

(D) In the absence of any circumstances identified in paragraph (a)(5)(i) of this section, the operation of a small Post Office at a deficit.

(iii) *Notice to customers.* Local management must provide notification and questionnaires to customers at the USPS-operated retail facility under study. Local management may determine whether notification is appropriate through media outlets. In addition, the following customers that receive delivery service from the USPS-operated retail facility must receive notification and questionnaires by mail:

(A) Post Office Box customers at the USPS-operated retail facility under study;

(B) Customers whose delivery carrier is stationed out of the USPS-operated retail facility under study;

(C) Customers in the delivery area of the same ZIP Code as the retail facility under study, regardless of whether the delivery carriers for those customers are stationed out of the retail facility under study or out of a nearby facility; and

(D) Customers whom the retail facility under study serves for allied delivery services such as mail pickup.

(iv) *Initial feasibility study due to emergency suspension.* Wherever possible when an initial feasibility study is to be initiated under § 241.3(a)(5)(i)(B) (for example, when it is anticipated that a lease or rental agreement will be cancelled with no suitable alternate quarters available in the community), responsible personnel should initiate the initial feasibility study sufficiently in advance of the circumstance prompting the emergency suspension to allow a meaningful opportunity for public input to be taken into account. If public input cannot be sought sufficiently in advance of the end date of the lease or rental agreement, responsible personnel should endeavor, to the extent possible, to continue operation of the USPS-operated retail facility for the duration necessary to gather public input and make a more fully informed decision on whether to proceed with a discontinuance proposal. Customers formerly served by the suspended facility should receive notice under paragraph (a)(5)(iii) of this section, including by mail, to the same extent that they would have if the facility were not in suspended status at the time of the initial feasibility study, proposal, or final determination.

\* \* \* \* \*

**Stanley F. Mires,**

*Attorney, Legal Policy & Legislative Advice.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2012-0059; FRL-9694-9]

### Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Regional Haze

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving revisions to the Wisconsin State Implementation Plan (SIP) addressing regional haze for the first implementation period, which extends through July 31, 2018. Wisconsin submitted its regional haze plan on January 18, 2012, with a supplemental submittal on June 7, 2012. EPA received comments on its proposed approval, addressing best available retrofit technology (BART) for a Georgia-Pacific Consumer Products, L.P. (Georgia-Pacific) paper facility and for power plants. EPA provides its response to these comments, and concludes that the Wisconsin regional haze plan satisfactorily addresses these requirements. Consequently, EPA is approving an administrative order establishing BART requirements for Georgia-Pacific into the Wisconsin SIP. More generally, EPA finds that Wisconsin has satisfied the applicable requirements for the State to remedy any existing and to prevent future impairment of visibility at mandatory Class I areas.

**DATES:** This final rule is effective on September 6, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2012-0059. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Matt Rau, Environmental Engineer, at (312)

886-6524 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Matt Rau, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR-18)), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6524, [rau.matthew@epa.gov](mailto:rau.matthew@epa.gov).

**SUPPLEMENTARY INFORMATION:** This supplementary information section is arranged as follows:

- I. What was proposed in the proposed rule?
- II. What are the responses to comments?
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews

#### I. What was proposed in the proposed rule?

Wisconsin Department of Natural Resources (WDNR) submitted its regional haze plan on January 18, 2012, with a supplemental submittal on June 7, 2012. This plan was intended to address the requirements in Clean Air Act section 169A and the regional haze rule in Title 40 Code of Federal Regulations 51.308 (40 CFR 51.308). This plan concluded that the Georgia-Pacific paper mill in Green Bay and several electric generating units (EGUs) were subject to requirements for BART. For Georgia-Pacific, EPA proposed action on a draft administrative order that establishes a cap on the sum of sulfur dioxide (SO<sub>2</sub>) emissions and of nitrogen oxide (NO<sub>x</sub>) emissions from the various boilers at the facility, including two boilers subject to the BART requirement and multiple other boilers not subject to this requirement. For the power plants, Wisconsin is relying on the Cross-State Air Pollution Rule (CSAPR) as a trading program alternative to mandating source-specific BART, except that Wisconsin addressed BART for particulate matter (PM) for EGUs by supplementing existing limits with a more stringent PM emission limit for one plant.

EPA reviewed Wisconsin's plan according to the regional haze rule as promulgated on July 1, 1999 (64 FR 35713), and subsequently amended on July 6, 2005 (70 FR 39156), and on October 16, 2006 (70 FR 60631). The July 6, 2005, amendment provides further guidance on provisions related to BART.

EPA proposed approval of the Wisconsin regional haze plan on February 28, 2012 (77 FR 11928). The proposed rule described the nature of the regional haze problem and the statutory and regulatory background for EPA's review of Wisconsin's regional haze plan. The proposed rule provided a lengthy description of the regional

haze plan requirements, including mandating BART, consulting with other states to establish goals for reasonable further progress in mitigating anthropogenic visibility impairment, and adopting limitations necessary to implement a long-term strategy for reducing visibility impairment. EPA proposed to approve the Wisconsin plan as properly identifying the facilities subject to BART and mandating emission reductions meeting the applicable BART requirements. EPA also proposed to approve the Wisconsin plan as meeting other regional haze requirements, such as having a long-term strategy that provides an appropriate contribution from Wisconsin toward meeting reasonable progress goals.

## II. What are the responses to comments?

In response to its proposed rule, EPA received comments from the Sierra Club, the National Park Service (NPS), Wisconsin Department of Natural Resources (WDNR), Georgia-Pacific, and the U.S. Forest Service. The comments are included in the docket, EPA-R05-OAR-2012-0059. A summary of the comments are included below along with EPA's response.

### *Comments by Sierra Club*

*Comment:* Sierra Club submitted extensive comments relating to Wisconsin's reliance on CSAPR to satisfy the BART requirement for EGUs. Sierra Club believes that the Clean Air Act requires BART on a source-by-source basis. Even if reliance on a trading program is permissible, Sierra Club finds that Wisconsin failed to make the source-specific BART determinations that are required under 40 CFR 51.308(e)(2) for assessing the relative merits of a trading program. In the view of Sierra Club, it is not clear that CSAPR provides surplus emission reductions that are creditable for satisfying the BART requirement. Sierra Club comments that, "CSAPR does not ensure that emissions reductions will be made to help achieve reasonable progress goals (RPGs)," and in particular does not require BART at a plant that is within 300 kilometers from Seney, i.e., the Pulliam plant. In addition, Sierra Club objects to reliance on CSAPR because it is presently stayed. Sierra Club objects that the annual CSAPR programs only limit annual emissions, thus allowing shorter-term emission variations that could adversely affect visibility. Sierra Club believes that EPA's analysis of whether CSAPR would provide better visibility protection than source-specific

application of BART limits is flawed, because EPA used presumptive BART levels to represent BART rather than the more stringent BART levels that source-specific BART analyses would identify.

*Response:* As noted in the proposed rule, these comments are addressed in a separate rulemaking, published on June 7, 2012, at 77 FR 33642. The EPA's response to these comments can be found in Docket ID No. EPA-HQ-OAR-2011-0729 at [www.regulations.gov](http://www.regulations.gov). The Pulliam plant, which is approximately 240 kilometers from Seney Wilderness Area, is one of many plants in the Midwest and beyond that contribute to visibility impairment at the Seney Wilderness Area. EPA's conclusion regarding satisfaction of BART requirements for EGUs is based on a finding that controls required under CSAPR can be expected to provide better visibility protection than would be obtained from direct application of BART at Pulliam and other subject EGUs.

*Comment:* Sierra Club asserts that EPA cannot approve the administrative order that provides the necessary BART limits for Georgia-Pacific because the State does not have authority to submit administrative orders for this purpose. Sierra Club quotes Wisconsin Statute Section 285.14(1): "[WDNR] may not submit a control measure or strategy that imposes or may result in regulatory requirements to the federal environmental protection agency for inclusion in a state implementation plan under 42 U.S.C. § 7410 unless the department has promulgated the control measure or strategy as a rule." In Sierra Club's view, this statute requires Wisconsin to submit its limitations only in the form of state rule. Sierra Club also notes that Wisconsin law mandates that measures to be submitted must be subject to other mandated review procedures. Sierra Club believes that the State has not met these procedural requirements for the administrative order for Georgia-Pacific. Thus, Sierra Club concludes that Wisconsin does not have the authority to submit this administrative order to EPA and that EPA must disapprove the submission because it does not meet the requirement in Clean Air Act section 110(a)(2)(E) that submissions be valid at the state level.

*Response:* Wisconsin issued a valid administrative order in full compliance with State law. In its submission, the State clarified that it has in fact met the requirements of Wisconsin Statute 285.14(1) by creating Wisconsin Administrative Code Natural Resources (NR) 433. The statute does not require that particular limits be adopted by rule

or that the rule be the means by which the limits are enforced. Instead, in this case, Wisconsin first adopted a rule that mandates implementation of BART for sources determined to be subject to provisions in 40 CFR 51.308(e) requiring BART. Then, in accordance with NR 433, Wisconsin defined the specifics of the control measure by issuing a determination of BART numerical limits. The administrative order for Georgia-Pacific establishes permanency for the BART numerical limits set forth in the determination.

Wisconsin provided multiple opportunities for public comment on this issue. Wisconsin held a public hearing during the adoption of NR 433. Since this rule mandated BART and defined the process by which particular limits would be established, this State rulemaking was the most appropriate time for Sierra Club to identify its concerns regarding the adequacy of NR 433, specifically, and the State's BART process, generally, to provide the rulemaking to satisfy Wisconsin Statute 285.14. Notably, it appears that Sierra Club did not raise this objection during the adoption of NR 433. Wisconsin also met the other procedural requirements for public hearings of concern to Sierra Club during the NR 433 adoption process. Finally, the State solicited public review and responded to comments for several iterations of the proposed BART numerical emission limits that it intended to use as the precise numerical definition of BART for Georgia-Pacific. The State addressed comments in determining final BART conditions and fulfilled the procedural requirements including public hearings necessary under State statutes. Consequently, EPA believes that Wisconsin has met the applicable statutory requirements for requiring BART at Georgia-Pacific, and EPA believes that the State's submitted administrative order is fully valid at the State level and fully approvable under section 110.<sup>1</sup>

*Comment:* Sierra Club comments on discussion in the proposed rule expressing EPA's concerns about the enforceability of the language of the draft administrative order. Given these EPA concerns, Sierra Club objects to the procedure EPA is using to act on Wisconsin's plan. In particular, Sierra Club objects that EPA's proposal is "based on a 'premise'" that the final

<sup>1</sup> Section 110(a)(2)(E) requires that Wisconsin have "authority under State \* \* \* law to carry out [its] implementation plan," but does not define requirements for individual SIP submissions. Nevertheless, the important point here is that the Georgia-Pacific administrative order is a fully valid, fully enforceable, and approvable document.

administrative order will include revisions that address EPA's concerns. "This circumvents the review process, which requires EPA to determine whether the state's submission is actually sufficient (not whether possible future documents could make the SIP sufficient) and requires that the public have an opportunity to review and comment on the sufficiency of the actual submission by the state and the EPA's proposed basis for approval."

*Response:* In actions involving parallel processing, as authorized under 40 CFR 51 appendix V section 2.3, EPA solicits comments regarding an anticipated situation, namely that the state will have completed the administrative process necessary to submit a final SIP submission before EPA takes final action. Similarly here, EPA solicited comments on the anticipated situation in which Wisconsin would submit a final administrative order using language that assures that the limits are fully enforceable and Wisconsin would submit the order before EPA's final action.

EPA believes that this approach fully satisfies the requirements in the Clean Air Act and in the Administrative Procedures Act for soliciting public comment on Wisconsin's plan and EPA's proposed action. These statutes do not mandate that EPA wait for administrative orders to be issued in final form before proposing action. Instead, EPA may propose action on draft administrative orders, so long as the proposal provides sufficient information regarding the prospective administrative order (and other elements of the State submission) and EPA's intended action on the prospective order for commenters to have suitable opportunity to comment on significant issues pertinent to the State material and EPA's proposed approval.

Notably, Sierra Club did not express any concerns of its own regarding the language of the administrative order, suggesting that no further solicitation of comment on the particular differences in language between the draft and the final administrative order was warranted. Therefore, EPA concluded that its proposed rule provided an adequate basis for commenters to identify issues of concern and allow EPA to proceed to final rulemaking without reproposal.

*Comment:* Sierra Club objects to Wisconsin expressing the limits for Georgia-Pacific as a cap on emissions from four boilers, including two boilers that are not subject to the requirement for BART. In Sierra Club's view, this

approach "dilutes the stringency of the BART limits," insofar as "the control efficiency required of the BART units will depend on the operating characteristics of the other, non-BART units."

*Response:* Wisconsin established an emissions cap reflecting baseline emissions of the non-BART boilers plus emissions from the BART boilers at BART control levels, minus a deduction for environmental benefit. This cap assures that total emissions from the facility will be reduced by more than the amount that would be mandated with the establishment of limits solely on emissions from the BART units. That is, in the scenario of concern, in which the company accommodates operation that controls BART unit emissions by less than the unit's full control capacity by reducing non-BART emissions to a slightly greater degree below baseline levels, the company would be achieving a slightly greater environmental benefit than if it had controlled BART unit emissions at full BART control levels and operated the non-BART units at baseline emission levels. This scenario is fully authorized in 40 CFR 51.308(e), which allows satisfaction of BART requirements by alternate strategies involving control at non-BART units that achieve greater environmental benefit than the strategy that simply controls BART units with BART-level control.

Strictly speaking, Wisconsin's administrative order does not regulate which boilers are in operation at any given time. For example, Georgia-Pacific is allowed under the order to resume operation of a fifth boiler. The important point here is that regardless of which boilers are operating, total emissions must be below levels that would occur if Wisconsin were simply mandating BART controls on the BART units.

*Comment:* Sierra Club echoes comments made by the National Park Service and the U.S. Forest Service (misidentified as the Fish and Wildlife Service) during the State's public comment process that the cap "is inflated because it relies on 'baseline' emissions" that include emissions for a shutdown boiler (B24) and used emissions for a "design fuel" rather than the more representative fuels for the boilers."

*Response:* In response to similar comments on a July 2011 draft plan, Wisconsin made the recommended changes, determining baseline emissions by excluding emissions from the shutdown boiler and removing any adjustments for "design fuels." Thus, this comment has previously been addressed.

*Comment:* Sierra Club objects that, with Georgia-Pacific's limit expressed as a cap on emissions from both BART and non-BART boilers, any future requirement to reduce emissions at the non-BART boilers will allow correspondingly more emissions at the BART boilers. Sierra Club in particular identifies two pending actions that in its view will likely require emission reductions at the non-BART boilers: An EPA rulemaking to require maximum available control technology at industrial boilers and a petition by the Sierra Club for EPA to find that this Georgia-Pacific facility should have become subject to tighter limits under prevention of significant deterioration regulations.

*Response:* EPA's regional haze regulation authorizes the State to establish a BART strategy that includes credit for measures that have been implemented since the baseline date of the SIP (which is 2002). In practice, the boilers at Georgia-Pacific vent to a common stack and the limits are designed to limit the combined set of emissions from the facility. Consistent with EPA's regional haze rule, Wisconsin's limits require a suitable degree of emission reduction from this facility and it is not necessary for Wisconsin to require these reductions to apply to the emissions of particular boilers. Second, Wisconsin is not required to mandate further emission reductions, either at the BART boilers or at other boilers from which it mandates emission reductions as part of its BART strategy, to go beyond the reductions that might be required in the future. Instead, the degree of reduction required to satisfy the regional haze rule is independent of the reductions mandated by other regulatory requirements that apply sooner or later after the baseline date. Third, future requirements on the non-BART boilers, such as Maximum Available Control Technology for boilers, will also apply to the BART boilers. As a result, the situation feared by the commenter, in which compliance with tight requirements on the non-BART boilers allows Georgia-Pacific to have minimal control of the BART boilers, is unlikely to arise. Finally, the degree of SO<sub>2</sub> and NO<sub>x</sub> emission control, if any, that might be required by the regulations cited by Sierra Club is speculative and too uncertain to consider here.

*Comment:* Sierra Club cites EPA as noting that "its Draft Economic Incentives Program Guidance is relevant to this rulemaking." Sierra Club states that this guidance allows credit only for emission reductions that are surplus and beyond current regulatory

requirements. Furthermore, “the Guidance notes that the reduction cannot be required by any regulatory requirement at the time the reductions occur,” which Sierra Club considers to mean reductions required by 2015. Sierra Club cites “the industrial boiler hazardous air pollutant rule, the 1-hour SO<sub>2</sub> SIP, and new source review requirements” as regulations that will require reductions before 2015, such that Wisconsin may only use credit for reductions below the 2015 levels.

*Response:* In cases like this where a subject is addressed by both the general guidance in the draft Economic Incentive Program Guidance and in program-specific guidance that more directly addresses specific statutory requirements, EPA gives more weight to the regulatory provisions that are promulgated for the specific statutory requirements, in this case to the provisions of the regional haze rule. As noted above, the regional haze regulations promulgated in 40 CFR 51.308 allow credit for reductions achieved after the baseline date of the SIP (2002), irrespective of any recommendations to the contrary in the draft Economic Incentives Program Guidance.

*Comment:* Sierra Club comments that, “the emission limits proposed by Wisconsin also apply the BART-level emission reductions to a faulty ‘baseline.’ \* \* \* First, Wisconsin’s baseline relies on an unreasonable assumption that the boilers always operate at the *maximum* heat input during any 30-day period or annual period between 2002–2004. [As a result,] boilers B26 and B27 will rarely, if ever, actually be required to meet the control efficiencies determined to represent BART. \* \* \* Furthermore, because the facility operated more and emitted more in 2002–2004 than in recent years, using a baseline from a decade ago is unrepresentative of more recent operations.” Sierra Club provided various calculations to illustrate its point that current operations cause substantially lower emissions, so that deriving a limit from emissions in 2002–2004 yields an inflated limit that requires substantially less control than BART. Similarly, Sierra Club objects to the derivation of a monthly emission limit from the peak operating rate rather than from a more representative operating rate. Sierra Club recommends instead that EPA “require that the boilers B26 and B27 comply with a percent reduction [limit] through a weighted average of fuel input into each boiler.”

*Response:* EPA believes that Wisconsin has made a reasonable choice

in formulating its limits on Georgia-Pacific’s SO<sub>2</sub> and NO<sub>x</sub> emissions as mass emission limits governing the emissions of all the boilers in the facility. While the facility’s current emissions are lower than the emissions during the baseline period, EPA’s regional haze rule allows credit for such reductions, insofar as the reductions contribute to mitigating regional haze. Wisconsin reasonably based its limits on the peak baseline emission levels rather than average emission levels, since the State must set a limit that requires continuous compliance and the limit must be a level that can be achieved even at peak operating rates. EPA agrees that a limit defined as a weighted average of the intended emission factor (e.g., in pounds per million British Thermal Units for each boiler) times the applicable boiler’s heat input would also be an appropriate form for the limit, but EPA finds Wisconsin’s formulation of its limit to be fully approvable and fully adequate as well.

*Comment:* Sierra Club comments that EPA should have required further control at the non-BART boilers at Georgia-Pacific, for purposes of achieving reasonable progress in mitigating visibility impairment.

*Response:* Since the non-BART boilers by definition are not required to install or operate BART-level controls, the reasonableness of control at the non-BART boilers at Georgia-Pacific is judged according to the same criteria as control at other facilities. EPA believes that Wisconsin has mandated sufficient emission reductions to address the requirements for reasonable progress.

#### *Comments by NPS*

*Comment:* NPS states, “Boiler B25 ceased operation in 2008. WDNR and EPA propose to allow the combined baseline emissions to include emissions from boiler B25 that has not operated for three years, as well as boilers B26, B27, and B28. However, in its September 2011 letter to WDNR, EPA commented that including emissions from the non-operational boiler B25 in the combined emissions limit would allow less effective controls of the BART boilers.”

*Response:* As Wisconsin explains in its response to comments, while Georgia-Pacific ceased operation of boiler B24 in 2004, it has only suspended operation of boiler B25, pending resolution of questions regarding whether the requirements of the Clean Air Interstate Rule apply to this boiler. EPA then found, on May 2, 2011, that the boiler was exempt from requirements of the Clean Air Interstate Rule, so that the company no longer had this disincentive for operating this

boiler. While this issue was being resolved, Georgia-Pacific had relatively constant total boiler use but shifted load from boiler B25 to its other boilers. Now that this issue is resolved, representative operation of Georgia-Pacific’s boilers may be considered to include operation of boiler B25. For this reason, EPA considers boiler B25 (unlike B24) to be a source for which the baseline emissions may reasonably be included in determining a collective limit on emissions of operating boilers at Georgia-Pacific.

*Comment:* NPS asserts that, “Controls on boiler B28 are warranted for reasonable progress because the northern Class I areas impacted by Wisconsin’s emissions are not meeting or just meeting the uniform rate of progress for visibility improvement. The BART and reasonable progress levels of control should be 95% for sulfur dioxide and 75–85% for nitrogen dioxide.”

*Response:* The non-BART boilers at Georgia-Pacific are a few among many boilers in Wisconsin that warrant consideration for control. The Georgia-Pacific boilers warrant review under the same criteria as the other boilers in the State. Wisconsin reviewed the information generated by the Midwest Regional Planning Organization (MRPO), addressing the factors pertinent for judging potentially reasonable measures, and concluded that additional control of industrial, commercial, and institutional boilers was not a reasonable measure at this time. This conclusion implicitly applies to the non-BART boilers at Georgia-Pacific as well as to other boilers in the State. Wisconsin will reassess the reasonableness of control of this category of boilers in a regional haze plan for a future implementation period.

*Comment:* NPS “disagree[s] with Wisconsin’s and EPA’s proposal to approve four different combinations of SO<sub>2</sub> and NO<sub>x</sub> emissions limits as BART for the combined stack and to allow Georgia-Pacific to select by July 15, 2013, which emissions limits to meet. We are not aware of any other situation in the country where EPA proposes to allow a source to meet one of multiple emissions limits. \* \* \* In the approved Plan, the more stringent limits each for SO<sub>2</sub> and for NO<sub>x</sub> should be determined to be BART and less stringent alternative emissions limits should not be permitted.”

*Response:* The administrative order that EPA proposed to approve identifies four potential sets of emission limits and specifies a process by which one of these sets of limits shall be identified by July 15, 2013, as the enforceable limits

for Georgia-Pacific. The “baseline” limits were derived independently for SO<sub>2</sub> and for NO<sub>x</sub> based on baseline emissions for the four operating (or potentially operating) boilers minus the emission reductions expected from BART controls on the BART boilers minus a reduction for “environmental benefit.” EPA found these limits to satisfy the requirements under 40 CFR 51.308(e)(2) for providing greater reasonable progress in mitigating visibility impairment than direct application of BART limits, and so EPA found these limits to satisfy the BART requirements of 40 CFR 51.308(e). EPA then examined the three alternative sets of limits submitted by Wisconsin. The intent of the State was to establish equivalent alternatives, by setting increased NO<sub>x</sub> emission limits and setting SO<sub>2</sub> emission limits that were reduced by an amount equal to twice the amount by which the NO<sub>x</sub> limits were increased. The three alternatives differ only in the magnitude of the NO<sub>x</sub> limit increases and the associated SO<sub>2</sub> limit decreases. In EPA’s view, the modeling submitted by Wisconsin justifies the State’s view that the three alternative sets of limits could be expected to provide at least approximately the same degree of visibility protection as the baseline limits. From this, EPA concluded that any of the four sets of limits that may be selected would provide better visibility protection than would be obtained with direct application of BART limits on the BART sources. While states do not usually identify and submit, and EPA does not usually approve, alternative sets of limits, EPA believes in this case that Wisconsin has provided sufficient justification for each of the alternatives. EPA is assured that a single set of limits will be unambiguously identified as the applicable limits within a sufficiently short period of time (by July 15, 2013, well before the January 1, 2016 compliance date) and thus is approving this approach.

*Comment:* NPS observes that Wisconsin’s determination of whether its EGUs warranted tighter particulate matter (PM) limits was based on actual emissions rather than allowable emissions. NPS provided a table comparing actual PM emission rates to permissible PM emission rates, indicating that the applicable emission limits are in most cases substantially higher than actual emission rates. NPS believes that Wisconsin’s modeling is an inadequate justification for avoiding a full five-factor review of BART with respect to PM. NPS suggests that

Wisconsin could satisfactorily justify avoiding a full five-factor analysis either by demonstrating (with revised modeling) that allowable PM emission rates have minimal visibility impact or by revising PM limits to reflect current actual emissions.

*Response:* EPA believes that Wisconsin has adequately justified its conclusion that its limits for PM emissions from EGUs satisfy BART requirements. First, Wisconsin’s findings are consistent with findings by MRPO and findings by other states that even the higher allowable levels of PM emissions are unlikely to cause significant visibility impairment, as a result of the dispersion of PM that occurs over the distances from the EGUs and the Class I areas. Second, Wisconsin’s PM limits, despite being well above actual controlled emission levels in most cases, are arguably tight enough to require the companies to reduce PM emissions to levels that are insignificant from a visibility perspective. Wisconsin did note that one facility complying with applicable limits was emitting relatively large quantities of PM; Wisconsin reduced this facility’s allowable PM emissions. EPA is satisfied that all of Wisconsin’s EGUs can be expected to emit quantities of PM that are *de minimis* for visibility purposes.

*Comment:* NPS comments that limits should be based on more recent data that better represent the current operations. These more recent data suggest use of a baseline with significantly lower emissions.

*Response:* The regional haze rule authorizes states to determine limits based on emissions during the baseline period, irrespective of subsequent emission reductions. The subsequent emission reductions would be considered creditable emission reductions that needn’t result in calculation of lower emission limits. The most significant change in emissions over that period has been the result of the use of fuel with lower sulfur content. These reductions are creditable, and Wisconsin is not required to use a baseline that is reduced to reflect these reductions.

*Comment:* NPS takes note of EPA’s finding “that emissions limits of 2,340 [tons per year (tpy)] of SO<sub>2</sub> and 977 tpy of NO<sub>x</sub> are [BART] \* \* \* EPA then goes on to propose that a SO<sub>2</sub> limit as low as 1,250 tpy and a NO<sub>x</sub> limit as high as 1,522 tpy are also [BART].” NPS continues, “If EPA believes that 1,250 tpy is BART for SO<sub>2</sub> then it should not allow Georgia-Pacific to emit 2,340 tpy under any circumstance. Likewise, if EPA believes that 977 tpy is BART for

NO<sub>x</sub>, then it should not allow Georgia-Pacific to emit 1,522 tpy under any circumstance.”

*Response:* Wisconsin defines BART in terms of control equipment that achieves specified levels of control of SO<sub>2</sub> and NO<sub>x</sub> emissions from boilers B26 and B27. These limits do not define BART per se; instead, these limits, which also limit emissions from two boilers that are not required to have BART control, are designed to satisfy BART requirements by requiring emission reductions that would yield better visibility protection than would be obtained by requiring BART alone. The limits of 2,340 tpy of SO<sub>2</sub> and 977 tpy of NO<sub>x</sub> represent Wisconsin’s “baseline” 12-month rolling emission limits. The limits of 1,250 tpy of SO<sub>2</sub> and 1,522 tpy of NO<sub>x</sub> represent Wisconsin’s “Alternative 3” 12-month rolling emission limits. In each case, the limits reflect a set of control measures that EPA finds to provide better visibility protection than would be obtained from direct application of the measures determined to represent BART. Requiring Georgia-Pacific to meet the Alternative 3 SO<sub>2</sub> limits and the baseline NO<sub>x</sub> limits would of course also provide better visibility protection, but such an approach is not necessary to meet BART requirements.

*Comment:* NPS states, “Emission limits must reflect the best level of ‘continuous emission reduction,’ and the proposed mass cap limits would allow a very high lb/mmBtu emission rate during periods of low utilization.”

*Response:* Wisconsin’s emission limits apply at all times and therefore require continuous emission reduction. EPA allows states to express limits in various forms, including in the form of mass limits, as adopted by Wisconsin, as well as in the form of emission rate limits, as urged by NPS. Wisconsin has adopted a reasonable limit, which was designed to be achievable with BART level control even during periods of maximum plant utilization. Given the air pollution control equipment that these limits will require Georgia-Pacific to install, EPA expects significant emission reductions at all times.

*Comment:* NPS comments, “EPA should not allow the source to mix-and-match to find the least stringent combination for each situation.” NPS quotes from an EPA letter to Wisconsin: “If Wisconsin wishes to pursue 30-day averaging, in combination with an annual emissions cap, the State must provide justification.” NPS then comments that, “EPA has not explained why it now accepts the approaches that it recently rejected.”

*Response:* Wisconsin is no longer pursuing the variable limit approach that EPA was referring to in the letter the commenter is citing. Georgia-Pacific has an initial option to choose among four defined sets of limits, each of which has been found acceptable. To be precise, Wisconsin's administrative order establishes a baseline set of limits that apply by default, but the order also provides that one of three identified alternative sets of limits becomes the enforceable limits if Georgia-Pacific selects the alternative by July 15, 2013. The selected limits, or, in absence of a selection, the baseline limits, are permanently enforceable unless Wisconsin justifies limit revisions through a SIP revision process. Thus, EPA is not accepting an approach "it recently rejected."

Wisconsin has provided suitable justification for using a 30-day average limit. Regional haze is measured as an average over 20 percent of the days of a year (the 20 percent worst days or the 20 percent best days), and so expressing the emissions limit as a 30-day limit, supplemented by a 12-month limit that further limits average emission controls, suitably limits emissions consistent with the averaging time of the metric being addressed.

*Comment:* NPS objects that, "EPA proposes to allow WDNR to take advantage of the purported Stack S10 10 percent emission reduction more than once." NPS states, "while it is appropriate under EPA's Economic Incentive Program to reduce allowable emissions by 10 percent for the benefit of the environment, it is not appropriate to use that same 10 percent reduction again to 'arguably compensate for that uncertainty as to how much the emissions from the BART boilers will be controlled.'"

*Response:* NPS provides no reason that the pertinent reduction in the emission limit cannot serve multiple purposes. Arguably, the 10 percent reduction recommended in the Economic Incentive Program policy is to assure that the economic incentive program provides environmental benefit, notwithstanding the uncertainty regarding the extent to which individual sources will be controlled. EPA guidance does not require that Wisconsin reduce its emission limits to provide environmental benefit and then reduce its emission limits further to address uncertainty about which sources will reduce emissions by how much.

*Comment:* NPS does not believe that EPA has properly supported a conclusion that Wisconsin's long-term strategy provides for satisfaction of

RPGs. NPS notes differences between the visibility projections of the Central Regional Air Partnership (CENRAP) given in Minnesota's SIP and the projections of the MRPO that Wisconsin presents. With either set of projections, "The [RPGs] provides for less annual progress towards the ultimate visibility goals than the uniform rate of progress."

NPS notes comments it made to Wisconsin regarding an absence of a four-factor analysis of potential emission control measures for providing reasonable progress. NPS observes that Wisconsin responded by providing an analysis of emissions divided by distance ("Q/d") and by noting significant emission reductions that have occurred beyond the reductions originally expected in Wisconsin's regional haze plan, but NPS finds that Wisconsin set no criteria for conducting a four-factor review. In NPS' view, several sources in Wisconsin, including the non-BART units at Georgia-Pacific, warrant consideration for further controls for purposes of achieving reasonable progress. Finally, NPS quotes EPA as finding that "additional controls for [industrial, commercial, and institutional (ICI) boilers] are not needed now," but NPS believes that EPA has not justified this conclusion.

*Response:* Wisconsin relied on information developed by the MRPO that addressed the four factors to be considered in evaluating reasonable measures for purposes of providing reasonable progress. Wisconsin evaluated this information and concluded that the control measure that warranted most consideration as a further measure was control of ICI boilers. However, Wisconsin noted that EPA is exploring setting limits on these facilities in conjunction with CSAPR. Regional multi-state action on these sources would provide significantly more benefit than action in Wisconsin alone. Wisconsin noted that the limiting factor for providing further progress in addressing visibility impairment was the time needed to define and implement further controls. Wisconsin noted that EPA is still evaluating the potential for further reductions from ICI boilers. The State concludes that further reductions from this sector cannot reasonably be required in a timely fashion for the long-term strategy of this implementation period. Wisconsin further concluded that other sources categories are less appropriate to regulate in this long-term strategy. EPA concurs with Wisconsin's conclusion, finding that the State has conducted adequate analysis and presented suitable justification that its long-term

strategy provides adequate contribution to meeting applicable RPGs.

*Comment:* NPS quotes Wisconsin as "assert[ing] that the rate of emission reduction projected for Wisconsin sources, compared to those of Michigan and Minnesota, shows that Wisconsin is meeting its share of visibility improvement. Figures 6 and 7 \* \* \* show that Wisconsin emissions, using the 'on the books' inventory, decrease at a similar or greater rate than Michigan and Minnesota emissions." NPS observes, "However, inspection of Figures 6 and 7 finds that, while Wisconsin is predicting greater reductions in NO<sub>x</sub> than MI and MN, it falls short of the SO<sub>2</sub> reductions estimated in MN. WDNR should have conducted a valid four factor analysis of specific sources to determine what emissions controls are reasonable."

*Response:* NPS correctly characterizes the information in Figures 6 and 7. However, the critical test is whether Wisconsin has provided "all measures necessary to obtain its share of the emission reductions needed to meet the progress goal for the [affected Class I areas]." (40 CFR 51.308(d)(3)(ii)) Irrespective of modest differences in the emission reductions achieved in different states, Wisconsin's data show that Wisconsin is implementing measures similar to those in other neighboring states. Based on Wisconsin's submission, EPA concludes that Wisconsin has in place measures that will allow it to meet applicable RPGs.

#### WDNR

*Comment:* "WDNR believes that U.S. EPA inadvertently mislabeled the control technologies for NO<sub>x</sub> and SO<sub>2</sub> which WDNR \* \* \* determined to be BART at the Georgia-Pacific facility in Green Bay. Accordingly, WDNR requests that U.S. EPA make the following corrections to the BART control technologies listed in the proposed approval: change 'wet scrubbing' to 'dry scrubbing' for SO<sub>2</sub> BART; and change 'recirculating selective catalytic reduction' to 'regenerative selective catalytic reduction' for NO<sub>x</sub> BART."

*Response:* EPA acknowledges and corrects these errors. As noted by WDNR, the technologies that it determined to be BART are dry scrubbing for SO<sub>2</sub> and regenerative selective catalytic reduction for NO<sub>x</sub>.

#### Georgia-Pacific

*Comment:* Georgia-Pacific notes the same errors that WDNR identified in EPA's description of the control technology found to be BART.

Specifically, Georgia-Pacific quotes from WDNR's submission: "The final BART determination for SO<sub>2</sub> reflects fuel switching of petroleum coke from BART boilers B26 and B27, followed by circulating bed dry scrubbing technology at 93 percent control." Georgia-Pacific quotes further from WDNR's submittal: "For B27, a cyclone boiler, the BART determination for NO<sub>x</sub> reflects overfire air combustion modifications followed by Regenerative Selective Catalytic Reduction (RSCR) to yield an 85 percent long-term NO<sub>x</sub> Control requirement."

*Response:* As requested, EPA is correcting the description of the technology determined to be BART to include, in part, dry scrubbing technology and regenerative selective catalytic reduction.

*Comment:* Georgia-Pacific supports EPA's findings regarding the adequacy of its limits to satisfy BART requirements. The company in particular agrees with EPA's position that the limits established for the sum of emissions across all operating boilers at the facility provide additional environmental benefits, as recommended in the EPA Draft Economic Incentive Policy Guidance.

*Response:* EPA acknowledges Georgia-Pacific's support for its proposed action.

*Comment:* Georgia-Pacific "supports WDNR's simplified approach for establishing a 'not-to-exceed' emissions curve (line) instead of a mass cap established by a single point or a set of three sets [of] alternative emission limits." Georgia-Pacific notes that EPA in its notice of proposed rulemaking "agrees that different pairs of SO<sub>2</sub> and NO<sub>x</sub> emission limits can provide equivalent visibility improvement." Georgia-Pacific then notes that WDNR in its submission "supports a more simplified approach" in which Georgia-Pacific "does not need to elect one set of SO<sub>2</sub> and NO<sub>x</sub> mass caps," but instead allows inter-pollutant trading, using "the established 2:1 trading ratio" (*i.e.*, requiring two tons less SO<sub>2</sub> emissions for each ton more of NO<sub>x</sub> emissions), such that Georgia-Pacific may comply with any combination of SO<sub>2</sub> and NO<sub>x</sub> emissions that meet an equation defining combinations with equivalent benefits. Accordingly, Georgia-Pacific envisions a graph of the SO<sub>2</sub> and NO<sub>x</sub> limits in the baseline limits and the three alternative sets of limits, and the company observes that these four points on this imagined graph lie along a straight line. "We believe that equivalent improvements in visibility exist for any emission limit set that also lies on the line." Georgia-Pacific quotes

from WDNR's submittal: "This approach allows the control levels to be varied over time based on the most effective option at that time. Further, this approach does not require an election of one set of mass caps by July 15, 2013, and or SIP approval for mass caps identified at a later time."

Georgia-Pacific concludes, "The compliance date for BART controls in DNR's SIP is December 31, 2015. We request the SIP allow the state flexibility in granting alternate emission limits through December 31, 2015 through amendment of a state-authorized order or other mechanism deemed appropriate by WDNR. Between today and December 31, 2015, these boilers require other controls to meet 40 CFR 63 DDDDD (Industrial Boiler MACT). With the ultimate Boiler MACT rule requirements still uncertain, adjustments to the alternate BART emission limits may be necessary to provide a reasonable solution to comply with both overlapping requirements."

*Response:* Wisconsin's submission identifies a baseline set of limits and three alternative sets of limits, with provision for Georgia-Pacific either to become subject to the baseline set of limits or to choose by July 15, 2013 to become subject to one of the three alternative sets of limits. The Wisconsin submission does not include any limits based on the more flexible approach that Georgia-Pacific suggests, and so these comments are not directly germane to Wisconsin's submission or to EPA's proposed rule. Furthermore, EPA does not have the latitude to approve a hypothetical SIP revision that differs from the State submission by including the requested flexibility.

A similar issue arose in the context of Wisconsin's July 2011 draft SIP. Therefore, EPA's comments to Wisconsin in response to that draft SIP also serve to respond to these comments. In a letter to Wisconsin dated September 16, 2011, EPA stated:

"While EPA's regional haze rule offers some flexibility for establishing combinations of particular control measures that provide more or less control of particular pollutants, the rule does not provide for states to adopt limits that provide for a range of control levels for one pollutant that is dependent on the level of emissions of another pollutant. Georgia-Pacific can expect to be required to reduce SO<sub>2</sub> emissions substantially over the next several years. Georgia-Pacific will likely need to install emission control equipment to satisfy the maximum achievable control technology (MACT) regulation for industrial boilers, and the SO<sub>2</sub> emission reductions will likely also be necessary to provide for attainment of the SO<sub>2</sub> national ambient air quality standard. If Wisconsin allows these SO<sub>2</sub> emission reductions (or reductions from

reduced boiler usage) to replace the NO<sub>x</sub> reductions that would otherwise be required as BART, it is quite plausible that implementation of these reductions would allow Georgia-Pacific to implement no reductions of NO<sub>x</sub> emissions at all. In contrast, the baseline scenario involving standard limits requiring BART would require NO<sub>x</sub> emission control regardless of whether extraneous factors require or otherwise yield SO<sub>2</sub> emissions below BART levels. While Wisconsin is comparing visibility levels with various potential emission scenarios against visibility in 2002 to 2004, EPA is comparing visibility under these scenarios against visibility that would be expected under a standard scenario in which BART limits apply directly to the BART units. Consequently, Wisconsin's proposed approach must be considered to authorize Georgia-Pacific to cause more visibility impairment than would be authorized under an approach that applied standard BART limits."

#### Forest Service

*Comment:* The Forest Service referenced the comments it made to Wisconsin regarding draft regional haze plans. In particular, it cites letters to Wisconsin dated March 4, 2011, and July 27, 2011. The Forest Service states, "We do not believe the changes made address the concerns in our previous letters." The Forest Service encloses copies of the previous letters, but provides no discussion regarding which concerns remain unaddressed. The letters address BART for Georgia-Pacific (generally supporting Wisconsin's January 13, 2011 draft and objecting to Wisconsin's July 1, 2011 draft), the determination that the BART requirement does not apply to other sources in the State other than EGUs, and the provisions in the long-term strategy for achieving RPGs.

*Response:* Wisconsin's regional haze plan includes responses to comments, including responses to both comment letters from the Forest Service. Implicit in EPA's proposal to approve Wisconsin's plan is a finding that Wisconsin has satisfactorily addressed the comments it received. In general, Wisconsin modified its BART determination for Georgia-Pacific in response to some comments and justified its draft determination with respect to other comments. Wisconsin justified its determination of which sources were subject to a BART requirement, and Wisconsin justified the features of its long-term strategy as implementing its share of reductions for achieving RPGs. In absence of identification of particular issues that remain of concern and explanation of the Forest Service's disagreements with EPA's proposed rule and with Wisconsin's responses to its comments,

EPA continues to believe that Wisconsin has appropriately addressed comments by the Forest Service.

### III. What action is EPA taking?

EPA is approving Wisconsin's regional haze plan as satisfying the applicable requirements in 40 CFR 51.308. The plan identifies affected Class I areas, calculates the baseline and natural visibility, establishes RPGs, relies on CSAPR to address BART requirements for nine EGUs that are subject to BART, mandates BART measures for Georgia-Pacific, establishes a Long-Term Strategy for making reasonable progress toward visibility goals, and provides a monitoring strategy.

A key element of Wisconsin's plan is an administrative consent order establishing emission limits satisfying BART requirements for Georgia-Pacific. Wisconsin issued this order, Administrative Consent Order Number 405032870, on June 8, 2012. This Order provides a baseline set of emission limits and three alternative sets of emission limits, and provides a selection process to be completed by June 15, 2013, such that one of these sets of emission limits for Georgia-Pacific shall become permanent and State enforceable. The Georgia-Pacific BART emission limits will become Federally enforceable with this SIP approval.

### IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 9, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a

petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, and Sulfur oxides.

Dated: June 15, 2012.

**Susan Hedman,**

*Regional Administrator, Region 5.*

Therefore, 40 CFR part 52 is amended as follows:

### PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

■ 2. Section 52.2570 is amended by adding paragraph (c)(124) to read as follows:

#### § 52.2570 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(124) On January 18, 2012, supplemented on June 7, 2012, Wisconsin submitted Wisconsin's regional haze plan to EPA. This regional haze plan includes an administrative consent order specifying limits satisfying best available retrofit requirements for Georgia-Pacific Consumer Products, L.P. This plan also includes a long-term strategy with emission reductions to provide Wisconsin's contribution toward achievement of reasonable progress goals at Class I areas affected by emissions from Wisconsin sources.

(i) Incorporation by reference.

(A) Administrative Consent Order Number 405032870, issued by the Wisconsin Department of Natural Resources on June 8, 2012, to Georgia-Pacific Consumer Products LP.

(B) Construction Permit Number 11-POY-123, issued by the Wisconsin Department of Natural Resources on November 11, 2011, to Wisconsin Power & Light for its Columbia Energy Center.

\* \* \* \* \*

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