

MEMORANDUM

April 20, 2006

FROM: 309 State Air Directors  
TO: WRAP Stationary Sources Joint Forum  
SUBJECT: SO2 Program

While we are all still awaiting publication of EPA's final revisions to Section 309 and the rules governing alternatives to source-specific BART, we have been discussing the options for moving ahead with the Section 309 regional haze plans each of our states submitted in December 2003. We appreciate the work the Stationary Sources Joint Forum (SSJF) has done to date to frame the issues and gather information needed for any approach.

Though there have been discussions about expanding the 309 SO2 program to include other states and developing a similar program for NOx, it does not appear that a critical mass of interest has emerged to warrant actively pursuing these options at this time. Nevertheless, we continue to believe that the recommendations of the Grand Canyon Visibility Transport Commission, as codified in Section 309 of the Regional Haze Rules, represent good public policy and an appropriate response to the challenge of improving visibility at Western Class I areas. The dramatic SO2 reductions that have occurred in the West over the last 7 years and the plans for even more reductions in the near future are a testament to the Commission's recommended approach.

Therefore, we ask the SSJF to move forward as quickly as possible to reevaluate the 5-state SO2 milestones using the best data currently available and in light of EPA's expected rule changes in response to the decision in CEED v. EPA. As you know, the 309 SO2 program is currently being implemented in all five of the 309 states, with state rules in effect and the annual milestone reports submitted to EPA as required. Our intent is to reevaluate the 5-state SO2 program and resubmit our Section 309 SIPs by December 2007. It would be most helpful for the SSJF establish a work plan and schedule resulting in final recommendations by November 1, 2006.

We certainly welcome any other state or tribe that may be interested in joining our SO2 program, but until a specific request is made the focus should be on the 5-state program.

NOx

WRAP discussions on a regional NOx program go back more than two years to the time when EPA considered expanding CAIR to the West. Since then, EPA has finalized its source-specific BART rule, including presumptive limits for NOx emissions from electric generating units. We are aware that many of our electric utilities believe they will be unable to meet these presumptive BART limits with combustion control technology. We

also recognize that the universe of NO<sub>x</sub> sources is larger and more diverse than the group of sources we are addressing in our SO<sub>2</sub> program.

These facts suggest to us that the most appropriate course of action now is to do the work needed to prepare for source-specific BART determinations for NO<sub>x</sub>. In the event of renewed interest in a regional NO<sub>x</sub> program, we believe the work to evaluate BART at individual sources could be used in the establishment of milestones. We remain open to this approach should a consensus emerge that a regional program is preferable to source-specific BART determinations for NO<sub>x</sub>.

We are aware of the challenge presented by an approach that addresses SO<sub>2</sub> under a backstop trading program while addressing NO<sub>x</sub> on a source-specific basis. However, given that most BART-eligible sources of SO<sub>2</sub> have already controlled, or plan to do so in the near future, we believe this approach can work and that it may be the best way to address the wide variety of technical, policy, and regulatory challenges before us.

We are all committed to dedicating the state staff resources needed to accomplish the goal of resubmitting our Section 309 SIPs to EPA by December 2007. Similarly, we will provide management and policy direction as appropriate along the way. It is our expectation that all interested stakeholders will make a similar commitment to participate in this process through the SSJF.

Finally, attached is a recent letter from WEST Associates articulating a number of principles that are important to them as we move ahead. We believe these are important issues that need to be addressed through the process of updating the 309 SO<sub>2</sub> program.

Thank you all for your ongoing commitment to this important regional partnership.