

Utah Office, 444 East 800 North, Logan, UT 84321  
ph. (435) 752-2111 fax (435) 753-7447  
e-mail: [hpendery@pcu.net](mailto:hpendery@pcu.net)

**FILED**

SEP 28 2006

September 27, 2006

Terri A. Lorenzon, Director  
Environmental Quality Council

Wyoming Environmental Quality Council  
122 West 25<sup>th</sup> Street  
Herschler Building, Room 1714  
Cheyenne, Wyoming 82002

Dear Environmental Quality Council,

Below and enclosed are points and concerns the Wyoming Outdoor Council requests that you consider at your meeting on October 10 in Pinedale where you will be considering the proposed mercury and best available retrofit technology (BART) rules.

Enclosed are comments we previously submitted to the Air Quality Advisory Board with respect to these two proposed rules. With respect to the BART rule, we would like to reemphasize two points we previously made. First, it is our view that the definition of BART in the proposed rule provides more than enough flexibility to deal with relatively minor contributors to haze problems and that excluding these sources prior to fully evaluating the potential benefits of requiring BART is not necessary and is not helpful for meeting haze reduction needs. This provision would apparently lead to 38 percent of the sources potentially subject to the rule being excluded from the rule before the application—and the benefits—of BART are even considered. This seems like too high of an exclusion rate to us. While the state will of course still have to demonstrate “reasonable progress” toward achieving natural visibility conditions under EPA’s regional haze rule, and thus excluded sources might later become subject to regulation, such an approach seems inherently reactive rather than proactive to us, as well as speculative, and thus in our view is not as advisable as a rule that requires all sources potentially contributing to haze problems to be subject from the beginning to the degree of BART deemed appropriate and necessary.

The second point made in our prior comments that we would like to reemphasize is the need for explicit and full opportunity in the new rule for participation by federal land managers in BART considerations. These are the agencies charged with the affirmative responsibility to protect Class I areas from the effects of haze, and thus it seems to us they should have an explicit place at the table pursuant to this new rule. While the federal land managers may well have many other points of engagement in haze-related matters—such as participation in the Western Regional Air Partnership—in

our view this does not negate the need for explicit provision and allowance for their participation in BART considerations which are explicitly intended to reduce haze problems, which obviously implicates the Class I areas these agencies are charged with protecting.

In addition to these two specific points, we also continue to believe that the other points made in our July 3, 2006 letter to the Air Quality Advisory Board have merit, and we ask that you consider them at your October 10 meeting.

With respect to the proposed mercury rule, we request that the Environmental Quality Council consider our request that rather than adoption of the EPA cap and trade approach developed pursuant to section 111 of the Clean Air Act, that Wyoming instead pursue the approach developed and endorsed by many other state and local air pollution control officials, which regulates mercury emissions from power plants as a hazardous air pollutant under section 112 of the Clean Air Act, and accordingly requires application of the Maximum Achievable Control Technology (MACT). We have enclosed this proposal from the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO), and ask that this approach be considered as an option to the approach submitted by the Department of Environmental Quality. Where a compound clearly as hazardous as mercury can be is under consideration, it seems apparent to us that it should be regulated as a hazardous air pollutant, and that even if the exact contributions of mercury pollution contributed by each power plant cannot be attributed at this time, it is nevertheless appropriate to insist on the maximum control possible in all cases in order to ensure public health and welfare is protected. We believe that is what the Clean Air Act calls for.

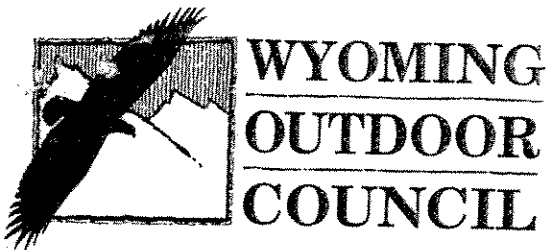
Thank you for considering these comments, and I regret that I will not be able to attend your October 10 meeting due to long-planned travel out of the country.

Sincerely,

A handwritten signature in cursive script that reads "Bruce Pendery".

Bruce Pendery,  
Program Director and Staff Attorney

Enclosures



Utah Office, 444 East 800 North, Logan, UT 84321  
ph. (435) 752-2111 fax (435) 753-7447  
e-mail: [hpendery@pcu.net](mailto:hpendery@pcu.net)

**FILED**

SEP 28 2006

Terri A. Lorenzon, Director  
Environmental Quality Council

July 3, 2006

Wyoming Air Quality Advisory Board  
Herschler Building  
122 West 25<sup>th</sup> Street  
Cheyenne, Wyoming 82002

**Re: Comments on Proposed Chapter 6 Section 9 BART Rule**

Dear Board:

Please accept these comments on behalf of the Wyoming Outdoor Council regarding the proposed Chapter 6 Section 9 Best Available Retrofit Technology (BART) rule (hereinafter, Proposed Rule) that you will consider at your July 10, 2006 meeting in Gillette.

We are concerned about the exemption provided in Section 9(d)(i)(C) of the Proposed Rule and believe it should be modified in one of two ways. First, we believe this exemption should be totally removed from the rule and that any source that causes or contributes to visibility impairment in a Class I area should be deemed a source subject to BART. We take this view for several reasons.

First, we believe the way to provide flexibility with respect to the requirements to implement BART are provided in the definition of BART itself, making a special exemption unnecessary. See Section 9(b) of the Proposed Rule (defining BART). This definition allows case-by-case determinations of what would be required as BART. Flexibility is provided to deal with, among other things, the technology that is available for a facility, costs of compliance, and perhaps most importantly "the degree of improvement of visibility which may reasonably be anticipated to result from the use of such technology." Since the Section 9(d)(i)(C) exemption is clearly intended to eliminate from BART regulation sources deemed to be minor contributors to visibility impairment, there is no need for it since the definition of BART already requires this consideration in determining what BART will be required.

Furthermore, EPA's regulations make it clear that if "any" visibility impairment in Class I areas might result from a source it should not be subject to exemption. 40 C.F.R. Part 51, Appendix Y, § III (consideration of exemption only applicable where the source "may not reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area"); 40 C.F.R. § 51.308(e) (BART applicable to "each BART-eligible source

that may reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory Class I Federal area"). The proposed exemption is not limited to sources that would not cause "any" visibility impairment in Class I areas, rather it is applicable to sources deemed to be minor contributors to impairment because their eighth worst day of visibility impairment per year is less than 0.5 deciviews ("98<sup>th</sup> percentile daily change in visibility . . . is less than 0.5 deciviews"). But this is not the standard provided by the EPA regulations; "any" impairment should prevent a source from being exempted (if it is truly a minor source of impairment, its regulation can be dealt with through BART itself). Since the Proposed Rule specifically adopts the provisions in Appendix Y of the EPA regulations as controlling, we believe that if a source could cause "any" visibility impairment in a Class I area it should not be exempted from BART. See Section 9(c) of the Proposed Rule (adopting Appendix Y).

Furthermore, based on information we received from the Air Quality Division, it appears that if the proposed exemption were put in place, 5 out of the 13 identified BART-eligible sources would be exempted. This is 38 percent of the potential sources being exempted from BART before its specific application is even considered. We believe that is too high of a level of exemption, especially when the definition of BART will allow for any needed flexibility if these sources are indeed minor contributors to visibility impairment.

The second way in which we believe the exemption might be modified would be to make it more stringent. The exemption could be limited to the 99<sup>th</sup> percentile of daily changes in visibility rather than the 98<sup>th</sup> percentile. This would mean that a source would have to remain below 0.5 deciviews of visibility impairment on the third or fourth worst days of impairment per year, rather than the on the 8<sup>th</sup> worst day. This would seem to be far more in keeping with the goals of the EPA regional haze rule, as well as the Clean Air Act itself. 42 U.S.C. § 7491(a) (it is the national goal to prevent "any" future impairment of visibility in Class I areas and to remedy any existing impairment). Thus, we believe that if Section 9(d)(i)(C) is not eliminated entirely, it should at least be made more stringent so that fewer sources are exempted.

Somewhat similarly, Section 9(e)(i) allows sources subject to BART to further limit the potential applicability of BART by allowing them to exclude so called "de minimis" levels of NO<sub>x</sub>, SO<sub>2</sub>, and PM<sub>10</sub> pollution. We believe this provision should be eliminated. The relevant question is whether the source will cause or contribute to visibility impairment in a Class I area. If it will, all of its emissions should be considered in the BART analysis. Again, the definition of BART allows for application of any needed flexibility to deal with relatively minor contributors to impairment of visibility.

Section 9(e)(iii) states that the Administrator may approve or amend proposed emissions limits, BART technology, and the compliance schedule. We believe this section should be expanded so as to specifically include the standards at 40 C.F.R. §§ 51.308(d)(1) (there must be improvement in visibility on the most impaired days and no degradation on the least impaired days) and (d)(1)(i)(B) (the rate of progress needed to attain natural visibility conditions by 2064 must be determined) as considerations for approval or amendment of BART permits. The stated intent of the Proposed Rule is to position

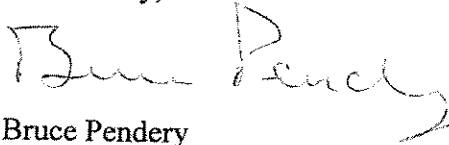
Wyoming to have an approvable regional haze State Implementation Plan rule. That being the case, we believe the EPA regional haze rule standards should be specifically acknowledged and incorporated into the Air Quality Division's BART permit approval process.

Sections 9(e)(viii) and 9(f) contain some ambiguity in our view that should be rectified. Clearly, provision is being made for emissions trading to be an alternative for BART, which is permissible, but the Proposed Rule, particularly Section 9(f), is somewhat unclear about what standards any emissions trading program alternative must meet. The reason for this, in our view, is that the term "BART Alternative" does not actually appear in the language of the regulation; it appears only as a caption. The term "BART Alternative" is defined in Section 9(b) and any alternative to BART must "achieve greater reasonable progress toward national visibility goals than would have resulted from the installation, operation, and maintenance of BART", but we do not believe this clear, mandatory language is necessarily specifically imported into Section 9(f). We believe there is some level of ambiguity in the regard and that it should be corrected by specifically importing the term "BART Alternative" into the regulatory language.

Last, the Proposed Rule makes no specific provisions regarding the involvement of Federal Land Managers (FLM) in this BART process. We believe this should be corrected, perhaps by incorporating by reference other sections of the Wyoming Air Quality Standards and Regulations that do make provision for FLM involvement. In any event, given the "affirmative responsibility" of FLMs to protect the air quality related values in Class I areas, we believe they should be given an important and meaningful place in this BART review and permitting process.

Thank you for considering these comments.

Sincerely,



Bruce Pendery  
Program Director

cc: Dave Finley  
Richard Long, EPA