

***EPA RESPONSE
TO CONSOLIDATED LIST OF WRAP QUESTIONS***

March 2003

This document contains EPA's responses to questions from the Western Regional Air Partnership (WRAP) regarding the regional haze rule. The consolidated list of WRAP questions dated December 18, 2002, is reiterated below along with EPA's responses.

GROUP 1: Questions related to 309 SIPs due December 31, 2003

1. ADEQUATE LEGAL AUTHORITY TO IMPLEMENT

WRAP Question:

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.

EPA Response:

EPA may accept SIPs that substantially comply with the regulatory requirements under special circumstances. The EPA Administrator may authorize conditional approval of a SIP that is substantially complete if the state commits to adopt specific enforceable measures by a date certain, but not later than one year after the final conditional approval of the plan (CAA Section 110 (k)(4)). In identifying a specific date by which it will meet the commitment, the state should select the most expeditious time frame for completing the action. For additional information on conditional approvals and associated commitments, see EPA's memo dated July 9, 1992, *Processing of State Implementation Plan (SIP) Submittals* at www.epa.gov/ttnn01/gen/memo-s.

As provided in the CAA, EPA shall treat a conditional approval as a disapproval if the state fails to comply with the commitment by the date identified by the State in its submission. EPA assumes that where commitments are not fulfilled and the conditional approval therefore converts to a disapproval, a state will then need to comply with Section 308 of the Regional Haze Rule. Under no circumstances can EPA use conditional approvals to postpone SIP deadlines nor can a commitment significantly undermine the overall integrity of the regional haze program.

Alternatively, in very limited circumstances, EPA has fully approved SIPs based, in part, on enforceable commitments. Please note, however, that EPA's use of enforceable commitments is under legal challenge in two courts. In the submittal, the state must explain and EPA must examine why the circumstances warrant consideration of an enforceable commitment for a future action rather than completion of the full obligation by the statutory or regulatory date. The explanation should focus on the unique circumstances that prevented the state from completing all actions on time, and should include reasons beyond the mere failure to begin the statutory or regulatory process in a timely manner. If EPA determines that the circumstances warrant the consideration of an enforceable commitment, EPA will consider three factors in determining whether the commitment is acceptable. The commitment must be limited in scope, the state must be capable of fulfilling the commitment, and the commitment must be for a reasonable and appropriate period of time.

Given the exceptional nature of the use of commitments, EPA requests that each state provide advance notice to EPA if the state intends to submit a SIP that relies on commitments. EPA prefers to work with a state as early as possible to determine whether we can consider a commitment as part of the state's submittal.

2. COORDINATION

WRAP Question:

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; and
- 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.

EPA Response:

The enclosed draft EPA protocol describes our collaborative approach to review and take action on the 309 SIPs. In regard to the three questions, EPA representatives from the western regional offices and headquarters continue to participate on almost all the WRAP committees and forums including the new STIP II Work Group. We are already reviewing the technical support documentation and will provide feedback to the Technical Oversight Committee. EPA is developing a checklist for reviewing the 309 SIPs which, along with ongoing coordination, will provide regional offices with a tool to ensure consistency in our respective reviews.

GROUP 2: Questions related to 309 and 308

3. CONSOLIDATED GUIDANCE

WRAP Question:

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.

EPA Response:

EPA interprets this question as relating to the requirements of §308(d)(1)(i)(A) of the regional haze rule. This paragraph requires states to consider the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources.

EPA intends to provide further guidance on these reasonable progress factors over the next two years, consistent with the schedule for updating the regional haze rule. While there is no guidance document that specifically addresses these factors in the context of regional haze, these types of factors have long been considered in EPA and state air quality programs, and there are documents and examples illustrating these types of analyses. For example:

Costs: EPA has developed a control cost manual for use in calculating costs of many types of control devices for reducing stationary source emissions. This manual is used for EPA emission standards development efforts and would be applicable to development of visibility strategies.

Time necessary for compliance: Given the long-term nature of the regional haze strategies (covering the time period up to the year 2018), a central question in addressing this factor is whether a given measure could be implemented within this time period.

Energy and non-air quality environmental impacts of compliance: Many examples exist for analysis of energy and non-air quality impacts of regulations and control measures. Background information documents for maximum achievable control technology (MACT) standards contain a chapter describing how these impacts were determined for a particular standard. These impacts also are described in EPA's draft New Source Review Workbook Manual. EPA believes that we will probably need to supplement these

existing examples and guidelines by describing the types of “beneficial” non-air quality environmental impacts that should be considered such as deposition to sensitive areas.

Remaining useful life: EPA discussed this issue in our July 2001 proposal for best available retrofit technology (BART) guidelines. In relation to "reasonable progress," the remaining useful life is essentially an integral part of the cost analysis, and will affect the cost calculations only if the remaining useful life is determined to be less than the time period for amortizing costs. Where the remaining useful life for a particular source represents a relatively short time period that affects the degree of control required in the SIP, guidelines are likely to require that the time period assumption be supported by a Federally enforceable requirement.

4. TIME LINE TO ADDRESS OTHER CLASS I AREAS IN 309 SIPs AND TIPs

WRAP Question:

Our understanding of the RHR is that 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.

EPA Response:

EPA concurs that under section 309(g) of the current regional haze rule, states have until December 31, 2008, to address additional Class I areas. EPA notes that in the *American Corn Growers* case, however, the court expressed concerns that the regional haze rule did not strictly adhere to the schedule identified in the Transportation Equity Act for the 21st century (TEA-21). Thus, there may be no definitive answer to this question until EPA fully addresses the court's remand on this issue.

Another factor related to this issue is that EPA is seeking a legislative adjustment to the TEA-21 schedule. EPA's current recommendation, which has been forwarded to the Department of Transportation for inclusion in legislation, would create a single due date of December 2007 for all regional haze SIPs except for those under section 309. This change would harmonize the schedule for regional haze SIPs with those addressing PM2.5.

5. ENFORCEABILITY OF SIP/TIP COMPONENTS

WRAP Question:

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.

As discussed in a phone conversation between Brian Finneran of the STIP II Work Group and Steve Body, EPA Region 10, the issue is at what point do the technical elements of the SIP become "fixed in time" (i.e., cannot be changed by updates to inventories or additional modeling runs based on new information or data)? Evidently, this question stems from the fact that the technical information supporting the regulations and programs adopted by the State will continue to be in flux as technology improves.

EPA Response:

Technical SIP elements such as emission inventory and modeling demonstrations are required to support the programs and regulations the state adopts to improve visibility. These technical elements are not "federally enforceable," meaning EPA will not take an enforcement action based on a technical element. However, the elements are submitted with the SIP to provide a technical rationale for the programs and regulations, and are approved as part of the applicable SIP. Once the SIP is approved, they become the technical support for the SIP, and are used to understand and justify the regulatory decisions contained in the SIP. EPA will make decisions on the technical adequacy of the SIP based on EPA's guidance during the period of SIP development. States should address new EPA guidance in the SIP revisions due every five years.

6. DEMONSTRATIONS OF INTERSTATE IMPACTS

WRAP Question:

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.

EPA Response:

EPA agrees with the WRAP's interpretation stated above. Regional planning groups do not need to demonstrate that each state in the regional planning group impacts every other state.

7. PLAN REVISION DEADLINE

WRAP Question:

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.

EPA Response:

In the case of emissions from sources in another state(s), we concur that the SIP revision would be due at the time of the next 5-year progress report.

8. IMPLEMENTATION OF BART ON TRIBAL LANDS

WRAP Question:

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?

EPA Response:

EPA believes it would be appropriate for the Agency to develop a Federal Implementation Plan (FIP) for tribes wishing to opt into 309, but not choosing to adopt a TIP. We have discussed this issue with tribes that have major stationary sources of SO₂, but have not

yet been informed whether they are interested in having EPA do a FIP. We will continue our discussions with the tribes to see whether this is an option that they want to pursue. As tribes are not subject to SIP submittal deadlines, EPA does not believe that development of any FIPs must follow such deadlines. If necessary, we will develop a FIP schedule in consultation with the affected tribes.

9. ADDRESSING EMISSIONS FROM OTHER COUNTRIES

WRAP Question:

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.

EPA Response:

EPA is involved in a number of international activities and funding of projects related to improving air quality at our borders with Canada and Mexico. In these country to country negotiations, our involvement with states and tribes is more likely through joint participation in various international forums. We currently have no specific plans to work directly with states or tribes to evaluate the impact of international emissions. The following is a description of some of our international activities in the border areas.

Mexico: Under the La Paz Agreement, EPA has the authority to work directly with Mexican environmental authorities on issues of mutual interest including air quality, which is an important topic of ongoing cooperation and discussion. The new Border 2012 program has specific goals outlined to improve air quality, but does not emphasize visibility as a goal. Visibility issues are a continuing challenge given the current emphasis of the Mexico air program on criteria pollutants. Achieving cooperation on criteria pollutants may indicate a future opportunity to work with Mexico on visibility issues.

In terms of specific examples, EPA is working to develop better technical tools and supporting forums to help address the impacts of emissions from Mexico. The BRAVO Study included perhaps the best emissions inventory of Mexico which has been shared with the WRAP. In addition, the BRAVO study's REMSAD modeling platform is available for those who wish to use it to estimate air pollutant transport across the border. Further, CENRAP is having an International Forum on Regional Haze in El Paso, Texas, in March of 2003.

Canada: Under the US - Canada Air Quality Agreement, there are provisions addressing visibility. Article IV and Annex I of the agreement requires that Canada “develop and implement means affording levels of prevention of significant air quality deterioration and protection of visibility comparable to those [required of the U.S.], with respect to sources that could cause significant transboundary air pollution.” The Agreement requires Canada to report bi-annually on its progress in implementing its Annex I requirements. The 2002 Progress Report (available at <http://www.epa.gov/airmarkets/usca/airus02.pdf>) contains the most recent description of progress. Further, Article XI allows for consultations on any matter within the scope of the agreement, including transboundary air pollution and relevant sources affecting visibility. Finally, the US and Canada are currently engaged in joint US/Canada modeling and data analysis concerning PM2.5. This effort is national in scope, covering the entire US/Canada border, and the results should be relevant for regional haze impact assessment and planning.

10. TRIBAL ASSISTANCE

WRAP Question:

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.

EPA Response:

Providing adequate support for tribes is a difficult challenge for EPA in all areas of air program development, including the regional haze program. EPA understands its obligations to assist tribes with their regional haze TIPs, and plans to provide the necessary technical and policy assistance. Within the WRAP, there is an effort to develop a model TIP in addition to a model SIP, so tribes will have a model to follow that is specifically designed for them. In addition, as we mentioned above, we are also prepared to develop a FIP for tribes who do not have a TIP. With regard to funding, EPA is unaware of any forthcoming increase in tribal air grant dollars. Regional haze work by tribes and inter-tribal consortia continues to be an eligible activity under EPA air grants.

11. EVALUATION OF LEVEL OF REPRESENTATION OF TRIBAL INTERESTS ON RPOs;
CONSIDERATION OF VISIBILITY IMPACT ON TRIBAL LANDS

WRAP Question:

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?

EPA Response:

EPA has worked diligently with the Regional Planning Organizations (RPOs) to ensure that tribal members and representatives interested in air quality issues are included in the development and operation of these organizations. In general, we believe the RPOs have been successful in their efforts to include the tribes. All five RPOs have solicited federally recognized tribes in their areas to join, and have achieved various levels of tribal participation. The WRAP has been particularly successful in reaching out to western tribes and sustaining tribal membership. Western tribes have received exceptional support from the National Tribal Environmental Council which is funded by EPA.

EPA encourages the tribes as members of the WRAP to request a review of the modeling results for visual impairment and impacts of control strategies on visibility in non-mandatory Class I areas. The modeling results would show two-dimensional plots of baseline ozone concentrations and light extinction for those areas included in the model's 36 km grid system. The qualitative light extinction results would effectively show the impact of source emissions on visibility within the modeling domain including the state or tribal non-mandatory Class I areas. Modeling results currently show impacts and control strategy improvements at IMPROVE sites. We expect consideration of visibility impacts on tribal and other non-mandatory Class I areas will continue as modeling efforts switch from an emphasis on results for Section 309 SIPs to Section 308 SIPs.

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

WRAP Question:

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.

EPA Response:

For States included in the transport region, opting into a market trading program later under section 308 would require a substantial amount of new technical analysis, including an updated modeling demonstration and revisiting the control technology assumptions. States and tribes submitting plans in 2007 or 2008 would not be able to rely on technical analysis conducted in 1999 and 2000. In addition, technical analyses would be needed to address impacts in additional Class I areas beyond the 16 Class I areas addressed by section 309. Similar technical analyses would be needed for states not included in the transport region. One key question to be addressed for such states would be the degree to which extending the regional area affects the predicted pattern of emissions reductions. For example, if a state was added which had many tons of low-cost reductions, this geographic shift in emission reductions may affect the initial trading program's ability to achieve "greater reasonable progress" in the initial 16 Class I areas.

13. ALLOCATION OF EMISSION REDUCTIONS AMONG STATES AND TRIBES FOR RFP

WRAP Question:

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.

EPA Response:

EPA will continue to engage in planning discussions and review the technical work related to determining shares of emission reductions under this requirement of section 308.

14. NUMBER OF SEPARATE SIPs NEEDED FOR CLASS I AREAS OUTSIDE STATE

WRAP Question:

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 Response:

We concur on the WRAP's interpretation of both questions.

15. POSSIBLE APPROACHES TO BART

WRAP Question:

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).

Options iii and v would not necessarily be “better than BART”. Washington believes that since the court vacated “group BART” there is no longer a basis for holding that “alternatives” must be better than BART. Does EPA concur?

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

EPA Response:

As we stated in our July 22, 2002, letter to the WRAP, EPA believes that the court decision does not affect the requirements of 51.308(e)(2) of the rule. The court's vacature of the "group BART" approach does not change the requirement that any alternative measures adopted in lieu of BART must achieve "greater reasonable progress than BART." Hence, the approach under items iii and v would be deficient if they did not achieve greater reasonable progress than BART.

Under approach (iv), the state would need to fully address the requirement for reasonable progress goals (including the 60-year "glide path" analysis). Each state opting in must ensure that it achieves results that are better than BART.

RA BART is still applicable until full implementation of BART under the regional haze rule or the implementation of an alternative to BART under 51.308(e)(2). Washington is correct that during this time RA BART still applies to hot spots.