

**SUMMARY OF COMMENTS AND STAFF RESPONSES
FOR PROPOSED REVISION TO SUBCHAPTER 8, PART 11 VISIBILITY
PROTECTION STANDARDS (BART)**

**COMMENTS RECEIVED PRIOR TO THE
JANUARY 18, 2006, AIR QUALITY ADVISORY COUNCIL MEETING**

Written Comments

EPA Region 6 - Letter dated December 2, 2005, signed by Carrie Page for Thomas H. Diggs, was received by FAX on December 5, 2005, from Joe Kordzi

1. **COMMENT:** The ODEQ should clarify whether all 35 of the 51.301 definitions are intended to be adopted, as several definitions (i.e., fugitive emissions, potential to emit, reconstructed, stationary source, etc) are referenced in the proposed rule, but are not defined in the rule. Also, other definitions are not referenced or listed in the rule. ODEQ should clarify if these general definitions have been adopted elsewhere and, if so, it should make reference to this cite.

RESPONSE: The terms that are used in Part 11 are defined either in OAC 252:100-8-71, 252:100-1-3, or 252:100-8-31. The terms "adverse impact on visibility", "Federal Land Manager", "major stationary source", "major modification", "natural conditions" and "visibility impairment" are not used in Part 11. They are, however used in Part 7 and are defined in OAC 252:100-8-31. "Agency", "building, structure, or facility", "federally enforceable", "fugitive emissions", "potential to emit", and "stationary source", are defined in 252:100-1-3. "Federal Class I area", "fixed capital cost" "geographic enhancement for the purpose of 51.308", "implementation plan", "Indian tribe or tribe", "installation", "least impaired days", "most impaired days", "reconstruction", "regional haze", "significant impairment" are not used in Part 11 and are, therefore, not defined.

2. **COMMENT:** In Section 252:100-8-70, ODEQ should clarify that "BART-eligible source" means an existing stationary source as defined in Section 8-71.

RESPONSE: This change has been made, except the term is "existing stationary facility".

3. **COMMENT:** Section 252:100-8-76, states the BART requirements will be included in a permit modification in a facility's Part 70 permit. It is our understanding that ODEQ's BART Rule will be submitted to EPA for federal approval, making that rule an applicable requirement. As such, the requirements under the rule will then be folded into each source's operating permit. Please clarify that ODEQ will use its significant modification or reopen procedures per 252:100-8-7.1, *et al.* Also, please provide more specific references in the BART rule.

RESPONSE: Language has been added to clarify this.

4. **COMMENT:** ODEQ should define "potential to emit" using the language from 51.301:

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

RESPONSE: This definition is very similar to the definition of "potential to emit" located in 252:100-1-3. However, the definition in 40 CFR 51.301 requires that any limitations be federally enforceable and the definition in 252:100-1-3 does not. In light of this difference, "potential to emit" as defined in 40 CFR 51.301 has been added to 252:100-8-71.

5. **COMMENT:** ODEQ may wish to change the term "BART applicability" in Section 252:100-8-73(b), to "Whether a source is subject to BART", or similar language, in order to highlight the difference between the term "BART eligibility" and "subject to BART" and to provide a smoother transition between the Section 252 rule and the BART guidelines.

RESPONSE: This change has been made.

6. **COMMENT:** Section 252:100-8-73(c)(3) provides that a source can request a waiver to a BART determination if the source demonstrates by modeling that it does not emit any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in a Class I area. ODEQ should clarify this exemption, as discussed on page 39117 of the 7/6/05 rule, is limited to sources at levels between de minimis and 250 tons. In addition, ODEQ may wish to clarify the term "BART demonstration." The following language is suggested:

(c) The owner or operator of a BART-eligible source may request and obtain a waiver from the Department that a BART determination under Section III of Appendix Y of 40 CFR 51 is not required:

- (1) for SO₂ or for NO_x if the BART-eligible source has the potential to emit less than 40 TPY of such pollutant(s),
- (2) for PM-10 if the BART-eligible source emits less than 15 TPY of such pollutant, or
- (3) if the owner or operator of the BART-eligible source that emits less than 250 tons of a visibility-impairing air pollutant, demonstrates by modeling, in accordance with a protocol approved by the Director, that a source does not emit any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory Class 1 Federal area.

ODEQ may wish to separate out Section 252:100-8-73(c) into new Section 252:100-8-74 entitled "De Minimis BART Exemption" (and renumber successive paragraphs), in order to emphasize the de minimize aspect of the exemption. In addition, ODEQ is encouraged to submit the modeling protocol contemplated above to EPA Region 6 for concurrence, prior to submission of the regional haze SIP.

RESPONSE: OAC 252:100-8-73(c)(3) has been revised to limit the modeling option to BART-eligible sources with plant-wide emissions of SO₂, NO_x, and PM-10 between the "de minimis levels" and 250 TPY.

7. **COMMENT:** "Administrator," which appears in 252:100-8-74(a), should be defined using the definition in 40 CFR 51.100(b):

"Administrator" means the Administrator of the U.S. Environmental Protection Agency (EPA) or an authorized representative.

RESPONSE: This term is defined in OAC 252:100-1-3.

8. **COMMENT:** ODEQ may wish to define the term "subject to BART" as a "BART-eligible source that emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory Class I Federal area." That term can then be substituted for the language in Section 252:100-8-73(a), and woven into Section 252:100-8-74, 252:100-8-75(f), and the first part of 252:100-8-75(a).

RESPONSE: Staff has decided not to add a definition of "subject to BART" to the proposed rule.

9. **COMMENT:** As discussed on page 39172 of the 7/6/05 rule, it is important that sources employ techniques that ensure compliance on a continuous basis. Therefore the following clarification to 252:100-8-75(e) is suggested:

The owner or operator of each source subject to BART shall maintain the control equipment required by this Part and establish procedures to ensure such equipment is properly and continuously operated and maintained.

RESPONSE: OAC 252:100-8-75(e) has been modified as suggested.

OG&E Energy Corp - letter received via e-mail received on December 15, 2005, dated December 15, 2005, from Julia Bevers, CIH, Sr. Regulatory Environmental Analyst (these comments were based on the September 15, 2005, revision of the proposed rule, rather than the December 15, 2005 revision)

10. **COMMENT:** The last sentence in the definition of "secondary emissions" in 252:100-8-71 should be made consistent with the definition provided in OAC 252:100-1-3.

RESPONSE: The definition of "secondary emissions" in 252:100-8-71 is specific to Part 11 and has requirements identical to that in the definition of "secondary emissions" in 40 CFR 51.301. DEQ has decided not to move the definition of "secondary emissions" from 252:100-8-1.1 to 252:100-1-3 at this time or to make any substantive change to this definition.

11. **COMMENT:** There appears to be a typographical error in 252:100-8-75(a). There are two paragraphs identified as number (3). As both seem to reflect the same requirements, one of them should be deleted.

RESPONSE: This error has been corrected in the December 15, 2005 revision of Part 11.

12. **COMMENT:** It is unclear how the date that BART must be installed and operated will be determined. 252:100-8-75(d) requires this no later than five years after the Department has approved the proposed BART. It is our understanding that a source will first submit a proposed BART to the Director by December 1, 2006, following which the Director will submit the SIP to EPA for their approval. There appear to be at least four options that could determine the date BART is approved by the Department: 1) the date the source submits a proposed BART to the Director, 2) the date the SIP is submitted to EPA; 3) the date EPA approves the SIP, or 4) some other date that has not been defined. The date BART installation and operation must occur should be clarified in the rule and be consistent with Federal requirements that allow five years after EPA approves the SIP before installation and operation are required (40 CFR 51 Appendix Y Section V). We propose that 252:100-8-75(d) be revised to read "The owner or operator of each BART-eligible source subject to BART shall install and operate BART no later than five years after the EPA approval date of the proposed SIP."

RESPONSE: OAC 252:100-8-75(d) requires that BART be installed and operated no later than 5 years after the Department approves it and 252:100-8-76 requires that sources subject to BART shall submit BART requirements to the Director pursuant to 252:100-8-7.2 no later than December 1, 2006. This means that the BART shall be installed and operated no later than 5 years after the Department approves the modification to the Part 70 permit that incorporates BART into that permit. The Department is considering rewording OAC 252:100-8-75(d) to make clear that the BART will be approved by the Department when it is incorporated into the Part 70 permit for the source.

OG&E Energy Corp - letter dated January 4, 2006, from Julia Bevers, CIH, Sr. Regulatory Environmental Analyst

13. **COMMENT:** The applicability statement in 252:100-8-70 states that Part 11 applies to any BART-eligible source which may be anticipated to cause or contribute to any visibility impairment at any mandatory Class I Federal area. The words "any visibility impairment" are also used in 252:100-8-73 and 252:100-8-75. Does this really mean "any visibility impairment" no matter how small an impact, or is there some level of significance that applies?

RESPONSE: Sections 252:100-8-70, 73, and 75 have revised to include a threshold value for visibility impairment.

14. **COMMENT:** In 252:100-8-71, the definition of "Best Available Retrofit Technology" uses the words "each pollutant" the definition of "existing stationary facility" uses the words "any air pollutant". Since Part 11 applies to visibility protection it would be more accurate to state "each (or any) visibility impairing pollutant" in both instances.

RESPONSE: The federal rule in 40 CFR 51.301 uses the words "each pollutant" in the definition of "Best Available Retrofit Technology" and the words "any air pollutant" in the definition of "existing stationary facility". Since the Federal definitions do not narrow the

universe of pollutants to SO₂, NO_x, PM-10, PM-2.5, VOC, and ammonia, neither do the definitions proposed in the DEQ rule. However, DEQ proposes to revise 252:100-8-73(b) to limit the pollutants considered for BART to NO_x, SO₂, PM-10, and PM-2.5.

15. **COMMENT:** In an effort to provide clarity we suggest in 252:100-8-72 that the title of Appendix Y also be included so that the section reads: "Appendix Y, Guidelines for BART Determination Under the Regional Haze Rule"

RESPONSE: Staff agrees and proposed this change.

16. **COMMENT:** Subsections (a) and (b) of 252:100-8-73 appear to be contradictory. Subsection (a) states that each BART-eligible source that emits any air pollutant which may reasonable be anticipated to cause or contribute to any visibility impairment in any Class I Federal area is subject to BART while subparagraph (b) states that whether a source is subject to BART shall be determined using criteria in Section III of Appendix Y of 40 CFR 51 in effect on July 6, 2006. Paragraph (a) should be deleted.

RESPONSE: Paragraphs (a) and (b) have been revised and the contradiction no longer exists.

Oral Comments Made At The Council Meeting

17. **COMMENT:** Bud Ground, PSO. The Department has no plans at this time to develop a trading program. Are you waiting on CENRAP to develop something or for private industry to develop a trading program, or are you just not planning on ever trying to implement a trading program? Would you be opposed to the Bart-eligible sources getting together to discuss trading?

RESPONSE: The Department has no plans to develop a trading program, but is not opposed to the stakeholders developing such a program. We will be happy to discuss any cap and trade program that such a group develops.

COMMENTS RECEIVED PRIOR TO THE APRIL 19, 2006, AIR QUALITY ADVISORY COUNCIL MEETING

BENHAM Companies, LLC – E-mail dated February 13, 2006 from Laura Worthen, P.E., Air Quality Group Manager

18. **COMMENT:** OAC 252:100-8-73(c)(4) reads that the modeling exemption waiver is limited to sources less than 250 TPY of NO_x, SO₂ and PM-10. This doesn't make sense, since sources that emit less than 250 TPY are not considered BART eligible and the modeling waiver option under the federal rule is intended for sources that emit greater than 250 TPY of an air pollutant.

RESPONSE: This language was added to OAC 252:100-8-73(c)(4) based on an EPA comment. It appeared to make sense when it was added, but the unexpected consequence of this modification prompted staff take another look at paragraph (4). Staff had no intention of

excluding any source with emissions of 250 TPY or more of any one pollutant from using modeling to demonstrate that the source does not emit any air pollutant which may reasonably be anticipated to cause or contribute to visibility impairment in any mandatory Class I Federal area and had not interpreted the added language to mean this. Contact with EPA indicated that although this language is in the preamble, it shouldn't be. The last sentence in OAC 252:100-8-73(c)(4) containing the language in question has been deleted.

OG&E Energy Corp – Telephone call on March 20, 2006, from David Branecky, Manager, Air Quality

19. **COMMENT:** OAC 252:100-8-73(c)(1) allows the owner or operator of a BART-eligible source to request and obtain a waiver from the requirement for a BART determination for SO₂ or NO_x if the potential to emit these pollutants is less than 40 TPY of each pollutant. OAC 252:100-8-73(c)(2) allows an owner or operator to request and obtain a waiver from BART determination for PM-10 if PM-10 emissions are less than 15 tons per each. Why is the waiver from SO₂ and NO_x based on potential to emit and the waiver from PM-10 is based on actual emissions?

RESPONSE: A search of the preamble published in the Federal Register on July 6, 2005, indicates that a waiver from the requirement for a BART determination for PM-10 emissions should also be based on potential to emit. The preamble states that "We believe States may, if they choose, exclude from the BART determination process potential emissions from a source of less than forty tons per year of SO₂ or NO_x, or 15 tons per year for PM-10." Staff proposes to revise OAC 252:100-8-73(c)(2) to indicate that the waiver for PM-10 is also potential to emit.

Georgia Pacific – Telephone call on April 5, 2006, from Rob Kaufman

20. **COMMENT:** What is the basis for 252:100-8-75 (g)? Since a BART determination is a one-time evaluation, what is the basis for future BART evaluation requirements?

RESPONSE: This is a general plan requirement under the federal regional haze rule at 40 CFR 51.302. State plans must allow for a BART analysis, at such times as determined by the Administrator, when the conditions of 40 CFR 51.302 (c) (V) exist.

EPA Region 6 – Letter dated April 12, 2006, received by FAX on April 14, 2006, signed by Thomas H. Diggs, Chief, Air Planning Section and David Neleigh, Chief, Air Permits Section.

21. **COMMENT:** OAC 252:100-8-78 states that all modeling required by Part 11 shall be performed in accordance with a protocol approved by the Director. To avoid miscommunication on this issue, we suggest that Oklahoma ensure that any BART modeling follows EPA-approved protocol. We urge the State to submit such protocols to us for prior approval. This will help ensure that the State does not risk disapproval of its Regional Haze SIP.

RESPONSE: We will work with EPA to insure that any BART modeling relied upon in the SIP follows EPA guidance. Since 40 CFR 51, Subpart P – Protection of Visibility does not

require States to officially submit modeling protocols to EPA and obtain approval prior to any BART modeling, we do not believe Part 11 of Subchapter 8 needs to be changed to include this requirement.

22. **COMMENT:** Although Appendix Y to 40 CFR Part 51 is properly referenced in OAC 252:100-8-72 and 252:00-8-72(b), Oklahoma may wish to avail itself of other relevant guidance in the preparation of the regional haze SIPs, including the following:
- "Guidance for Tracking Progress Under the Regional Haze Rule," EPA-454/B-03-004, September 2003
 - "Draft Guidance for Demonstrating Attainment of Air Quality Goals for PM_{2.5} and Regional Haze," January 2, 2001
 - "Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule," EPA-454/B-03-005, September 2003.
 - A memo from Lydia Wegman to the Regional Air Directors entitled, "2002 Base Year Emission Inventory SIP Planning: 8-Hour Ozone, PM_{2.5} and Regional Haze Programs," dated 11/18/2002.
 - "Draft Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program," 11/28/2005.
 - "Visibility Monitoring Guidance," EPA-454/R-99-003, June 1999.
 - "Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter NAAQS and Regional Haze Regulations," EPA-454/R-05-001, August, 2005.
 - "Interim Air Quality Policy on Wildland and Prescribed Fires," April 23, 1998

RESPONSE: Although OAC 252:100-8-72 incorporates Appendix Y, Guidelines for BART Determination Under the Regional Haze Rule, of 40 CFR 51 as it existed on July 6, 2006, and 252:100-8-73(a) references Section III of Appendix Y of 40 CFR 51 in effect on July 6, 2005, neither Section 8-72 or subsection 8-73(a) precludes the use of documents such as those listed in Comment #22. DEQ has worked closely with CENRAP in developing protocol and is aware of EPA's requirements.