing regional haze SIPs and TIPs.

Please contact WRAP Co-Directors Patrick Cummins and Bill Grantham to discuss how we can continue to work together on these issues.

Sincerely,

/s/
Sandra Ely
State of New Mexico
Co-chair, Air Managers Committee

/s/
Randy Ashley
Confederated Salish & Kootenai Tribes
Co-chair, Air Managers Committee

/s/
Julie Simpson
Air Project Coordinator, ERWM Program
Nez Perce Tribe
Co-chair, Initiatives Oversight Committee

/s/
Rick Sprott
State of Utah
Co-chair, Initiatives Oversight Committee

cc:
Tim Smith
Tom Webb
Western EPA Regional Air Program Directors

**Consolidated List of WRAP Questions
December 18, 2002**

Group 1: Early response needed. WRAP proposes to address these through the STIP II Work Group

These questions are related to 309 SIPs, which are due December 31, 2003

1. Adequate legal authority to implement

(Question 14 from the January 18 IOC/TOC letter to Lydia Wegman)

“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 regulatory programs. 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 rule 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 date certain, parallel processing of SIP elements, and other strategies.” Because of the immediacy of 309 SIP submittal dates, this question must be addressed early as part of the STIP II project.

2. Coordination

(Questions from October WESTAR technical conference)

“How does EPA intend to provide essential close coordination, including:

- Feedback on drafts of the model SIP/TIP (expected through EPA participation on the STIP II workgroup);
- Feedback on the technical support documentation, including informing states and tribes of any additional technical work needed for their individual SIPs and TIPs;
- Provide consistent criteria across the EPA regions for review and approval of Regional Haze SIPs and TIPs?”

States and tribes have expressed broad concerns about EPA’s SIP and TIP review policy in general. Interregional consistency-of-review as part of the overall coordination of regional haze requirements is of particular concern, because of the regional nature of regional haze SIPs and TIPs. This issue as it relates to the 309 SIPs should be addressed through STIP II.

Group 2:

These are other questions related to 309 and 308

3. Consolidated Guidance

(Question 1 from January letter combined with B from WRAP Air Managers' Committee (AMC) questions)

“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.”

It is important that states and tribes have ready access to all guidance as regional haze SIPs and TIPs are being developed. It may be possible to combine this request with the need to have a “docket” or a ready reference of questions and answers related to regional haze requirements.

4. Timeline to address other Class I areas in 309 SIPs and TIPs

(Question 3.b from January letter, combined with C from AMC questions)

“...(our understanding of the RHR is)... For states that submit section 309 SIPs in 2003...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... Does EPA concur with this interpretation of the rule?” What, if any effect does American Corn Growers et. al. vs. EPA have on the timing and scope of the NOx and PM analyses and control strategy development for the other applicable Class I areas Under 309?”

This is a two-part question. Part 1 was originally asked prior to American Corn Growers... Part 2 gets at whether or not, as a result of the court case, EPA believes any changes might be in store that would affect the timing and/or scope of the NOx and PM analysis for the other Class I areas under 309 (g), apart from the approach EPA is contemplating for timing of 308 SIPs.

5. Enforceability of SIP/TIP components

(Question 19 from January letter)

“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 way as specific control measures and commitments to limit emissions.”

This is a clarifying question.

6. Demonstrations of interstate impacts

(Question 5 from January letter)

“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.

7. Plan revision deadline

(Question 6 from January letter)

“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 that 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 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)?”

If EPA does not concur, this issue, though important may not need to be addressed immediately.

8. Implementation of BART on tribal lands

(Question 12 from January letter)

“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?”

Of particular interest to tribes, who need to know what process EPA will initiate if a FIP is being considered, what avenues of consultation with the affected tribe will be utilized, and what prior efforts will EPA make prior to deciding to develop a FIP.

9. Addressing emissions from other countries

(Question 13 from January letter)

“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 Governor’s 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.”

Of particular interest to tribes, who need to know the specific ways EPA expects to work with tribes, with examples.

10. Tribal assistance

(Question 17 from January letter)

“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, section 103 grants, contractual assistance, grants to inter-tribal consortia) does EPA plan to utilize for these purposes?”

Of particular interest to tribes, who are looking for more assurance that the commitment of EPA assistance is real. Tribes are looking for such commitments in a plan to provide adequate time and resources to help consortia or individual tribes who need it, not just general promises. Examples might include a block of (EPA) FTE for direct consultation, the availability of 103 grants for adequate personnel and training, assistance with writing RFPs, and evaluating and managing contracts.

11. Evaluation of level of representation of tribal interests on RPOs; Consideration of visibility impact on tribal lands

(Question 18 from January letter)

“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.”

Of particular interest to tribes. When and how will this evaluation take place?

Group 3:

Other questions needing a response, but to be discussed in draft form with EPA:

12. 308 states and tribes opting into a 309 market trading program

(Question 8 from January letter)

“Can states and tribes submitting plans under 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).”

EPA has addressed a similar question in a July letter to the IOC, stating there are no legal or regulatory barriers to expanding the (Annex backstop trading) program, assuming the technical work supports such a plan. There is still the issue of distinctions, if any between a full market trading system and the backstop approach used under 309.

13. Allocation of emission reductions among states and tribes for RFP

(Question 9 from January letter)

“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.”

This work will be done by the WRAP for the 308 plans.

14. Number of separate SIPs needed for Class I areas outside state

(Question 10 from January letter; first part about one plan for other areas)

“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),...Does EPA concur?”

The rest of this question asserts that submittal deadlines are those of the submitting state, rather than any other state affected by emissions from the submitting state. -EPA has concurred.

15. Possible approaches to BART

(Questions from WA)

We understand that, in light of the recent court decision, EPA is in the initial phases of developing a revision to the BART provisions of the regional haze rule and that EPA estimates a final rule revision to address this matter is perhaps two years away. BART is an important component of 308 SIPs, and states that are beginning to develop their 308 SIPs are interested in understanding potential options before the rulemaking is completed. Is there some way that EPA can share its current thinking on this issue with state and tribal officials from the WRAP?

We have given this issue some thought and are interested in EPA's perspective on the following possible approaches:

- i. State applies RH BART to all BART eligible sources on a case-by-case basis (as per 308(e)(1)).
- ii. State (instead of EPA) determines that all BART eligible sources need BART controls
- iii. State determines the amount of point source reductions needed to achieve the reasonable progress goal and makes it a requirement for effected sources. The level of reduction under this approach may be different (more or less) than what would be achieved through BART at the BART eligible sources.
- iv. State opts into the 309-milestone program (assuming this is an option – see question 12, above).
- v. State develops a milestone/ emissions trading program of it's own (similar to the 309 Backstop plan).

In any of these options, WA believes that RA BART could still be applicable to address hot spots. Does EPA concur?