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Before the
United States Environmental Protection Agency

Comments of
AMERICAN TRUCKING ASSOCIATIONS, INC.



Driving Trucking's Success

on the
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; Proposed Rule
67 Federal Register 30418 (May 6, 2002)

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INTRODUCTION

The American Trucking Associations, Inc. (“ATA,“) submits the following comments in response to the United States Environmental Protection Agency’s (“EPA”) notice of a Proposed Rule published in the Federal Register on May 6, 2002, entitled “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,” 67 Fed. Reg. 30418 (2002) (the “Proposed Rule”).

ATA is the trade association of the American trucking industry. As the national representative of the trucking industry, ATA is vitally interested in matters directly or indirectly affecting the nation’s trucking fleet, including EPA’s development of regulations, guidance, policies, and scientific research. In that capacity and for those reasons, ATA is submitting these comments on the Proposed Rule.

SUMMARY OF COMMENTS

Under the Proposed Rule, milestones for reducing stationary source sulfur dioxide (“SO₂“) emissions in the nine-state Western Regional Air Partnership (“WRAP”) region will be established. The Proposed Rule would also allow states to address other visibility impairing emissions from stationary sources as part of a state implementation plan (“SIP”) revision to be submitted in 2008. As shown in Table 1 below, stationary source emissions of VOC, NO_x, CO, PM-10, PM-2.5 and NH₃ are projected to increase over the 1996-2018 time period.

Table 1: Q-State (WRAP) Point Source Emissions with SO2 Milestones (Annual Tons)			
Pollutant	1996	2018	% Change
voc	193,096	266,168	66%
NOx	849,443	885,722	15%
co	378,243	582,213	66%
so2	770,440	510,000	-37%
PM-10	175,000	232,777	19%
PM-2.5	97,900	127,373	18%
NH3	17,958	30,223	157%

Source: Western Regional Air Partnership Emission Forecasts for 2018, Draft Report, E.H. Pechan & Associates, Inc. May 2002.

These increased emissions from stationary sources are likely to offset any visibility improvements associated with the Proposed Rule's SO2 milestones or achieved by reducing emissions from other sources throughout the region. The Proposed Rule's milestones for stationary sources are inadequate and need to be adjusted accordingly to achieve recognizable visibility improvements.

Unlike stationary sources, mobile sources have taken great strides in reducing emissions. For example, over the last quarter century, due to stricter federal engine and fuel standards and new vehicle purchases, mobile source emissions of carbon monoxide have decreased by 22%, volatile organic compounds by 32% and particulate matter by 4%.¹ In spite of this remarkable progress, the Grand Canyon Visibility Transport Commission ("GCVTC") recommended the adoption of additional federal emission controls for on-road and off-road vehicles to help improve visibility on the Colorado Plateau.

EPA has already adopted more stringent Tier 2 light-duty engine emissions and low-sulfur gasoline standards, as well as the 2004 and 2007 heavy-duty engine emissions and 2006 low-sulfur diesel fuel standards. These standards will substantially reduce

¹U.S. Environmental Protection Agency, *Latest Findings on National Air Quality: 1999 Status and Trends*, (August 2000).

mobile source emissions in the nine-state WRAP region by the following amounts between 1996-2018:

- 48% for carbon monoxide emissions;
- 64% for volatile organic compounds emissions;
- 13% for particulate matter emissions; and
- 55% for oxides of nitrogen emissions.*

The GCVTC also recommended the adoption of more stringent off-road engine and fuel standards. These standards are currently being developed by EPA for adoption next year. Once in place, these off-road standards will further reduce mobile source emissions.

The federal on-road and off-road engine and fuel standards reflect the mobile source emission control strategies recommended by the GCVTC. These standards will help improve visibility on the Colorado Plateau and contribute to reasonable progress towards the national visibility goal.

Despite these unparalleled efforts, certain fast-growing areas of the West may face additional mobile source emission controls. Under Section 309, areas with mobile source emissions deemed to contribute significantly to visibility impairment at any of the 16 Class I areas on the Colorado Plateau will have to establish a control program to cap mobile source emissions at their lowest projected levels.³ Given the tremendous emission reductions being achieved throughout the WRAP region as a result of the existing and upcoming federal mobile source control program versus the expected increases in emissions from stationary sources, it is hard to justify why additional area-

² Western Regional Air Partnership, Mobile Source Forum *Working Documents* (www.wrapair.org), (January 4, 2002).

³ 40 CFR § 51.309(d)(5)(iii).

specific controls on mobile source emissions are needed to demonstrate progress towards the national visibility goal.

To address this concern, the Proposed Rule presents an opportunity for EPA to recognize the reductions being achieved through the federal mobile source program and, as a result, avoid a patchwork of area-specific mobile source emission control programs. To achieve this objective, EPA should find that, due to federal emission controls on mobile sources, mobile source emissions from any individual urban area do not contribute significantly to visibility impairment at any of the 16 Class I areas on the Colorado Plateau. This determination will allow mobile source emissions to be evaluated on a state-by-state basis — consistent with other emissions sources, rather than on an area-specific basis. In addition, this determination will emphasize the importance of the federal mobile source emissions control program in meeting the national visibility goal.

Given the extent of our outstanding concerns, ATA cannot support the Proposed Rule. EPA must revise the Proposed Rule to ensure that stationary source SO₂ milestones are made more stringent and that state's are not precluded from addressing visibility impairing emissions in a consistent and equitable manner. EPA must also resolve the numerous conflicts, discussed in more detail below, involving the Proposed Rule and the recent court decision.

COMMENTS AND ANALYSIS

I. Background to ATA's Comments

A. ATA's Representation of the National Trucking Industry

ATA is a united federation of motor carriers, state-trucking associations (including the nine state-trucking associations in the WRAP region), and national trucking conferences created to promote and protect the interests of the trucking industry.

Its membership includes more than 2,000 trucking companies and industry suppliers of equipment and services. Directly and through its affiliated organizations, ATA encompasses over 34,000 companies and every type and class of motor carrier operation. As such, it effectively represents the interests of the trucking industry in the United States.

B. Overview of the Trucking Industry in the United States

The trucking industry is composed of both large national enterprises as well as a host of small businesses whose livelihood can be dramatically impacted by new regulatory requirements. According to the Department of Transportation, almost 50% of motor carriers have only one truck, and fully 95% of motor carriers (nearly 395,000 in number) have 20 or fewer trucks.⁴

The trucking industry is a major force in the United States economy, employing 9.7 million people in jobs that directly relate to trucking.^{5,6} Trucking accounts for 86 cents of every dollar collected for freight transportation in the U.S., and trucking hauls practically every type and kind of product and raw material used in the manufacturing and retail sectors of the economy.

Moreover, as the predominant mode by which U.S. consumers receive virtually all of their goods, the trucking industry ensures the availability and cost-effective distribution of finished goods and raw materials throughout all segments of the economy. In this regard, over 70 percent of all communities in the United States rely *exclusively* on

⁴ Federal Motor Carrier Safety Administration, Docket Item FMCSA 1997-2350-954, *Preliminary Regulatory Evaluation (Truck Driver Hours of Service)*, page 60, paragraph 3.

⁵ The importance of the trucking industry to the nation's economic well-being has been documented previously in the context of EPA's September 16, 1997 Regulatory Impact Analysis accompanying the final rule establishing emissions standards for Heavy Duty Engines. See 62 Fed. Reg. 54694 (October 21, 1997).

⁶ American Trucking Trends: The Essential Guide to Trucking Facts and Figures (2000).

trucks to deliver all of their fuel, clothing, medicine, and other consumer goods. In sum, the nation's trucking industry provides the essential transportation resources, infrastructure and services that are necessary to sustain the growing economy that benefits all Americans.

II. Comments

A. EPA Must Issue a Revised Regional Haze Rule Prior to Approving the Proposed Rule

Under the recent court decision, *American Corn Growers Association vs. Environmental Protection Agency*, the Best Available Retrofit Technology ("BART") provisions of the Regional Haze Rule have been rejected.⁷ The Court in its decision ruled as follows.. .

We hold only that the Haze Rule's treatment of § 169A(g)(2)'s benefit calculation and its infringement on states' authority under the Act render the BART provisions of the rule impermissible.

The Court also remanded provisions allowing states to submit "commitment SIPs" that would permit states to delay meeting certain requirements of the Rule.. .

With the Rule and hence the contents of the SIPs now altered and subject to revision on remand, the more prudent course for this court is simply to remand the deadline-extension issue as well. This will permit the agency to reconsider its decision to extend the deadline at the same time that it decides what form the substantive requirements of a revised Haze Rule should take.

⁷ *American Corn Growers Association v. Environmental Protection Agency*, 291 F.3d 1 (D.C. Cir. May 24, 2002) (No. 99- 1348).

The requirements of Section 309 of the Regional Haze Rule are inseparably linked to satisfying the requirements under Section 308. For instance.. .

A Transport Region State may choose to comply with the provisions of this section and by doing so satisfy the requirements of § 51.308(b) through (e) only if the Grand Canyon Visibility Transport Commission (or a regional planning body formed to implement the Commission recommendations) submits a satisfactory annex to the Commission Report no later than October 1, 2000. [40 CFR § 51.309(f)(1)]

Beyond this, States are given the choice of complying with Section 308 or Section 309...

Any Transport Region State may elect not to implement the Commission recommendations set forth in paragraph (d) of this section. Such States are required to comply with the timelines and requirements of § 5 1.308. [40 CFR § 5 1.309(e)]

Given the interrelationship between Sections 308 and 309, EPA cannot approve the Proposed Rule until the agency has revised the Regional Haze Rule as directed by the D.C. Circuit. Until EPA revises the Regional Haze Rule to address the Court's concerns, states will not be able to perform due diligence when evaluating their choice between adopting either a Section 308 or a Section 309 approach. The inability to perform a thorough analysis of alternatives in selecting a compliance path could make these SIPs susceptible to future legal challenges. To alleviate these concerns and ensure that states are able to make an objective choice, EPA should delay adoption of the Proposed Rule

until revisions to the Regional Haze Rule have been finalized and can be fully evaluated by states.

B. The Commitment Provision for Addressing Stationary Source NO_x and PM Emissions in Section 309 is Invalid

The Clean Air Act (“CAA”) establishes specific timeframes for approving SIP submissions. Under Section 110(k), once a SIP is received, EPA has 6 months to determine whether the submittal is complete and an additional 12 months after this determination to approve the SIP. In the event a SIP contains commitments to adopted enforceable measures, EPA may conditionally approve the SIP provided the State adopts enforceable measures within 1 year of approval. If a state does not approve such enforceable measures, the SIP is disapproved. More specifically.. .

The Administrator may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision. Any such conditional approval shall be treated as a disapproval if the State fails to comply with such commitment. [CAA § 110(k)(4)]

Based on this timeframe, States have a total of 30 months after submitting a SIP to EPA to adopt enforceable measures in response to any commitment provisions. In contrast, Section 5.1.309 of the Regional Haze Rule states.. .

The plan submission must provide for an implementation plan revision, containing any necessary long-term strategies and BART requirements for stationary source PM and NO_x (including enforceable limitations, compliance schedules, and other measures) by no later than December 31, 2008. [40 CFR § 5.1.309(d)(4)(v)]

With plan submissions under § 51.309 due December 31, 2003, the Regional Haze Rule allows 60 months for states to adopt enforceable measures relating to stationary source PM and NO_x controls, or double the timeframe allowed by the CAA. This timeframe will result in SIPs that fail to meet the requirements of the CAA and, therefore, are not approvable. This issue was brought to light during the recent court decision's discussion over whether states should be granted an extended deadline for participating in a regional planning process.. .

A commitment SIP, which by definition addresses neither the Haze Rule's "core requirements for regional haze," nor its "requirements for BART," 40 C.F.R. § 51.308(c), does not appear to satisfy the statutory requirement. Cf. *Natural Res. Def. Council, Inc. v. EPA*, 22 F.3d 1125, 1134 (DC. Cir. 1994) (holding, under CAA s 110(k)(4), that EPA cannot satisfy its responsibility to determine whether a state plan submission complies with the CAA unless the submission "contains something more than a mere promise to take appropriate but unidentified measures in the future," and that a submission containing nothing more than such a commitment cannot extend the statutory deadline).⁸

In light of the recent D.C. Circuit's holding, EPA must review and revise, as appropriate, all provisions contained in Section 308 and 309 that are directly or indirectly affected by the court decision prior to finalizing any revisions to the Regional Haze Rule.

⁸ *American Corn Growers Association*, 291 F.3d 1.

C. The Proposed Rule will allow Stationary Source SO2 Emissions to be Treated in a Vacuum, Absent Consideration of the Visibility Impact of Other Stationary Source Pollutants

Based on emission inventories prepared for the WRAP, stationary source emissions of VOC, NOx, CO, PM-10, PM-2.5, and NH3 will increase over the 1996-2018 time period.

Table 2: Q-State (WRAP) Point Source Emissions with SO2 Milestones (Annual Tons)			
Pollutant	1996	2018	% Change
VOC	193, 096	266, 168	66 %
NOx	849, 443	885, 722	15%
CO	370, 243	582, 213	66 %
<i>so2</i>	770, 440	510, 000	- 37%
PM-10	175, 000	232, 777	19 %
PM-2.5	97,900	127, 373	18 %
NH3	17, 958	30, 223	157%

Source: *Western Regional Air Partnership Emission Forecasts for 2018, Draft Report*, E.H. Pechan & Associates, Inc. May 2002.

The cost of the SO2 emission controls envisioned under the Proposed Rule is projected at greater than \$100 million.⁹ Given this large expense, it seems unlikely that stationary sources will be willing to spend more to install additional controls for other visibility impairing emissions. Consequently, the Proposed Rule emphasizes reducing SO2 emissions at the expense of other stationary source emissions. If EPA’s intent is to control only SO2 emissions, then states should not be asked to control other types of pollutants from non-stationary sources. Alternatively, EPA should ensure that states address visibility impairment through a comprehensive approach that considers all pollutants and all sources relative to their contribution to visibility impairment.

⁹ ICF Consulting, *Economic Impacts of Implementing a Regional SO2 Emissions Program in the Grand Canyon Visibility Transport Region*, (January 2000).

D. The Proposed Rule will allow Stationary Source SO₂ Emissions to Initially Increase over Current Levels. These Increases Fail to Provide for Steady and Continuing Emission Reductions and Runs Counter to the Commission's Definition of "Reasonable Progress"

According to the Annex, 1999 SO₂ emissions, including expected emissions of 38,000 tons from the two smelters not currently operating, were about 690,000 tons." By subtracting out the unrealized smelter emissions, actual 1999 SO₂ emissions in the nine-state transport region were 652,000 tons. Comparing existing emissions to the milestones proposed by the WRAP reveals that stationary source SO₂ emissions will be greater than existing levels until 2013, if the two suspended smelters do not resume operation, or 2018, if they do resume operation.

The haze rule requires the milestones to provide for steady and continuing emission reductions for the 2003-2018 time period consistent with the Commission's definition of reasonable progress.¹¹ The Commission developed the following definition of reasonable progress.. .

Reasonable progress towards the national visibility goal is achieving continuous emission reductions necessary to reduce existing impairment and attain steady improvement of visibility in mandatory Class I areas, and managing emissions growth so as to prevent perceptible degradation of clean air days. [The Grand Canyon Visibility Transport Commission, *Recommendations for Improving Western Vistas*, p. x-xi (June 10, 1996).]

The Proposed Rule fails to provide for "steady and continuing emission reductions." For example, the 2003-2007 milestones allow SO₂ emissions to be 5-10

¹⁰ An Annex to the Report of the Grand Canyon Visibility Transport Commission, *Voluntary Emission Reduction Program for Major Industrial Sources of Sulfur Dioxide in Nine Western States and A Backstop Market Trading Program*, p. ii (September 29, 2000).

¹¹ **40 CFR** § 51.309(f)(i).

percent higher than 1999 levels. These emission increases, as opposed to reductions, will contribute to visibility degradation and, therefore, is not consistent with the Commission's definition of reasonable progress. Specifically, the Commission's goal of "achieving continuous emission reductions necessary to reduce existing impairment" cannot be satisfied by allowing stationary sources to emit at higher levels than they do today.

E. The Proposed Rule Will Give Preferable Treatment To Stationary Sources By Taking Credit For Reductions Since 1990 While Other Sources Are Being Evaluated Against a Current Baseline

In its analysis of whether the milestones provide for "continuous" reductions for the 2003 to 2018 time period, the WRAP uses as its starting point, or frame of reference, the Commission's goal of achieving a 13 percent reduction in 1990 baseline emissions by the year 2000, rather than an estimate of actual emissions for 2000.¹² Actual stationary source SO₂ reductions during this time are estimated at 22 percent. Allowing the WRAP to account for reductions on a projected rather than actual basis overestimates current stationary source SO₂ emissions and, consequently, overestimates the actual reductions expected from the Proposed Rule. This interpretation gives stationary sources credit for reductions from years past. However, this same standard is not applied to other emissions sources and will hold non-stationary sources to a higher standard of reduction.

For example, between 1990- 1999 SO₂ emissions from mobile sources decreased by 12%.¹³ Yet, credit for these reductions is not considered when determining mobile source compliance. Rather, mobile source emissions of SO₂ are projected to increase between 1996-2018.¹⁴ This increase, while acceptable for stationary source SO₂

¹² 67 Fed. Reg. 30425 (May 6, 2002).

¹³ U.S. Environmental Protection Agency, *Latest Findings on National Air Quality: 1999 Status and Trends* (August 2000).

¹⁴ Western Regional Air Partnership Mobile Source Forum • Working Documents (www.wrapair.org), "On-Road" and "Off-Road" Mobile Source Emissions Inventories (January 4, 2002).

emissions, may require states to cap mobile source emissions in those areas deemed to contribute significantly to visibility impairment at any of the 16 Class I areas on the Colorado Plateau.¹⁵ This, in turn, will force states to develop a patchwork of SO₂ emission controls for mobile sources to ensure that “significant” areas comply with the requirements of the Regional Haze Rule.

F. The Proposed Rule Fails to Ensure that Stationary Sources Located Closest to the 16 Class I Areas will Reduce SO₂ Emissions

The Proposed Rule assumes that half of the reductions in SO₂ emissions will come from states on the Colorado Plateau? There are no provisions, however, to ensure that these SO₂ reductions will actually happen. Instead, the Annex allows trading throughout the region on a one-for-one basis. Consequently, reducing a ton of SO₂ emissions in Oregon will supposedly have the same impact on visibility on the Colorado Plateau as reducing a ton of SO₂ emissions in Arizona.

According to the visibility modeling work, the wind fields relied upon to make air quality and visibility predictions over-emphasize transport from the southwest and under-emphasize transport from all other directions.¹⁷ This observation highlights the fact that SO₂ emissions from certain areas have a greater impact on visibility on the Colorado Plateau than others. Yet, the Proposed Rule does not account for this fact and, instead, assumes all SO₂ reductions throughout the nine-state region are equal. Given the latitude stationary sources have to seek SO₂ reductions throughout the region, there are no guarantees that the most cost-effective reductions will also be from those sources capable

¹⁵ 40 CFR § 5 1.309(d)(5)(iii)(A).

¹⁶ 67 Fed. Reg. 30446 (May 6, 2002).

¹⁷ Sonoma Technology, Inc., *Analysis of Visibility Improvement at 16 Class I Areas on the Colorado Plateau under command and Control and under WRAP Market Trading (Annex) Scenarios, Draft Reportl, 901160-xxxx-DFR1* (June 2001).

of providing the greatest improvement in visibility. In fact, the opposite could occur, thereby minimizing the expected benefits. The Proposed Rule needs to include mechanisms to ensure that a higher value is placed on SO₂ emissions from sources closest to the 16 Class I areas.

G. The Proposed Rule Fails to Demonstrate a Greater Improvement in Visibility than BART

Prior to the October 1, 2000 deadline for submitting a “satisfactory” Annex, the WRAP submitted a visibility analysis as Attachment C of the Annex. According to the analysis. . .

Rounding to the nearest tenth of a deciview -- a level of accuracy beyond which the results cannot be compared with any confidence -- the average visibility benefit of the MTF scenario equals that of the Command and Control scenario -- 0.1 dv. [*Voluntary Emissions Reduction Program for Major Industrial Sources of Sulfur Dioxide in Nine Western States and a Backstop Market Trading Program*, Attachment C, p. C-141

The analysis goes on to state...

Further, the visibility improvements of all of the different approaches would be indistinguishable for regional haze purposes.¹⁸

After the deadline for submitting a “satisfactory” Annex, the WRAP prepared two additional visibility analyses, a follow-up report released in June 2001 and a sensitivity

¹⁸ WRAP, *Voluntary Emissions Reduction Program for Major Industrial Sources of Sulfur Dioxide in Nine Western States and a Backstop Market Trading Program*, Attachment C, p. C-14 (September 29, 2000).

analysis released in July 2001.^{19,20} According to these reports, SO₂ reductions achieved through the market trading program will achieve greater visibility improvement at the 16 Class I areas compared to the command and control (BART) option. In order to make this determination, the follow-up analysis, at the direction of the Market Trading Forum, added an additional 10% of base case SO₂ emission back into the BART analysis to account for uncertainty.*’ In contrast, the Annex assumed an uncertainty/headroom set aside of 2% of base case SO₂ emissions.** Comparing the uncertainty estimates used in these two scenarios reveals that the uncertainty value assigned to the BART analysis accounts for nearly all of the difference in visibility impacts between the two scenarios.

In addition, the follow-up analyses assumes baseline SO₂ emissions are higher than those contained in the Proposed Rule, resulting in greater SO₂ reductions being attributed to the milestones and a higher amount of tons attributed to uncertainty for the BART analysis. Furthermore, the follow-up analyses draw conclusions based on results outside the model’s level of confidence, which the Annex previously acknowledged as one-tenth of a deciview. Given these substantial inequities among the different analyses, any relative comparisons between SO₂ reduction scenarios using the WRAP’s visibility modeling approach are not valid.

To EPA’s credit, the Proposed Rule appears to support this finding.. .

The modeling results showed that the visibility impacts of the trading program are likely to be very similar to those for the range of possible BART results,

¹⁹ Sonoma Technologies, Inc., *Analysis of Visibility Improvement at 16 Class I Areas on the Colorado Plateau under Command and Control and WRAP Market Trading (Annex) Scenario* (June 2001).

²⁰ Sonoma Technologies, Inc., *Sensitivity Analysis to Quantify the Benefits Achieved by an Emissions Cap* (July 2001).

²¹ Sonoma Technologies, Inc., p. 4-2 (June 2001).

²² Western Regional Air Partnership, *Voluntary Emissions Reduction Program for Major Industrial Sources of Sulfur Dioxide in Nine Western States and a Backstop Market Trading Program, Attachment C*, p. C-1 1 (September 29, 2000).

and that the visibility impacts of the trading program could be slightly greater or slightly less than a BART-only program would achieve. [67 Fed. Reg. 30425]

Given the uncertainty and lack of valid comparisons associated with the visibility modeling, EPA should determine that the Proposed Rule's visibility analysis is insufficient to demonstrate a greater improvement in visibility than BART.

H. The Proposed Rule Fails to Provide Satisfactory Evidence of Greater Reasonable Progress than BART

The Regional Haze Rule requires the Annex's emission reduction milestones to provide for greater reasonable progress than would be achieved by application of BART pursuant to § 51.308(e)(2).²³ Due to the uncertainties surrounding the BART provisions as a result of the recent court decision, EPA's ability to make this determination will be speculative, at best, until revisions to the Regional Haze Rule are made.

Beyond the court-related issues, the Proposed Rule falls short of providing satisfactory evidence of greater reasonable progress on many fronts. As acknowledged by EPA, differences between the BART-eligible sources identified by the WRAP and those identified under EPA's proposed BART guidelines underestimate the effectiveness of BART by a few thousand tons.²⁴ While a few thousand tons of SO₂ may seem insignificant in terms of comparing expected progress between the Proposed Rule and BART, examples of overestimating the impacts of the Annex and underestimating the impacts of BART are prevalent throughout the Proposed Rule.

²³ 40 CFR § 51.309(f)(i).

²⁴ 67 Fed. Reg. 30423 (May 6, 2002).

For example, the WRAP calculated SO₂ reductions from BART-eligible sources of 168,000 tons for the year 2018. In May 2000, EPA provided the WRAP with a technical review of their BART determination and found that due to a higher level of control for uncontrolled utility boilers, SO₂ reductions of 170,000 to 190,000 tons from BART are possible.

In addition to underestimating the effectiveness of BART, the WRAP offsets the projected level of SO₂ reductions by 35,000 tons in 2018. These offsets, referred to in the Proposed Rule as “uncertainty” and “operational headroom,” represent an “Enron-esque” method of accounting for lower levels of SO₂ reductions than represented. For instance, when the additional 35,000 tons of “uncertainty/operational headroom” are accounted for, SO₂ reductions of 132,000 tons are projected for 2018. This total is well below both the EPA’s and the WRAP’s BART estimates and, therefore, does not ensure that the Proposed Rule will provide greater reasonable progress than BART.

I. EPA has Mistakenly Characterized the WRAP as a Consensus Effort when, in fact, Approval of the Annex was not Unanimous

The Proposed Rule states.. .

Although not determinative of whether the program achieves better than BART reductions, EPA believes that it is important to recognize that the WRAP program has resulted from a consensus effort, which included broad-based participation of many Western stakeholders. [67 Fed. Reg. 30425]

While the WRAP Charter indicates the intent of the WRAP is to resolve all issues on a consensus basis, ultimate passage of any matter requires the support of two-thirds of the WRAP membership.

Contrary to EPA's belief the Annex is the result of a consensus process; consensus support for the Annex was not achieved among WRAP members. The State of Colorado abstained from supporting the Annex, citing numerous concerns over the methodology and analyses used to develop the program. Details of these concerns are contained in two letters that have been submitted to the WRAP.²⁵

The WRAP's consensus effort is also misleading because several western states are either not represented or are represented but are not eligible to develop Section 309 SIPs.²⁶ Nevada, for instance, does not participate in the WRAP, yet nearly one-fifth of the projected SO₂ reductions from the utility sector occur in Nevada prior to 2003.²⁷ In addition, even though California is a WRAP member and is perceived to be an important contributor to visibility impairment on the Colorado Plateau, the state has indicated it will not likely submit a Section 309 SIP and, therefore, will not participate in the Annex. Finally, it should be noted that the states of Alaska, Montana, North Dakota, South Dakota, and Washington are all members of the WRAP who are not eligible to submit Section 309 SIPs. These states, even though they are voting members of the WRAP, do not have a stakeholder's interest in the Annex.

J. The WRAP Excludes Mobile Sources from Participating on its Standing Committees

The WRAP Bylaws establish general guidelines for standing committees reporting directly to the WRAP.²⁸ According to the Bylaws.. .

²⁵ Letters to WRAP from the State of Colorado dated September 25, 2000 and May 22, 2001.

²⁶ 40 CFR § 51.309.

²⁷ E.H. Pechan & Associates Inc., *Western Regional Air Partnership Emission Forecasts for 2018, Draft Report* (May 2002).

²⁸ See www.wrapair.org/WRAP/bylaws.html.

Whenever processes are directed to be stakeholder-based, membership should represent a wide range of social, cultural, economic, geographic, relative population and technical viewpoints. To meet this goal, the following categories of representatives should be considered. *Industry (focused on production sector but excluding the mobile source sector), *Small business (focused on the service sector, including “green industry”), *Mobile sources (including vehicle manufacturers and transportation planners), *Federal government, *Tribal government, *Local government, *Academia, *Environmental groups, *General public. [WRAP Bylaws (I)(B)]

The Bylaws go on to describe how the two standing committees are to be established. Specifically.. .

TOC and IOC membership will consist of representatives from three tribes and three states, a Federal Land Manager, an EPA representative, and two representatives each from the environmental and industrial communities. [WRAP Bylaws (III)(B)(I)]

The Bylaws make a distinction between industry and mobile source representation under the general guidelines. However, in establishing the two standing committees, representation is limited to the industrial community, a sector that specifically excludes mobile sources. As such, mobile sources are not allowed to participate on the two important standing committees that report directly to the WRAP.

K. The WRAP Travel Reimbursement Policy Treats Stakeholders Inequitably, Resulting in a Biased Process

The WRAP conducts numerous meetings throughout the western United States. As a result, travel by a broad range of participants is an important component of the

process that is considered by the WRAP travel reimbursement policy. The WRAP provides limited travel reimbursement to individuals from selected groups who would be unable to participate without such assistance.²⁹ The travel reimbursement policy is divided into four sections that apply differently depending upon your affiliation.. .

- Tribal and state government officials and employees serving on WRAP committees or forums are reimbursed at a rate of 100 percent.
- Individuals representing local or other non-state or non-federal governmental bodies and serving on WRAP committees or forums are reimbursed at a rate of 75 percent.
- Non-profit organizations preserving the environment and serving on WRAP committees or forums are reimbursed at a rate of 75 percent.
- Individuals not affiliated with an interest organization and serving on WRAP committees or forums are reimbursed at a rate of 50 percent.

In addition to these supposed “hardship” provisions, a general hardship policy is available in the case of undue financial hardship. Given the subjective nature of this hardship determination, it is our belief that the travel policy is simply used to reimburse participants according to their affiliations. For instance, if two non-profit organizations participate on a WRAP committee or forum and one is not charged with preserving the environment, that organization does not get reimbursed unless a hardship demonstration can be made while the other non-profit organization gets reimbursed.

We are unaware of any public process that selectively pays some participants to attend while excluding others of this opportunity based on their affiliation. This has resulted in a biased WRAP process that precludes objective involvement by all interested

²⁹ See www.wrapair.org/WRAP/Forms/travpol.htm.

parties. With the myriad of meetings taking place throughout the West, only those individuals that are reimbursed can afford to participate in the vast majority of the meetings. Small businesses, such as small trucking companies, construction companies, taxi operators and others, can hardly afford to be away from their businesses, much less be reimbursed 50 cents for each dollar spent. By selectively reimbursing certain individuals deemed integral to the process, the WRAP process favors selected stakeholders, thereby creating an inequitable process.

CONCLUSION

The Proposed Rule will establish SO₂ milestones for stationary sources while enabling western states to delay controls on other visibility impairing emissions from stationary sources until at least 2008. Stationary source emissions of VOC, NO_x, CO, PM- 10, PM-2.5, and NH₃ within the WRAP states are projected to increase over the 1996 to 20 18 time period.

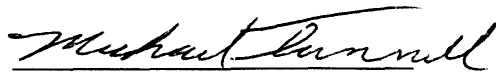
In contrast, despite the tremendous strides mobile sources have made to reduce emissions, and the considerable reductions that will result from upcoming national programs, the Proposed Rule will enable area-specific controls on mobile sources while doing nothing to ensure emission reductions from stationary sources in those same areas. For these reasons, ATA cannot support the Proposed Rule.

The Proposed Rule must be revised to ensure compliance with the Regional Haze Rule. In addition, EPA should include a determination that, due to federal emission controls on mobile sources, mobile source emissions from individual urban areas do not contribute significantly to visibility impairment at any of the 16 Class I Areas on the Colorado Plateau. This determination will help establish the federal mobile source emissions control program's preeminence in helping to meet the national visibility goal.

Finally, in light of the recent court decision, the Proposed Rule should be delayed. This delay will give EPA time to revise the Regional Haze Rule to address the concerns of the court and provide western states with complete information on what options are available for complying with the Regional Haze Rule. This delay will also allow EPA to revise the Proposed Rule to ensure compliance with the requirements of the Clean Air Act and the Regional Haze Rule.

ATA appreciates the opportunity to comment and looks forward to working with EPA on this and other important issues affecting the nation's trucking industry.

Respectfully submitted,



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