

WRAP COMMENTS ON EPA'S PROPOSAL TO REVISE PROVISIONS GOVERNING
ALTERNATIVES TO SOURCE-SPECIFIC BART DETERMINATIONS

70 Federal Register 44154 – August 1, 2005

Docket ID # OAR-2002-0076

Submitted: September 16, 2005

The Western Regional Air Partnership (WRAP) is pleased to submit the following comments on EPA's proposal to revise the provisions governing alternatives to source-specific BART determinations. (70 FR 44154 – August 1, 2005). The WRAP is a collaborative effort of Western tribes, Western states, and federal agencies working with business and environmental interests to address regional haze in Western Class I Areas.

The WRAP is encouraged that EPA is taking this and other actions to revise the regional haze rule and supporting guidance. In addition to facilitating implementation plans being developed throughout the West, this action will preserve the ability of western states and tribes to implement the recommendations of the Grand Canyon Visibility Transport Commission (GCVTC), whose work to build consensus-based regional strategies first began in 1991. The following comments reflect general agreement among WRAP participants, but additional comments may be submitted independently by these participants.

PROPOSED CHANGES TO REGULATORY TEXT IN 309

EPA is proposing to amend Section 309 of the regional haze rule by removing subsections (f) and (h), which are the subsections calling for an Annex to the final GCVTC report and which subsequently codified that Annex. In their place, 309(d)(4) – which contains the basic programmatic requirements for stationary source reductions – is supplemented by including a few key elements originally in 309(f) and the Annex, such as the need for states and tribes to submit quantitative emission reduction milestones for sulfur dioxide, special provisions for the 2018 milestone, and documentation of methods used to calculate emissions in the base year. Clarification is also provided by EPA in the proposed rule and preamble that Section 309 SIPs would be due by December 17, 2007 (the same date by which Section 308 SIPs are due), that any of the nine Grand Canyon Visibility Transport Region states may submit 309 SIPs by this time, and that visibility projections required by 309(d)(2) should at least show no degradation from current conditions for the 20% best and 20% worst visibility days.

The WRAP agrees with EPA's proposed changes. In addition, the WRAP requests that EPA make explicit in its final rulemaking that backstop trading programs are permissible under 309 and 308 for sulfur dioxide and nitrogen oxides. Currently, the only statement made by EPA on this topic is that "nothing precludes states outside the 9-state region from incorporating elements of the GCVTC strategies into their SIPs."

Likewise, the WRAP requests that EPA clarify that "geographic enhancements" to address the requirement under 51.302(c) related to BART for reasonably attributable impairment are preserved under Section 309 through the cross-reference to 308(e)(2) (specifically (e)(2)(v)) that appears in the proposal at 309(d)(4)(i).

PROPOSED CHANGES TO REGULATORY TEXT IN 308(e)(2)

For alternative programs implemented in lieu of BART, EPA is proposing that states and tribes determine a BART “benchmark” according to 308(e)(1). Specifically, EPA would require “an analysis of the degree of visibility improvement that would be achieved in each affected mandatory Class I Federal area as a result of the emission reductions projected from the installation and operation of BART controls under paragraph (e)(1) of this section at each source subject to BART in each source category covered by the program.” The SIPs and TIPs would then be required to show that the alternative program would provide for greater reasonable progress than provided by the BART benchmark. EPA is requesting comment on this approach to revising the rule and on whether “it would be reasonable to allow states to use a weight-of-evidence approach to evaluate both air quality modeling results and other policy considerations” when demonstrating an alternative program is better than BART. EPA is also proposing to require 12 elements to be included in any cap and trade program implemented in lieu of BART, such as applicability, emissions monitoring, recordkeeping, etc.

The WRAP agrees with EPA’s approach to cross referencing (e)(1) to determine a BART benchmark for use in developing an alternative program. The WRAP also believes that EPA should allow states and tribes to use a weight-of-evidence approach to demonstrate that an alternative is better than BART. We note that part of this approach, as described by EPA in proposed sections 308(e)(2)(i)(C) – (E), is inconsistent with the two-pronged approach already promulgated under 308(e)(3) in that it would require visibility modeling regardless of the change (or lack thereof) expected in the geographic location of emission reductions under an alternative program. EPA should reconcile this discrepancy in its final rulemaking. Finally, the WRAP agrees that it is reasonable for EPA to require that any cap and trade program include the 12 program elements described in the proposal.

OTHER COMMENTS

In the preamble, EPA is seeking comment on streamlined approaches and preferred modeling methodologies for determining a BART benchmark in the context of an alternative program and whether their use would significantly ease the burden on states and tribes. An example would be the use of a photochemical grid model such as CMAQ and CAMX in lieu of multiple CALPUFF analyses for each BART source. The WRAP agrees that streamlined approaches should be allowed when determining a BART benchmark and that it would significantly ease the burden on states and tribes. However, we note that the proposed text for 308(e)(2)(i)(C) currently cross references 308(e)(1) for determination of a BART benchmark. Neither 308(e)(1) nor the guidelines for implementing that section explicitly recognize streamlined approaches for determining BART. EPA should therefore take care to ensure that a streamlined approach for the purpose of determining BART in the context of an alternative program (i.e., a BART benchmark) is clear, permissible, and not legally unsound in the final rule.

The preamble also describes EPA’s view that the requirement to achieve reasonable progress under the Clean Air Act and the regional haze rule may serve as an independent premise for developing an alternative to BART. In other words, reasonable progress would define the

emission reductions needed, not BART. In this case, the alternative program could be shown to be better than BART by comparing it to a “most-stringent-case BART scenario.” This would forego the need to conduct a full BART analysis for each source when developing an alternative program. This was the approach used by EPA to demonstrate that the Clean Air Interstate Rule provides for greater reasonable progress than BART for electric generating units. The WRAP agrees with EPA’s view that reasonable progress is an independent requirement that can be used to develop an alternative to BART. We support the inclusion of this option in the final rule.

TRIBAL CONCERNS

It is important to point out that the rule EPA proposes is not a trivial exercise for any tribal program to accomplish given most tribal programs lack the staff and expertise of state air programs. As part of this rulemaking, EPA should acknowledge this situation and the difficulties tribes may experience in achieving BART determinations.

In the preamble to the proposed rule, EPA noted that it is “cognizant of the need to avoid importing into [the revised 309 rule] any provisions of the Annex rule that were directly or indirectly dependent or related to the specific quantitative milestones contained in the Annex.” Therefore, the preamble went on to explain, the proposed rule “retained only those provisions [EPA] believe[s] are critical to any conceivable variation of the GCVTC’s backstop trading program recommendation” (70 FR 44167). Presumably, this is why the proposed rule does not contain any requirement for a tribal set-aside. However, in the approval of the WRAP Annex, EPA had singled out the tribal set-aside as the one exception to EPA’s general approach of leaving details of the allowance allocation methodology up to the SIPs and TIPS, rather than being specified in the federal rule (68 FR 33774). In this final BART-trading rule, EPA should clarify what expectations it has regarding the consistency of tribal set aside provisions between the section 309 SIPs submitted by various states, and what role, if any, EPA would play in assuring implementation of such provisions.

Submitted by WRAP Co-Directors
Patrick Cummins, WGA
Bob Gruenig, NTEC