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September 15, 2005

OAR Docket / Ms. Kathy Kaufman

Environmental Protection Agency

Mailcode: B102

1200 Pennsylvania Ave., NW

Washington, DC 20460

RE: Docket ID No. OAR-2002-0076; 70 FR 44153-44175

Dear Ms. Kaufman,

The Mid-Atlantic / Northeast Visibility Union (MANE-VU) thanks you for the opportunity to submit comments on the "Regional Haze Regulations; Revisions to Provisions Governing Alternative to Source-Specific Best Available Retrofit Technology (BART) Determinations; Proposed Rule," 70 FR 44153-44175. MANE-VU was formed by the Mid-Atlantic and Northeastern states, tribes and federal agencies to coordinate regional haze planning activities for the region.

MANE-VU Class I Areas

ACADIA NATIONAL PARK
ME

BRIGANTINE WILDERNESS
NJ

GREAT GULF WILDERNESS
NH

LYE BROOK WILDERNESS
VT

MOOSEHORN WILDERNESS
ME

PRESIDENTIAL RANGE
DRY RIVER WILDERNESS
NH

ROOSEVELT CAMPOBELLO
INTERNATIONAL PARK
ME/NB, CANADA

Overarching Comments

MANE-VU understands and appreciates the U.S. Environmental Protection Agency's (EPA's) desire to allow states to achieve their visibility goals in a manner that maximizes state flexibility yet also minimizes the potential compliance costs of sources. The proposed BART Trading Rule ("Proposed Rule") reflects EPA's sincere effort to amend the Regional Haze Rule to both respond to the court's ruling in *CEED v. EPA* and to provide flexibility to states in implementing alternatives to BART. (The DC Circuit's decision in *CEED v. EPA* prohibits EPA from requiring that a BART alternative trading program be compared to a source-by-source BART program by assessing the effect on visibility of the source-by-source BART program on a cumulative basis).

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The Proposed Rule details the specific elements of a cap and trade program as an alternative to source-by-source BART that might provide greater reasonable progress towards the national visibility goals in the most cost-effective manner. The Proposed Rule goes to great lengths to incorporate the *CEED* ruling into the new methodology whereby a state would compare the expected visibility improvement under a cap and trade program to the expected improvement under a “traditional” source-by-source BART approach. The Proposed Rule also describes in detail the fundamental elements that any cap and trade program adopted in lieu of BART must contain.

Unfortunately, MANE-VU believes that the intent of the proposed rule is lost in its own minutiae. States must evaluate the Proposed Rule on the basis of whether a cap and trade program for BART is a practical alternative to the traditional source-by-source method, and if the benefits of such a program merit the resource expenditure necessary to implement it. When approached from this standpoint, the rule fails to meet the intended goals of greater flexibility and lower costs.

MANE-VU is well aware of the potential overarching benefit of cap and trade programs achieving an environmental goal at least cost to society. The OTC NO_x Budget Program and the Title IV Acid Rain Program are well-accepted cap and trade success stories. The CAIR program will also use a cap and trade program to achieve reductions in SO₂ and NO_x. However, cap and trade is not viable in all situations, and a BART trading rule may be one of those situations where it is not viable.

A viable cap and trade program is premised on a few primary considerations: a large pool of participants, a sufficiently large allowance market to provide correct price signals to the participants and varying marginal costs of control of the traded pollutants. Even if these basic elements are present, a well-functioning program has administrative costs that must be taken into account, and these costs must be lower than the expected overall savings from the trading program to make sense.

A trading program for BART does not meet most of the above basic requirements. Even on a regional basis, much less an individual state basis, there are likely not enough participants to provide a “critical mass” for a BART trading program to be viable. A 2003 report by NESCAUM identified 66 non-EGU BART-eligible sources in nine states. The

66 sources had almost 230,000 tons of SO₂ and just over 90,000 tons of NO_x emissions. Of those 66 sources, New York and Massachusetts had 15 facilities apiece – hardly enough for an intra-state BART trading program. There are likely differing marginal costs of control between and among the 25 non-EGU source categories satisfying that requirement; however, the accurate measurement of emissions needed (with CEMs, for example) for a credible trading program is not likely feasible for these older, smaller industrial categories – a significant resource burden for these smaller facilities in a trading program that would offset potential savings.

The Proposed Rule correctly sets out the minimum required elements of a BART trading program. However, establishing and administering a trading program is a daunting task whether on an individual state or regional basis. MANE-VU believes that EPA's intent to save state resources with the new methodology to compare visibility results between a trading rule and a source-by-source approach will, all good intentions aside, probably not materialize – the new proposed rule anticipates two separate modeling exercises instead of just one with traditional BART. There is no guidance for states whether an intra-state, inter-state, or regional trading program may be preferable. There is no guidance on applicability of a trading program – in fact, the proposed rule states “[W]e encourage States and Tribes to design trading programs to be as inclusive as practicable, in order to maximize the efficiency of the market.” However, the rule suggests that source-by-source determinations might be more appropriate since “...some BART-eligible source categories might not be suitable for participation in a trading program. For example, for some source categories there may be difficulty in quantifying emissions with sufficient accuracy and precision to guarantee fungibility of emission allowances.” Notwithstanding the difficulties in making an applicability determination for entire source categories and whether to exclude them from a trading program, carving out source categories would only shrink the universe of potential participants, the opposite of what is needed for a successful trading program. There is no guidance on setting a cap level for a trading program, possibly the most important step of all. There is no guidance on an allocation methodology. Finally, the proposed rule requires a program evaluation, including opportunity for public comment, every five years to coincide with the periodic report describing progress towards the reasonable progress goals. Such a burdensome evaluation seems unnecessary, especially given that no such evaluation is required for the much larger CAIR trading program.

MANE-VU concludes that setting up and implementing any BART trading program for these limited sources appears to be an administrative nightmare with dubious benefit. Again, we appreciate EPA's attempts to provide states flexibility in reaching their visibility goals however a BART trading program is an unlikely vehicle for that purpose.

MANE-VU sees one avenue that might help states in determining whether to pursue a BART trading program. EPA could allow pre-1962 units that fit the other criteria to be included into the BART requirement. Also, EPA could allow the aggregation of smaller industrial boilers at facilities to allow inclusion of the facility in a trading program. Both of these changes would increase the potential pool of participants and emission allowances needed for a viable trading program. Also, expanding the "BART window" would lead to potential controls on some of the oldest and dirtiest facilities whose continued operation in calendar year 2005 was certainly not intended in the original Clean Air Act.

Finally, MANE-VU believes that there may be other avenues by which a state can implement a program in lieu of BART. Specifically, MANE-VU requests clarification and guidance from EPA as to what provisions in the Clean Air Act states could include in their SIPs to make a better-than-BART showing.

Specific Comments

1) EPA is proposing to add the word "affected" to clarify that every program need not address every Class I area nationwide (i.e., states have discretion in defining an "affected Class I area"). If the EPA makes this change, EPA must now clarify which states have this discretion. Should the states with the Class I area or should all states be responsible for determining when an area is affected by a source? In either case, allowing states to determine when their sources affect a given Class I area could lead to a hodgepodge of uneven and arbitrary BART decisions throughout the country. EPA should clarify when a Class I area is affected by emissions and the radius from a source within which the analysis should be done.

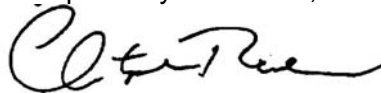
2) MANE-VU does not believe that the USEPA has the authority through regulation to circumvent the Clean Air Act requirement for controlling specific BART sources that

adversely affect visibility in Class I Areas. To avoid potential future legal challenges in this regard, the USEPA should require that the state show it will control all BART identified sources first as part of any showing that it is proposing a "better than BART" program. This will ensure that the requirements of Section 169 of the Clean Air Act are met, potentially expand the universe of credits available for use by non-BART sources, and place controls on the most cost effective, uncontrolled units first. Given the extent of the nations ozone and fine particulate non-attainment areas and the state's responsibility to propose adequate measures under the State Implementation Plan process, these controls on all BART-identified units can be proposed and adopted by the state using the authority of CAIR, Reasonably Available Control Technology, or other Clean Air Act requirements while also meeting the Act's requirements for BART controls on units adversely affecting visibility in Class I areas.

3) EPA suggests that states can demonstrate satisfaction of BART requirements through emissions reductions achieved under a state law or regulation not required by the CAA. EPA gives the CAIR as an example of requirements that could satisfy BART requirements for BART-eligible EGUs since the CAIR emissions reductions would be surplus to CAA requirements as of 2002 (the baseline date of SIPs for regional haze purposes). The MANE-VU states appreciate the availability of such a compliance option, but note that the Proposed Rule does not specify any criteria necessary to make such a demonstration for non-trading programs. If EPA has specific BART satisfaction criteria in mind necessary for EPA to approve a demonstration, the MANE-VU states encourage EPA to include such criteria in the final version of the Rule, as appears to be contemplated in 70 FR 39138.

Thank you for the opportunity to submit these comments. MANE-VU looks forward to EPA's response, and, as always, we look forward to working together to achieve our air quality goals.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Chris Recchia", written in a cursive style.

Christopher Recchia

Executive Director