

**DEQ – Air Quality Division
SUMMARY OF NEGOTIATED RULEMAKING
REGIONAL HAZE
Docket 58-0101-0601
May 18, 2006**

PARTICIPANTS

Anderson, Mary - DEQ-Modeling
Dzomba, Thomas - Forest Service-Montana (participated by telephone)
Edwards, Mike - DEQ-SIP Coordinator
Kronberg, Lisa - Attorney General's Office
McIntyre, Krista - Stoel Rives
Ottersburg, Eri - Geomatrix
Simon, Mike - DEQ-Stationary Sources
Simpson, Julie - Nez Perce Tribe
Wagner, Pete - DEQ-Pocatello Regional Office
Wilkinson, Bob - Husch & Eppenberger - P4
Wilkosz, Robert - DEQ-Mobile/Area Source
Heitman, Phyllis - DEQ-AQ Management Assistant

NOTE: All attachments referenced in this summary are available on the DEQ web site at www.deq.idaho.gov/rules/air/58_0101_0601_negotiated.cfm, or by calling the DEQ Air Quality Office at 208-373-0256.

Mike Edwards called the meeting to order at 7:35 a.m. on May 18, 2006 at the Division of Environmental Quality, 1410 N. Hilton, Boise, Idaho. Participants introduced themselves.

STRAWMAN RULES

A small work group convened to review the following draft rules and comments:

- DEQ Draft Rules - Regional Haze Vers. 3 - 5/17/06
- IACI Comments on Vers. 1 and 2 - 5/8/06
- P4 Comments - 4/13/06
- General Definitions (undated)

Mr. Edwards advised the group that DEQ staff reviewed IACI's comments and revised its Draft Rule - Regional Haze Vers. 2. Today's discussion centered on Draft Rule Vers. 3.

Lisa Kronberg prefaced the discussion by saying that DEQ in Rule Vers. 1 tried to pattern the rule after the Code of Federal Register (CFR) and the comments from IACI and P4 asked DEQ to write the federal regulation verbatim into the state rule. She stated that normally it is better to adopt a federal regulation verbatim so federal guidance and federal interpretation can be utilized. In the current rulemaking it is

somewhat awkward to adopt the federal regulation in its entirety and still maintain the intent and have it make sense in our rule. Some of the CFR states "the department shall do this" but the state's goal is to ensure the Department has the authority in its rules to compile a Regional Haze SIP.

Ms. Kronberg reminded the group that Mr. Wilkinson and his client have some difficulty with DEQ adopting Appendix Y and those concerns are based on determining BART-eligibility and the position he takes regarding emissions unit versus stationary source. IACI's comments were more along the line of as a general rule it is not a good idea for the state to adopt into law what the federal government writes as guidance. Unfortunately, the Regional Haze Regulations are such that at least some parts of the guidance are really needed in the state rule or at least the intent of the guidance is included in the rule. Two areas are in what numerical value will be assigned to "cause" and to "contribute."

Section-by-Section Review

Members of the group went through the Rule Version 3 draft section-by-section and either came to agreement on revisions DEQ has made or suggested additional changes. Revisions will be incorporated into a Version 4 document and submitted to the rulemaking group for review on May 31, 2006. Points discussed are listed below.

Regional Haze Rules

Section 006 - Definitions

- 006.xx Cause Visibility Impairment
- 006.xx Contribute to Visibility Impairment
 - Group of sources opposed to individual source
- Relationship between Regional Haze SIP and RAVI:
 - Incorporate Section 308; decide how much of Section 302 to include
 - Is it important to structure so BART sources are not subject to RAVI in the future
 - Talk to EPA:
 - o Is requiring BART eligible sources that did not put on equipment that was available; because they are back into the mix under the reasonable process goal to look at additional control measures, does that satisfy the old 302 requirement of installing BART if technology becomes available?
 - o If a facility has expended funds to satisfy BART, are they done?
 - Is a determination still classed as a BART determination if there was no technology available?
 - Do we want to incorporate Section 308 and get EPA approval, then address RAVI if it appears to be necessary?
 - If FLM exercises RAVI authority in an area, what input into that process/decision does the state have?
 - As much as possible, RAVI process has been eliminated from Rule Version 3
- 006.xx Visibility Impairing Pollutant
 - Section should have been deleted

Section 107 - Incorporations by Reference

- 107.03.x - Appendix Y deleted
- DEQ still deciding what need to be incorporated

Section 203 - Permits Requirements for New and Modified Stationary sources

- DEQ concerned about fugitives that may not trigger a facility to be major but they do have a lot of fugitives - this should be covered under Section 650 or Section 211
- 203.02.xx - Effect of Visibility was deleted

Section 204 - Permit Requirements for New Major Facilities in Nonattainment Areas

- Can state or tribe designate a Class I area; would state's SIP need to recognize?
- Do rules need definition of Mandatory Class I Federal Area?
- Discuss this section with larger rule group to ensure no issues are being overlooked

Section 205 - Permit Requirements for New Major Facilities in Attainment Areas

- Renumber and reorganize sections to raise "Effect on Visibility" to a subsection level with an introductory line
- May need to revise Section 202.01.b.v and 202.01.c.v in the application process to include visibility impact analysis

Section xxx - Regional Haze Rules

- Revise to state purpose is to "address regional haze visibility impairment in mandatory Class I Federal Areas"
- Add cite as 40 CFR308(a)

Section xxx - Reasonable Progress Goals

- This section should go ahead of BART Requirements
- Insert language that the "Department will establish" the goals
- Added xxx.01.b and xxx.02. from federal regulations to clarify reasonable progress goals
- Reorganize xxx.01 and 02 to add content of subsections 308(d)(1)(iii), (iv), (v); add consultation with affected states at xxx.01.c
- Combine enforceable standard/emission limitations for Idaho and long-term strategy at new section xxx.
- Review 308(d)(3)(ii) Long-Term Strategy; decide what to include

Section xxx - BART Requirement

- Section xxx.01 - the opening statement will indicate that the determinations shall be completed and the subsections will specific whether the Department or the facility has the lead
- IACI's recommended sections xxx.02-06 will be inserted intact; maintain DEQ's xxx.01.a and b.
- Section xxx.04 BART Alternative:
 - Why limit to one source category
 - Revise to say "causing an impact to the same Mandatory Class I Federal Area may be grouped together"

Construction Activities Rules

- Add Mandatory Class I Federal Areas to introductory purpose language
- Cross-reference to long-term strategy or best management practices
- DEQ has authority to look at dust; delete Section 652
- What construction activities are being targeted? Discuss in larger rule group; should it be defined in the Idaho rule?

Smoke Management Rules

- Section 600 - Open Burning - Cross-reference to long-term strategy or best management practices

Definition Rules

This draft is not ready for review by the group at this time; DEQ will refine and bring a second version to the next meeting. Members discussed that changing definitions or incorporating by reference for regional haze might impact how the terms are used in other air programs, so care must be taken in making revisions. Ms. Kronberg also mentioned that this rulemaking was not public noticed as a cleanup rule, so the group must ensure they do not make revisions outside of the rule scope.

General Comments

- Standardize capitalization of "Mandatory Class I Federal Area"
- Rule will need a preamble document
- Remove redline/strikeout to make Draft Rule Version 4 easier to read and understand

SCHEDULE FOR FUTURE MEETINGS

Future negotiated rulemaking meetings are scheduled for

- May 31, 2006, 8:30 a.m. - noon, DEQ Offices, Boise
Agenda: Review revised rules developed at 5/18 meeting
- June 20, 2006, 8:30 a.m. - noon, DEQ Offices, Boise

Meeting adjourned at 10:30 a.m.