



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711



OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

JUL 31 2002

Ms. Sandra Ely
Chief, Air Quality Bureau
State of New Mexico
2048 Galisteo Street
Santa Fe, NM 87505

Dear Ms. Ely:

Thank you for letter of June 28, 2002. In your letter, you noted a number of questions related to a recent court decision and its effect on both sections 308 and 309 of the regional haze rule. As you know, we have addressed a number of these issues in a recent letter to the co-chairs of the Western Regional Air Partnership (WRAP) Initiatives Oversight Committee. A copy of this letter is attached. The following are responses to the specific questions raised in your letter:

1. Question: What is the interpretation of the plural in the Court decision as in "best available retrofit technology (BART) provisions?" What are the referenced "BART provisions in the Court decision? These questions are directed at clarifying the Agency's interpretation of the reference to 308(e) in the Annex development process under 309(f).

Response: The Court ruled on the BART provisions 40 CFR 51.308(e)(1)(ii)(A) & (B) and the accompanying statements in the preamble regarding Environmental Protection Agency's (EPA's) interpretation of the language in the first paragraph of 40 CFR 51.308(e)(1)(ii).

2. Question: Could EPA promulgate any revised regional haze rule and annex simultaneously (i.e., in the same comment and rulemaking process that is currently underway noticed in the May 6, 2002 Federal Register)?

Response: It would be possible to publish a revised regional haze rule and annex simultaneously. This would, however, lead to a delay in publication of the final annex rule. To revise the regional haze rule to respond to the court's ruling, EPA will need to issue a notice of proposed rulemaking, to take comment on the proposal, and to comply with other applicable administrative requirements.

3. Question: How could "new" BART provisions differ from those invalidated by the Court?

Response: We are in the early stages of identifying options for responding to the court's decision.

4. Question: Is EPA planning to change the state implementation plan (SIP) due dates? How would these affect sections 308 and 309?

Response: EPA plans to seek a legislative change to SIP due dates for plans submitted pursuant to section 308, with the goal of harmonizing the SIP schedules for regional haze with those for PM_{2.5}. This would not affect the due dates for section 309 SIPs.

5. Question: What is EPA's understanding of the scope of the remand from the Court? Does EPA believe that the entire regional haze rule (308 and 309) has been remanded to EPA or only those specific provisions discussed in detail (BART and the deadline-extension)?

Response: The court did not remand all of sections 308 and 309. Indeed the court upheld the basic structure of the regional haze program, including the overall goal of ensuring reasonable progress towards natural background conditions. The court vacated and remanded only the BART provisions of 40 CFR 51.308(e)(1). The court did not remand or vacate the provisions of the rule related to the schedule for submitting SIPs although it suggested that EPA reconsider the schedule when acting on the remand of the BART provisions.

6. Question: Will EPA preserve the states' abilities to benefit from participation in a regional planning organization (deadline, etc.)?

Response: As noted, EPA plans to seek a legislative change to the section 308 schedule in a way that would provide consistent deadlines across various programs. We believe that regional planning is very important in addressing regional haze issues, and we fully intend to support and encourage State participation in regional planning organizations.

I hope these responses are helpful to your ongoing stakeholder process. If you have any further questions, please contact me at (919) 541-5505, or Tim Smith of my staff at (919) 541-4718.

Sincerely yours,

for John A. Edwards

Lydia N. Wegman

Director

Air Quality Strategies and
Standard Division

Attachment