

**DEQ – Air Quality Division**  
**SUMMARY OF NEGOTIATED RULEMAKING**  
**REGIONAL HAZE**  
**Docket 58-0101-0601**  
**February 28, 2006**

**PARTICIPANTS**

Adams, Carol - P4  
Ahmed, Yasemin - JBR Environmental - RDO Processing  
Anderson, Mary - DEQ-Modeling  
Bauer, Martin - DEQ-AQ Administrator  
Body, Steve - EPA-Region 10  
Bush, Sheila - J.R. Simplot  
Cummins, Pat - WRAP (participated by telephone)  
Deckert, Tom - DEQ-Lewiston Regional Office (participated by telephone)  
Delorey, Dean - Amalgamated Sugar  
Drechsel, Chris - Trinity Consultants (participated by telephone)  
Edwards, Mike - DEQ-SIP Coordinator  
Kronberg, Lisa - Attorney General's Office  
Mann, Hudson - DEQ-Lewiston Regional Office (participated by telephone)  
McIntyre, Krista - Stoel Rives  
Mehr, Darrin - DEQ-Modeling  
Miller, Ken - Northwest Energy Coalition  
Ramsdell, Chris - DEQ-Emission Inventory  
Rockwell, Ken - Wallowa Whitman Forest (participated by telephone)  
Schaefer, Suzanne - SBS Assoc - P4  
Simon, Mike - DEQ-Stationary Sources  
Simpson, Julie - Nez Perce Tribe (participated by telephone)  
Somers, Sue - Potlatch  
Stafford, Tim - DOE, INL (participated by telephone)  
Walker, Doug - BEA, INL (participated by telephone)  
Wilkinson, Bob - Husch & Eppenberger - P4  
Wilkosz, Robert - DEQ-Mobile/Area Sources  
Wolleson, Ward - J.R. Simplot  
Heitman, Phyllis - DEQ-AQ Management Assistant

Mike Edwards called the meeting to order at 9:00 a.m. on February 28, 2006 at the Division of Environmental Quality, 1410 N. Hilton, Boise, Idaho. Participants introduced themselves.

**IACI CONCERNS**

Krista McIntyre summarized that IACI is concerned because the focus of the SIP development appears to be primarily on stationary sources. IACI encourages DEQ to expand the scope so that other contributors are included. Information on smoke management and mobile sources was presented at the first meeting but there seems to

be limited attention being given to those elements. Focusing solely on stationary sources will not generate a successful SIP; even if emissions from BART-eligible sources were at zero, visibility goals would not be reached. The second concern is the timing of the work. It seems impossible to complete the work by July 15, 2006.

Mr. Edwards responded by thanking IACI for their letter and engaging in the process. He reminded the IACI members present that In June, 2004 and June, 2005 DEQ presented IACI with information on BART and other control measures and asked for their participation in WRAP. Time still remains for IACI and industry to join the WRAP Stationary Source Joint Forum. Industry representation from Idaho is badly needed.

Mr. Edwards said the first step in developing the SIP is adoption of Appendix Y and deciding on an appropriate approach to BART. Until that is decided, DEQ does not think it is beneficial to expand the group membership. Other control measures will be discussed when the BART issue is settled. DEQ has been active in WRAP over the past two years along with the Farm Bureau, Federal Land Managers and industry from other states. As far as the time schedule, he answered that with dedication to the process, the rulemaking group should be able to meet the July deadline. Mary Anderson added the timing is not totally driven by Idaho and rulemaking. Since WRAP is performing the analysis and modeling work, all state control measures must be completed and submitted to WRAP by September, 2006 in order for it to be included in the WRAP model.

Mr. Edwards said outreach to the public, the Board of Environmental Quality and the Legislature has already begun.

Ms. McIntyre voiced concern about Idaho's reliance on WRAP to develop these SIP components. Idaho may be unique since its emissions are lower, its contribution to Class I areas is smaller, and the visibility in the Class I areas is relatively good.

She also referenced Lisa Kronberg's comment at the last meeting about the possible need for changes in statutes. She said industry is still struggling with the issue of reducing stationary source emissions when there are other contributing source types that are not being discussed. Mr. Edwards responded that for regional modeling, Idaho needs to look to WRAP as one entity that can produce data for all states that impact each other. Where Idaho-specific information is needed, Idaho will develop its own data. He added that DEQ is focusing on stationary sources because it is an absolute in the SIP. In order to move forward, the group should decide on use of Appendix Y for BART issues so it can move on to other control measures.

### **BART GUIDANCE**

Ms. Anderson gave an overview of each Appendix Y section, the preamble and the intent of the BART rule. There was discussion about the definition of stationary sources, reconstructed sources, newly constructed sources and emission units. The preamble of the BART guidance addresses many of the same concerns that have been raised by this rulemaking group. She commented that Appendix Y provides detailed

examples, threshold options, definitions, descriptions of modeling, and instructions on determining the best BART technology. Dean Delorey asked if the modeling was going to be done by WRAP or Idaho. Ms. Anderson said Idaho plans to do the modeling in-house for the BART-eligible sources using CALPUFF and making the results available to the facilities. He asked how the regional modeling interacts with those results. Ms. Anderson stated the regional modeling would consider the results of all BART limitations and combine it with all other emissions in their model.

If Idaho decides to do an alternative to BART, such as a trading program, it would have to determine what alternative is needed to reach the same or better emission reduction as BART would achieve.

#### Modeling Protocol

Ms. McIntyre asked about use of Option 1-3 of the guidelines to show sources are exempt from BART. Ms. Anderson said Idaho is working with Oregon and Washington to develop a three-state protocol and met data set. DEQ has focused on Option 1. Option 2 is mainly for EGU's and does not use actual stack parameters or data. In Option 3, sources are modeled as a group. If the group is shown to contribute, all the sources are eligible regardless of the individual emissions. DEQ proposes to run the model both collectively and individually to see which result is most advantageous. Ms. McIntyre commented that Options 2 and 3 seem to give DEQ the most flexibility in exempting stationary sources from the program.

Ms. Anderson said the three states are currently drafting the modeling protocol based on Appendix Y guidance. The protocol will include a list of potential BART-eligible sources. The draft will be available to the rulemaking group for feedback as well as being published for public comment before going to EPA for approval. It should be available the week of March 13, 2006 and the met data set should be ready in May, 2006.

Mr. Edwards stated DEQ would like to look at the sections of Appendix Y that provide the most flexibility and then discuss the ramifications of implementing those parts.

#### Deciview Threshold

Ms. McIntyre asked if there is flexibility in Appendix Y regarding the deciview threshold. Ms. Anderson said the guidance states that a source with a 1.0 deciview impact is determined to cause a visibility impact and any source with a .5 deciview impact is a contributor. States have the option of lowering the level below .5 deciview. Ms. McIntyre said she thinks this was written for eastern states and that it could give Idaho flexibility to have a higher threshold. Mr. Edwards added that since Idaho's Class I areas are so pristine, it will be more difficult to improve them. He said setting a threshold higher than .5 deciview would not be advisable.

Lisa Kronberg asked if there is modeling that demonstrates how many deciviews of impact are contributed by prescribed burning and agricultural burning. Mr. Edwards said WRAP modeling speaks to fire as a whole. Ms. Kronberg questioned, if modeling

shows the naturally occurring smoke is the big contributor, would industry be required to install additional controls to compensate for the fire contributions. Mr. Edwards answered that industry sources must do their portion and DEQ would hope industry can assist in encouraging other source types to lower their impacts. In response to this comment, Ms. McIntyre said that it is the role of DEQ, not IACI, to get all source types to the table. Mr. Edwards stated that DEQ would appreciate having IACI's positive support when the SIP and rule go to the Board and the Legislature. Martin Bauer acknowledged that if a BART alternative pulls in other sources, it will be DEQ's responsibility to ask those parties to the table. They currently are taking part by participating in various forums in WRAP. Ms. McIntyre said IACI thinks these contributors need to be part of the DEQ rulemaking now so they can begin to understand their impact. Mr. Bauer added that reviewing the BART aspect first may determine stationary sources are not contributors and they may be able to drop out of the process while DEQ moves on to other control measures.

#### Applicability Test - P4 Argument

Bob Wilkinson commented that his client continues to be concerned about the applicability test in the Regional Haze Rule and Appendix Y. They are concerned about using emission unit, how is it defined and how to determine what constitutes a BART-eligible source. He added it could be argued that Appendix Y is more stringent than the Regional Haze Rule because the definitions appear to allow more sources to be pulled into BART. Use of a more stringent guidance may not be appropriate under Idaho statute. Ms. Kronberg responded that use of the guidance is an option provided by EPA and, therefore, would not be more stringent.

#### Draft Rule

Ms. Kronberg suggested the group could move forward by drafting a rule that includes Appendix Y, Section 2 and revise the rule as the BART analysis proceeds. Before the rule is final, the group will have many opportunities to discuss what should be included and what should not. Mr. Wilkinson said he agrees but would like to preserve his arguments.

Ms. Edwards asked if the group could agree to look at BART and the alternatives along with the sections of Appendix Y that provide flexibility and begin drafting a rule. Ms. McIntyre asked if DEQ envisions writing an entirely new section of rules for regional haze or try to mesh it into existing sections. He said it may be better to have an entirely new section, however, revisions will also be needed in some existing sections, such as the New Source Review and PSD. Using the Montana rule as an example, Idaho would probably incorporate the definitions under Section 301, adopt portions of Appendix Y, set the deciviews at .5, and include any Appendix Y sections that provide flexibility. Mr. Edwards stated he does not think there is anything in the rule that gives DEQ the authority to set reasonable progress goals. It is required under the Clean Air Act but nothing is mentioned in the rules.

Ms. Kronberg added the open burning, and prescribed burning sections will require revision, which will necessitate understanding on the part of the Forest Service and the

BLM about how these rules will affect them. Ms. Anderson added that minor sources near Class I areas also have an impact and DEQ will need the authority to look at visibility.

### Setting Progress Goals in Class I Areas

The discussion turned to the Class I areas and which state would assign the reasonable progress goals. Since the monitor for Hell's Canyon is in Oregon, that state will probably set the goals. Montana will probably have control of the Yellowstone Park goals. Idaho will be responsible for its sources' contribution to those areas. In the Idaho SIP, DEQ would explain the interaction among the states and discuss how the emission reductions will meet reasonable progress goals. WRAP, through the information provided by Idaho, is actually setting Idaho's contribution.

### DEQ's Authority to Revise Rules

Mr. Wilkinson asked if DEQ has the legislative/rule authority to revise some of these rules. Following are the possible areas that may need authority and change:

- New source review
- Prescribed burning
- Crop residue disposal (under Dept. of Agriculture)
- Construction dust/fugitive
- Mobile sources
- BART
- Visibility/PSD
- Minor sources

There was discussion about the newly proposed ethanol bill in the Legislature and about various grants and programs that DEQ has implemented to reduce emissions from mobile sources. Mr. Edwards said DEQ can take credit in the SIP for many of these projects. Some of these activities may need to be addressed in the rules in order to establish enforceability.

Ms. McIntyre stated that there are potentially eight areas of the rule that will need draft text revisions by July. Mr. Bauer said the group should try to get as much done as possible by July. DEQ can revise the schedule later if necessary.

### **INTRODUCTION TO EMISSIONS TRADING**

Chris Ramsdell, DEQ Emission Inventory Coordinator, presented information on the backstop trading program (see attached PowerPoint presentation). Idaho has the ability to develop its own trading and enforcement system. The federal trading program rule is still in the draft/proposed stage. A trading program can be Idaho-specific or can be regional or multi-state. A regional program would require one administrative person and each member state should have the same administrative process.

Mr. Edwards added that a trading program is just one alternative to BART. In a cap-and-trade program, BART facilities may incur more costs since additional monitoring is

required. In order to have a successful trading program, BART facilities, at a minimum, must be included. A state can do a cap-trade program for one pollutant or for all.

### **PAT CUMMINS - WRAP**

Pat Cummins joined the meeting by telephone to discuss the backstop trading program. Mr. Cummins explained the status of the 309 program trading program.

There is virtually no difference between 308 and 309. WRAP does not have the final revisions from the court remand of the provisions that contained the 309 trading program for SO<sub>2</sub>. However, in general, the final rule will follow the proposal. Essentially it means that any trading program that WRAP develops has to meet the same rule whether under Section 308 or 309. States could submit it as a 308 program or a 309 program. It is very unlikely to have a trading program for SO<sub>2</sub> or NO<sub>x</sub> if they are not able to re-establish the SO<sub>2</sub> program under Section 309 for at least 4 of the 5 (Oregon, Wyoming, New Mexico, Utah, Arizona) states that submitted plans under 309.

The steps are (a) to re-establish the SO<sub>2</sub> program for the states that submitted 309 SIPs and (b) expand that to include a NO<sub>x</sub> program, focusing primarily on electric utilities, specifically coal-fired power plants for both of those pollutants. The next step would be to figure out what other states and sources might be brought into a program.

They do intend to follow the backstop trading program where they would set milestones beginning in 2008 and have milestones continue through 2018. The difference between now and when the 309 SIPs were submitted two years ago is no allowances were allocated. There was discussion about how allowances could be allocated if the program was triggered but no allowances were set down to the source level. Allowances will have to set this time to alleviate any ambiguity when utilities go to their public utility commissions for rate setting. Utilities would like to see a trading program from day one and not go through milestone setting and the trigger mechanism. This would cause a large, costly administrative workload for states. Mr. Cummins said he thinks the objectives can be reached through continuing with the backstop approach and allocating allowances for each year of the program so every source would know for any given year what their emissions allowance would be. Sources can make better decisions and not exceed emissions that would trigger the trading program. He commented that sources could do trading among themselves or larger utilities could management emissions among multiple intra-company units. The goal of 309 has been to avoid a trading program.

Other states and sources could participate under 308 or 309 for those that are eligible for 309 including Idaho. Idaho or other states that did not originally do a 309 SIP could still participate. The benefits of 309 may not be particularly great for Idaho because it specifically addresses sixteen Class I areas on the Colorado Plateau - Idaho probably does not contribute to those areas.

Mr. Cummins said to establish milestones, Idaho would look at current emissions from the sources that would be incorporated. One of the criteria that will have to be met by

the sources is the ability to monitor and verify emissions. Idaho would look at current emissions from BART-eligible sources and power plants and apply the presumptive limits for SO<sub>2</sub>. For other source categories, he did not know what would be needed and if presumptive limits are available. A simplified level of analysis of those sources and what might constitute BART for them would have to be done so an emission reduction obligation could be assigned. This would be the basis for setting the allowances for individual sources, which would be the aggregated number for the state, and ultimately included in the aggregated regional number. It is the regional number that matters because as long as collectively the regional states stay below the number, then the trading program is never triggered. For any source covered under the program, it is not practical to bring sources into the program unless there is an expectation that those sources are going to have to reduce emissions either to meet BART or to meet other requirements. In the earlier SIP submittals, states included all the sources over 100 tons/year. This does not make sense if there is no expectation that sources are going to reduce their emissions or there is no other requirement that they would need to meet to reduce emissions.

He said there has not been much discussion about how to deal with non-BART sources. A non-BART source might be a candidate for the program if it is in close proximity to a Class I area, contributes to haze and there are cost-effective controls that could be placed on the source. The state must decide which sources need to be regulated for regional haze and at what levels they should be regulated either as a result of BART or a reasonable progress requirement. The program would set an expectation of what the future emissions for each source would be and that would become the state milestone. Then the individual states' milestones would become the regional milestone.

Ms. McIntyre asked about the mechanics of how the non-EGU sources in the five 309 states are contributing to meeting the milestones. As the SO<sub>2</sub> backstop trading program is re-established, some of the same principles of the 1999 Annex program will carry over. Mr. Cummins said under the Annex program, sources over 100 tons/year were included without regard to any other criteria. He thinks states will begin with the utilities and then decide who needs to be added; it would be selective on a source-by-source basis, potentially on a source-category basis. The Annex milestones were set exclusively on the basis of BART. Non-BART sources were included but no attempt was made to evaluate those sources. The result was 90% of the expected reductions came from power plants and 10% came from non-utilities. Because the utilities probably made greater reductions, the non-utility component might have made little reduction to keep the region under the goals.

The role of non-utilities in the new program will be different, the number of sources included will be smaller and the expectations for allowances will be clearer, but to the extent the universe of non-utilities exists, there could be benefits as compared to source-specific controls. Those are the benefits of a trading approach and the flexibility and cost-effectiveness associated with it.

Ms. Kronberg asked about the small sources and their impact on Class I areas. She asked why it is more beneficial for them to have a cap-and-trade program and how that would achieve reasonable progress goals. If a non-utility source impacts a Class I area at .5 deciview, what is the benefit of the state being in a cap-and-trade program? Mr. Cummins responded, this is a key aspect. The state would have to demonstrate that the overall visibility impairment would not be worse at any Class I area and that on average it would be better under a trading program than if a specific limit was placed on every source. There is a risk to a source when the state goes through an analysis that shows Source One emits this much SO<sub>2</sub>, impacts visibility and the state analyzes what the level of control is that equates to BART. Instead of telling that source they should reduce their emissions by x%, Source One will be lumped into a trading program with other sources and may buy allowances from a state like Arizona in order to comply.

Ms. Kronberg asked further that if Source One buys the allowance instead of putting control on, does not the impact still exist. Mr. Cummins said that is the risk to the source that someone may come back in the future and say Source One is still impacting the Class I area and we are going to sue. He said states have to look collectively across the west and see how emissions are being reduced. Maybe Source One did not make a reduction, but Source Two did more than what was expected, so that regionally the benefit is at least as great as if they installed individual controls. It would not work very well if Idaho joined a program like this and the expectations, due to the economics, were that all the reductions would take place someplace else. It would be difficult to demonstrate this is satisfactory, especially if there is a large source that is in close proximity to a Class I area. The state would be getting into a reasonably attributable impairment question, which satisfies the requirements under Regional Haze but not necessarily the requirements under reasonably attributable impairment provisions of the CAA.

Steve Body asked would they not be exempt under the reasonably attributable section of BART and would they be exempt from other control measures to achieve reasonable progress. Mr. Cummins said, yes. The provisions associated with reasonably attributable visibility impairment are separate from the provisions associated with regional haze. If a source is controlled for regional haze, presumably reasonably attributable concerns are also addressed. If a source is participating in a trading program and by doing so meeting the requirements of BART and reasonable progress, but that source does not put controls on and that source is later found to be impairing a Class I area, the source is at risk. No immunity can be offered by the state. If you have a big source near a Class I area and the state needs to make reductions, that big source is probably where reductions should be made.

Ms. Kronberg asked, if it is accurate to say that regardless of what program Idaho decides on, it must meet the glide paths in its Class I areas. Mr. Cummins said Idaho needs to meet reasonable progress - reasonable progress is not necessarily the glide path. She asked why a source that is contributing to visibility would spend money to buy credits from another state to improve that state's glide path and do nothing for the visibility in Idaho. Mr. Cummins said the cap-and-trade program could be a less ideal

approach in some states for some sources. WRAP is primarily focusing on utilities. He said he thinks WRAP will establish a program for electric utilities and selectively add other sources. A multi-state trading program would make sense for those states in the West that have coal-fired power plants where there are many units spread out somewhat uniformly. For those regions you can have improved visibility even if there is some trading because overall emissions will be reduced.

Ms. Anderson asked if the cap-and-trade program would be more beneficial for Idaho if a brand new coal-fired plant came into Idaho. She also asked if Idaho could enter into a trading program with Oregon, Washington, Idaho or have a stand-alone program. There was discussion about having a new source set aside, but recently there has been discussion about not including new sources under the milestones. New sources will be subject to BACT and to a visibility test. There is no intent in the Regional Haze program to discourage new, clean industries that are highly controlled from coming to the West. A sub-regional trading program is an option. WRAP could provide whatever assistance was needed.

WRAP has no statutory or regulatory authority; their role is to facilitate the analysis, the policy and technical work and provide the states the tools to develop a regional haze plan.

Ms. Anderson asked if WRAP has discussed any other alternatives to BART except cap and trade. Mr. Cummins said no other alternatives have emerged that seem feasible at this time.

Ms. Kronberg asked for Mr. Cummin's opinion as to what kind of program Idaho should have. He responded, since Idaho has few BART sources, very low emissions, and no coal-fired plants, it might be beneficial for the state to decide what reductions are needed to obtain maximum certainty under the Regional Haze and visibility requirements, and simply make those reductions instead of dealing with a trading program.

Mr. Edwards reminded those present that one of the requirements for a trading program is additional monitoring at the stack level.

### **SUBCOMMITTEE ASSIGNMENTS**

Mr. Edwards proposed establishing three subcommittees to review the various issues and develop rules or revisions as needed. Subcommittees suggested were:

- BART/Alterative to BART
- NSR/PSD/Minor Sources
- Other Control Measures

After discussion, the group decided it would be more effective to have all the discussions occur in the Steering Committee. All members thinks issues discussed in

the subcommittees will be revisited in the larger group, so a subcommittee structure is not needed.

### **SCHEDULE FOR FUTURE MEETINGS**

The next negotiated rulemaking meeting was scheduled for March 21, 2006 from 8:30 a.m. – noon at the DEQ state office in Boise.

Agenda will include:

- Appendix Y - Discussion of pros/cons; determine where flexibility is provided (all)
- Strawman BART Rule (Mike Edwards)
- Additional Controls for BART (all)
- NSR Recommendations (Mary Anderson)

Mr. Edwards added that facilities who have not met with DEQ, should do so prior to March 21.

The meeting adjourned at 2:40 p.m.