

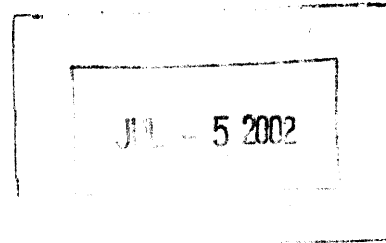


A-2000-51  
IV-D-03

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July 5, 2002

Air and Radiation Docket  
and Information Center (6102)  
Attention: Docket No. A-2000-51  
U.S. EPA  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460.



**Re: Proposed Revisions to Regional Haze Rule To Incorporate Sulfur Dioxide Milestones and Backstop Emissions Trading Program For Nine Western States and Eligible Indian Tribes Within That Geographic Area [Federal Register, Vol. 67, No.87, May 06, 2002]**

To Whom It May Concern:

PacifiCorp appreciates the opportunity to submit comments on EPA's proposal to revise 40 CFR 51.309 in order to incorporate provisions of the Annex to the Report and Recommendations of the Grand Canyon Visibility Transport Commission (GCVTC) submitted to EPA by the Western Regional Air Partnership (WRAP) on September 29, 2000. Subject to the comments below, PacifiCorp supports EPA's proposal to incorporate provisions of the Annex into the Regional Haze Rule (RHR).

PacifiCorp is a large, regulated western electric utility that serves approximately 1.5 million residential, commercial and industrial electric customers. PacifiCorp operates as Pacific Power in Oregon, Washington, California and parts of Wyoming; and as Utah Power in Utah, Idaho and parts of Wyoming. Headquartered in Portland, Oregon. PacifiCorp owns approximately 6,400 gross megawatts of coal-fired generation in addition to other generating resources including hydroelectric, geothermal, and natural gas. In addition, PacifiCorp affiliates own and operate non-regulated generating resources. All of

PacifiCorp's coal fired plants are part of regulated utility operations and all operate in attainment areas.

PacifiCorp owns approximately 15,000 miles of transmission lines; 40,000 miles of overhead distribution line and 11,000 miles of underground distribution cable across the west. The 15,000 miles of transmission lines interconnect with other utilities in about 150 locations enabling PacifiCorp to buy and sell power with more than 60 other western utilities. This makes PacifiCorp a critical resource for supplying and moving power to California and other western states during the ongoing energy problems in the west.

PacifiCorp and its affiliates are dedicated to developing and maintaining renewable resources as part of the overall power supply strategy and have the stated aim of securing 1,000 megawatts of new wind and geothermal resources by 2005. As part of this goal, a PacifiCorp affiliate is purchasing the output of the 262 megawatt Stateline Wind Generating Project, located on the Oregon-Washington border. This purchase will make the PacifiCorp affiliate the leading supplier of renewable energy in the region.

PacifiCorp actively participated in the GCVTC process and is an active stakeholder participant in the WRAP – the entity responsible for preparing and submitting the Annex. PacifiCorp is also a member of WEST Associates – an association of 17 public and private western utilities that has taken an active role in these western regional processes. The comments on this notice of proposed rulemaking (NPR) developed by the WRAP and WEST Associates will be referenced as appropriate in our own comments below.

## GENERAL COMMENTS

PacifiCorp supports EPA's proposal to incorporate the key provisions of the Annex into 51.309 of the RHR. PacifiCorp offers suggestions on the specifics of this proposal and urges EPA to adopt certain revisions and clarifications. However, we support approval of the package proposed by the WRAP and we compliment EPA for taking this action.

In addition, those who have participated in the Grand Canyon Visibility Transport Commission and WRAP processes on behalf of EPA realize that these and other regional stakeholder-based processes are at the same time challenging, fragile and extremely valuable endeavors. With respect to the WRAP process, at several turns EPA was faced with choices having the potential to affect the success or failure of the enterprise. In many of those situations, EPA was willing to work through issues in order to find a common ground with other WRAP stakeholders without sacrificing the independent role it plays on behalf of the

public. This constructive approach will be essential to ensuring success on several additional issues that need to be addressed in order for Section 309 and the WRAP process to be successful.

Notwithstanding that some of the following issues are not formally part of the NPR for comment at this time, developing a successful approach on all of the them will be important to the success of Section 309 and the initial state implementation plans (SIPs) that may be filed by states under this program.

American Corn Growers Association v. EPA. Several stakeholders have raised concerns about the effect of the recent decision of the U.S. Court of Appeals for the District of Columbia on the RHR and the Annex (see the comments of West Associates). We urge EPA to continue to take comment on this important issue after the close of the comment period on this NPR. Although we believe there is a basis for reconciling the Court decision and the Annex provisions, it serves the interest of this program to carefully consider different views on this matter and to address them before finalizing the rulemaking.

Clearly, the Court decision affirms that states are afforded significant authority and discretion under the visibility provisions of the Clean Air Act (CAA). In addition, a significant aspect of the Court decision concerns the remand of provisions affecting BART under 551.308 of the RHR and determining the significance of this as it relates the Annex milestones. While the WRAP has provided an initial reaction on this subject, we support their request that EPA provide a more detailed explanation of its position on the Court decision and its effect on the Annex. The states can then make their own determination whether and to what extent the Annex may or may not be affected by the decision. In the meantime, we support the states in their effort to make progress on defining the details of the Section 309 program.

Additional Class I Areas. EPA agrees with the WRAP that the SO<sub>2</sub> milestones satisfy the rule requirements for the 16 Class I areas on the Colorado Plateau. Yet the Section 309-eligible states are required to address all of their class I areas and any class I areas in neighboring states that may be affected. The WRAP is devoting considerable time and resources to model the impacts the SO<sub>2</sub> milestones on the additional class I areas in the region with the expectation that all of these areas may be addressed under the milestones and within one SIP filing. We encourage EPA to work with the states to ensure these additional class I areas can be addressed in an efficient and expeditious manner. Requiring states to prepare and submit multiple SIPs affecting different categories of Class I areas would create a major disincentive to selecting the Section 309 path.

BART for “Reasonably Attributable Visibility Impairment”. Significant uncertainty remains regarding the interaction of the milestones and backstop

trading program with the current program to address reasonably attributable visibility impairment (RAVI) through the application of BART. There are two primary issues at stake: (1) If the region chooses to move forward with the implementation of the Section 309 program, it is essentially choosing to use a system of economic incentives (a cap and backstop market trading program) in order to encourage sources to manage emissions under the milestones. Layering a command and control approach on top of this program to address essentially the same issue (regional haze) would adversely affect the goals of the regional market-based program. (2) If the RAVI program is intended to address the unique problem of localized visibility impairment or "hot spots", as suggested by the RHR, then it is important for sources to understand in advance how those impacts are to be distinguished from regional haze-related impacts.

The Annex makes it abundantly clear that this is an important task that must be resolved in a satisfactory manner. The federal land managers, states and tribes and other stakeholders continue to discuss this matter and the outcome should be embraced as part of the program. The need for this kind of reconciliation was explicitly stated in the Annex and provided for in the RHR.

Avoiding Disincentives to Select Section 309. Finally, as EPA states in the NPR,

"The requirements in 40 CFR 51.309, if revised, will be the product of a substantial effort by many States, Tribes, Federal agencies, and other interested parties, extending over a number of years from the work of the GCVTC to that of the WRAP. The EPA recognizes, however, that the States and Tribes do have the option of implementing the regional haze rule under 40 CFR 51.308 rather than 40 CFR 51.309. Because the objective of 40 CFR 51.309 is to provide a regional approach to protecting air quality at the 16 Class I areas on the Colorado Plateau, EPA believes that there must be a "critical mass" of States participating for 40 CFR 51.309 SIPs to be approvable" (at p. 30420).

Now that many of the essential components of the Section 309 program have been established, the goal should be to ensure that other administrative and policy issues (such as those mentioned above) are resolved in manner that avoids discouraging states and tribes from selecting the Section 309 alternative. So long as the overarching goals of 309 are not compromised, EPA must work carefully with the region to help ensure that a critical mass of states and tribes find 309 to be an acceptable alternative – even if that means extending the initial SIP due date on 12/31/03 in order to address any significant uncertainties that may stand in the way.

## COMMENTS ON SPECIFIC PROVISIONS OF THE PROPOSAL

### §51.309(h)(1) - The Milestones and Adjustments To The Milestones

PacifiCorp supports the regional milestones adopted by the WRAP. PacifiCorp agrees that the milestones satisfy the statutory requirements of §169A of the Clean Air Act (CAA) and that they provide greater reasonable progress than BART for the region. The analytical foundation for the milestone projections (baseline emissions, assumptions regarding retirement and replacement, capacity utilization, growth, etc.) reflect years of analysis and discussion by the WRAP participants. In the end, states and tribes made judgments about the appropriateness of this work for the purposes of making emission projections. However, it is important to clarify that these projections were made only for the purpose of forecasting emissions and establishing aggregate emission milestones for the region - not for purposes of prescribing what specific sources must do or be held accountable for in the future.

With respect to the methods used by the WRAP to identify BART-eligible sources and calculate emission reductions, we concur with the comments of the WRAP and WEST Associates endorsing that methodology as an outcome of the consensus process.

Table 1 in §51.309(h) “Sulfur Dioxide Milestones” states that sulfur dioxide emission milestones for each year after 2018 shall be no more than 510,000 tons (480,000 tons if suspended smelters do not resume operation). The WRAP recommends language that affirms the notion that the region will not backslide on the tonnage levels, but defers on the question of what will be needed to achieve reasonable progress after 2018. PacifiCorp agrees with this approach. However, the benefit to sources of achieving this milestone is that BART for any form of visibility impairment then tolls for sources in the region. We believe it should be stated explicitly in the rule that once the regional target is achieved, then BART has been achieved and will not be applied in any other manner to any BART-eligible source in the region.

With respect to the adjustment features of the milestones: PacifiCorp believes that the adjustment procedures outlined in the Annex are appropriate, but must be used judiciously. Stable emission targets are the centerpiece of this program and they should remain stable to the greatest extent practicable in order to encourage efficient behavior by the affected sources in the region. These adjustment provisions should not be viewed as a means of increasing or decreasing the milestones except for the very limited purposes for which the adjustments were established. In three of the adjustment provisions: smelter adjustments, disputed or so-called “illegal” emissions, and CEM adjustments, PacifiCorp agrees that the burden or impact of those adjustments (post-trigger)

should fall on the affected source or sources and not on sources in the entire region.

PacifiCorp offers the following specific comments on the milestone adjustment provisions:

- Opt-in/Opt-out Adjustments: we agree with EPA that, unless otherwise agreed to by the stakeholders through the WRAP process, these state totals are for the limited purpose of adjusting milestones and not for allocation purposes.
- CEM Adjustments: PacifiCorp agrees with the comments of WEST Associates that any of the three possible methods identified in the NOPR for calculating the change in emissions resulting from changes in flow rate methods is acceptable. The most appropriate of these three methods for a given situation should be determined on a case-by-case basis and after consultation between the state or tribe and the source. PacifiCorp also agrees with WEST that if a State or Tribe notifies the EPA that an individual source's emission monitoring methodology has been modified resulting in a change in its reported emissions, a corresponding up or down adjustment in the affected sources' emission and the State's/Tribe's total allocation would be made as part of its SIP/TIP revision. Also a corresponding adjustment of the milestones for the entire region would also be made consistent with the respective State or Tribe's recommendation.
- Adjustments for "Illegal Emissions": PacifiCorp acquiesces to the comments prepared by the WRAP and the Initiative Oversight Committee on this matter. However, we also agree with WEST Associates that the compromise negotiated on this matter has no relationship to the requirements relating to "reasonable progress" under the CAA. This compromise was negotiated as a matter of WRAP policy and not to comply with any statutory or regulatory requirement. Therefore, consistent with the WRAP comments, PacifiCorp urges EPA to eliminate use of the term "illegal emissions" and to substitute the more neutral term "milestone adjustments due to enforcement actions". Furthermore, we agree with the WRAP that Option 2, allowing consideration of the individual circumstances of each case, is the superior alternative.

The purpose of this Annex provision was to address clear-cut inaccuracies in the baseline emissions used to project the milestones, and nothing more. EPA correctly recognizes that the usual situation is seldom straightforward and involves some form of negotiated settlement between the parties. In these cases, the parties agree to resolve their differences

in spite of the fact that they have deeply divided views on the correct interpretation of the law and/or facts pertaining to the specific situation.

As the WRAP comments assert, it would be ill-advised to endorse a sweeping policy that characterizes all emission reductions arising out of a negotiated settlement as ones that should affect the milestones and related source allocations. This could create real disincentives for parties to engage in otherwise beneficial settlements. Given the multitude of circumstances and the sheer complexity of how to characterize, count, and date emissions for purposes of attributing them to a milestone or allowance adjustment, we believe the only practical solution is to leave it up to the parties involved in the dispute to resolve, including the appropriate state/tribal representatives.

Finally, we must consider whether a policy encouraging an aggressive ratcheting down of the milestones through claims that emissions are tainted by the claim of “illegality” is the most efficient way to get reductions. We believe it is not. If the value of the market mechanism is to provide incentives for sources to “do more” in ways that sources are best equipped to identify, then a policy creating the possibility of continual downward adjustment of the milestones through this kind of mechanism would likely chill this kind of beneficial activity.

#### §51.309(h)(2)(vii) & (3)(iv) – Special Provisions for 2013

The Annex anticipated that the review of the data in 2013 for purposes of assessing the likelihood of meeting the 2018 milestone would be a rigorous review. If the milestones provide for upfront flexibility in exchange for “backloading” the reductions, then it is reasonable to assume that reductions may not occur until the later half of the program. Therefore, any finding to trigger the program based on the 2013 review should be based on a substantial record of information clearly indicating that achieving the milestone is not feasible without triggering the program.

#### §51.309(h)(4)(i) - Allowances

PacifiCorp supports the revision to this section proposed by the WRAP to accommodate the identification of allowances in the state SIP on a tons per year basis or by formula.

#### §51.309(h)(4)(x) - Penalty Provisions

PacifiCorp concurs with the comments submitted by the WRAP and supported by WEST Associates that the penalty provision proposed by EPA are inconsistent

with the Annex and should be modified. We agree that EPA should replace the penalty provisions in the in the proposal with the provisions that were recommended in the Annex.

Thank you for considering these comments. We look forward to working with the WRAP and EPA as the process to develop the Section 309 alternative moves forward.

If you have any questions regarding our comments, please do not hesitate to contact me at (801) 220-4705.

Sincerely,

A handwritten signature in black ink, appearing to read "Ernest E. Wessman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ernest E. Wessman  
Vice President, Power Supply Safety and Environment