



Wyoming Outdoor Council

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June 11, 2010

Mr. James B. Martin, Regional Administrator
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop St.
Denver, CO 80202-1129

Re: EPA Implementation of the Regional Haze Rule

Dear Mr. Martin:

This letter follows on and supplements the letter that the below-signed and a number of other groups submitted on May 20, 2010 to Assistant Administrator Gina McCarthy regarding compliance with the Regional Haze Rule.¹ In this letter we will elaborate on points made in the earlier letter, focusing on issues that directly relate to the State of Wyoming.

In our May 20 letter we outlined seven steps that are needed to ensure that approval of Regional Haze Rule state implementation plans (SIP) or federal implementation plans (FIP) fully protect the air quality and iconic landscapes in our Class I wilderness areas and National Parks. The need for taking these steps is critical to ensuring the development and implementation of a successful plan for the State of Wyoming to reduce its haze-causing pollution.

Wyoming-Based Examples of the Need for the Seven Steps

Consistency

One needed step outlined in our May 20 letter is the need for consistency in best available retrofit technology (BART) determinations for eligible sources. This need is evident in Wyoming as well as nationwide. As pointed out in letters we have submitted to the Wyoming Department of Environmental Quality (DEQ) on proposed Wyoming regional haze BART permits,² and that EPA has also submitted comments on (EPA's letters will be discussed below), the DEQ is pursuing a wide range of BART requirements in Wyoming, ranging from selective catalytic reduction (SCR) at the Naughton power plant Unit 3, to low nitrous oxide (NO_x) burners and over-fire air at most plants, and even later-installed controls beyond the five-year regulatory deadline as an element of the "long-term strategy" at some plants. Just as is true nationwide, there should be assurance of consistency of BART requirements at all five electrical generating units (EGU) in Wyoming, as well as at the three trona plants that are subject to

¹ That letter is enclosed herewith.

² Letters dated August 4, 2009, October 27, 2009, October 17, 2008, and September 10, 2008, previously submitted to Ms. Monica Morales, EPA Region 8 Unit Chief, Air Quality Planning Unit, and enclosed herewith.

BART. Having some plants install low NO_x burners and over-fire air while others install SCR makes little sense in our view. We believe a proper interpretation of the BART requirements compels the state to require pollution controls that significantly reduce haze causing emissions from these sources, not merely technologies or emission limits that offer minimal reductions.

Selective Catalytic Reduction

Another need that was identified in the earlier letter is that SCR should be presumptively favored as BART for control of NO_x emissions from sources subject to BART. With respect to the five Wyoming EGUs, to date the DEQ has not planned to require SCR for most of these plants (SCR would be required only at Naughton Unit 3, and then later-required as an element of the long-term strategy at the Bridger and Laramie River EGUs). EPA has already noted the shortcomings of these proposals in its comment letters submitted to the DEQ. In its May 21, 2008 letter regarding the BART analyses prepared by several affected companies, EPA stated, “Based on information provided by the sources, it appears that for many units, SCR should be considered. With the visibility benefits from SCR, Wyoming’s [regional haze] SIP would be much stronger and Wyoming would be closer to achieving the Uniform Rate of Progress (URP).” Several similar comments were made in EPA’s August 3, 2009 comment letter on the DEQ’s proposed BART determinations for the five EGUs, including this with respect to the Dave Johnston plant: “In addition, the State should take the large visibility improvement attributable to SCR into consideration in making the final BART determination.” Given these comments, we believe EPA should determine that SCR is BART for these subject to BART sources.

Presumptive BART Limits

EPA’s presumptive BART limits were also identified in the May 20 letter as not necessarily meeting BART requirements. In Wyoming, as things stand now, several of the proposed permits for the EGUs would not meet EPA’s presumptive NO_x limits. This emphasizes again the need for consistency among BART determinations. While as discussed in the May 20 letter the presumptive limits should not be viewed as *per se* achieving BART, they certainly should *at a minimum* be achieved *in all cases*. As we noted in our August 4, 2009 comments on the DEQ’s EGU proposed BART determinations and permit requirements, many of the power plants are causing reasonably attributable visibility impairment in a number of Class I areas, and DEQ has recognized this. This determination of visibility impairment invokes not only the requirements of the regional haze rule and the regulations found in Chapter 6 Section 9 of the Wyoming Air Quality Standards and Regulations (WAQSR), but also implicates the EPA’s plume impairment regulations and Wyoming’s companion regulations found at WAQSR Chapter 9. Under the plume impairment (“reasonably attributable”) regulations, when visibility impairment is reasonably attributable to a particular source, as is the case here, BART must be required, and BART is presumed to be at least the current New Source Performance Standard (NSPS) limits, which are 0.11 lb./mmBTU for NO_x from new coal fired power plants. In most if not all cases, achieving the plume impairment rule-required emission limit—something DEQ is not proposing to do—would be less than the Regional Haze Rule presumptive BART limit for NO_x, and less than the emissions limits DEQ has proposed.

Cumulative Impacts

A fourth need identified in our prior letter was providing assurance that cumulative impacts and benefits must be considered as part of the fifth step in the BART analysis. In our August 4, 2009 comments regarding the proposed BART determinations and permits for the five EGUs in Wyoming, we noted the large cumulative impacts on visibility that these plants were having in Class I areas such as Wind Cave National Park and the Bridger Wilderness Area. Among other things, we pointed out how DEQ had failed to analyze impacts at some Class I areas that were within 300 km of the power plant, thus underestimating cumulative impacts. Thus, again, we urge the EPA to ensure that cumulative impacts are fully and properly considered when determining appropriate regional haze SIP or FIP requirements for the State of Wyoming.

Attaining Natural Visibility Conditions by 2064

And last among the seven identified steps that clearly have implications relative to Wyoming's Regional Haze Rule compliance was the need to provide for attaining natural visibility conditions by 2064. As we pointed out in our comments submitted to the DEQ regarding its draft "309(g)" SIP proposal, the State is planning on minimal compliance with the Regional Haze Rule, putting in place a reasonable progress goal (RPG) that would be far less than the uniform rate of progress (URP) needed to achieve natural visibility conditions by 2064. As we stated in those comments,

Current baseline visibility conditions in Wyoming's [seven] Class I areas [on the most impaired days] average 11.5 dv but an average level of 10.3 dv is needed to meet the URP goal, yet the actual RPG that DEQ plans for will lead to only an average visibility condition of 10.9 dv in the Class I areas. The planned RPG is only, on average, 45 percent of the URP goal [on the most impaired days]. An average improvement of slightly more than 0.5 dv is planned but the improvement needed to stay on the "glide slope" to reach natural visibility conditions by 2064 is 1.2 dv [on the most impaired days].

So, just as was true in the examples we presented in our May 20 letter, if Wyoming is permitted to pursue this minimalist approach to Regional Haze Rule compliance, it will not be on a path to achieve natural visibility conditions by 2064. Based on our analysis of the glide slope presented in Wyoming's draft 309(g) SIP, it appears Wyoming will not achieve natural visibility conditions in the Class I areas until about 2110, 46 years after the deadline.

EPA Comment Letters on Wyoming's Regional Haze Rule Compliance Efforts

The EPA has previously submitted comment letters to the Wyoming DEQ regarding Regional Haze rule compliance efforts. EPA submitted a letter regarding the companies' BART analyses dated May 21, 2008. On October 17, 2008 the EPA submitted a letter to DEQ regarding the proposed BART permit conditions for the three trona plants in southwest Wyoming (the Granger, FMC Westvaco, and General Chemicals Green River Works plants). On August 3, 2009 it submitted a comment letter regarding the draft BART permits for the five

EGUs. And in October 2009 the EPA submitted a letter addressing Wyoming's draft 40 C.F.R. § 309(g) SIP proposal.

We will not review these letters in detail here, but in general EPA has expressed a number of concerns regarding the State's compliance efforts. For example, regarding the draft 309(g) SIP, the EPA said, "We want to reiterate that controls for Laramie River Station and Jim Bridger need to be implemented under BART in this SIP and that implementation of controls can not be postponed until some later date under reasonable progress", as the State was proposing to do. Repeatedly in these comments the EPA notified the State that it could not assume that sulfur dioxide (SO₂) BART was met simply by the State's participation in the section 309 milestone and trading program, as the State proposed. As noted above, in a number of comments the EPA made clear that SCR might be BART. And relative to the trona plants, EPA was forced to point out to the State that a 0.5 dv visibility level was not a threshold validating the appropriate or needed levels of control (BART), but was only guidance for applying BART analyses. Given these concerns registered by the EPA, some of which are related to the seven needs identified in our May 20 letter, we urge the EPA to ensure that by January 15, 2011 there is a final and Federally-enforceable regional haze plan in place for Wyoming that assures these problems are rectified. We believe the collective import of these letters is that they show EPA has been critical of Wyoming's Regional Haze Rule Compliance efforts to date, has indicated strongly what improvements are needed to achieve compliance with the Regional Haze Rule, but which the state seems to have not complied with to date.

Conclusion

In conclusion, we urge the EPA Region 8 to take all necessary actions to promulgate a final Federally-enforceable regional haze rule plan for Wyoming before the January 15, 2011 deadline identified in EPA's Federal Register notice. 74 Fed. Reg. 2392 (Jan. 15, 2009). In addition, in our May 20 letter we requested that EPA provide us with information demonstrating how the EPA would meet the January 15, 2011 deadline. We reiterate those information requests here, with respect to the State of Wyoming. We specifically would like to know the date or dates by which a proposed SIP or FIP for Wyoming must be published in the Federal Register in order to meet the deadline, and the date or dates by which EPA will submit a proposed SIP or FIP to the Federal Register in order to initiate the public review process.

With respect to these information requests the following must be noted. There is little sign the State of Wyoming can present an approvable SIP to EPA well enough in advance of the deadline that EPA could approve the SIP. The Wyoming DEQ's approved BART permits for the five EGUs are tied up in an administrative appeal before the Wyoming Environmental Quality Council that the power companies filed. Given this further delay, it is our view EPA must begin to develop a FIP for the State of Wyoming. We see no option to that course of action, given the January 15, 2011 deadline. We see little likelihood that anything other than a FIP will meet the substantive Regional Haze Rule compliance requirements and do so by the established deadline.

Thank you for considering these supplemental comments regarding Regional Haze Rule implementation and compliance. It is our hope that we can make arrangements to meet with you personally to discuss these issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bruce Pendery', with a long horizontal flourish extending to the right.

Bruce Pendery
Wyoming Outdoor Council
And on Behalf of:

Stephanie Kodish
National Parks and Conservation Association

Jeremy Nichols
WildEarth Guardians

Shannon Anderson
Powder River Basin Resource Council

cc: Gina McCarthy

Enclosures: May 20, 2010 Letter to EPA
Environmental Group Regional Haze Comment Letters