



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2010-1043; A-1-FRL-9652-1] Approval and Promulgation of Air Quality Implementation Plans; Maine; Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: EPA is approving a revision to the Maine State Implementation Plan (SIP) that addresses regional haze for the first planning period from 2008 through 2018. It was submitted by the Maine Department of Environmental Protection (Maine DEP) on December 9, 2010, with supplemental submittals on September 14, 2011, and November 9, 2011. This revision addresses the requirements of the Clean Air Act (CAA) and EPA's rules that require States to prevent any future, and remedy any existing, manmade impairment of visibility in mandatory Class I Areas caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the "regional haze program").

EFFECTIVE DATE: This rule is effective on **[Insert date 30 days from date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2010-1043. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., 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 or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays

Copies of the documents relevant to this action are also available for public inspection during normal business hours, by appointment at the Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333-0017.

FOR FURTHER INFORMATION CONTACT: Anne McWilliams, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square – Suite 100, (Mail Code OEP05-02), Boston, MA 02109 – 3912, telephone number (617) 918-1697, fax number (617) 918-0697, e-mail mcwilliams.anne@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

The following outline is provided to aid in locating information in this preamble.

I. Background and Purpose.

II. Response to Comments.

III. Final Action.

IV. Statutory and Executive Order Reviews.

I. Background and Purpose.

On November 29, 2011, EPA published a Notice of Proposed Rulemaking (NPR) for the State of Maine. See 76 FR 73956. The NPR proposed approval of the Maine State Implementation Plan (SIP) that addresses regional haze for the first planning period from 2008 through 2018. It was submitted by the Maine DEP on December 9, 2010, with supplemental submittals on September 14, 2011, and November 9, 2011. Specifically, EPA proposed to approve Maine's December 9, 2010 SIP revision, and its supplements, as meeting the applicable implementing regulations found in 40 CFR 51.308. EPA also proposed to approve Maine's Best Achievable Retrofit Technology (BART) determinations for several sources and to incorporate the license conditions that implement those determinations into the SIP. In addition, EPA proposed to approve Maine's low sulfur fuel oil legislation, 38 MRSA §603-A, sub-§2(A), and to incorporate this legislation into the Maine SIP. Furthermore, EPA is also proposed to approve the following Maine state regulation and incorporate it into the SIP: Maine Chapter 150, Control of Emissions from Outdoor Wood Boilers.

A detailed explanation of the requirements for regional haze SIPs, as well as EPA's analysis of Maine's Regional Haze SIP submittal was provided in the NPR and is not restated here.

II. Response to Comments.

EPA received a number of comments on our proposal to approve Maine's Regional Haze SIP submittal. Comments were received from the citizen's group Credo Action and the National Park Service (NPS). A joint letter from the National Parks Conservation Association (NPCA), the Appalachian Mountain Club (AMC), the Conservation Law Foundation (CLF), and the Natural Resources Council of Maine (collectively "NPCA") was also submitted. Many of the NPCA comments echoed comments submitted by NPS. The U.S Forest Service reiterated previous comments submitted on Maine's proposed rulemaking and acknowledge the work that the State of Maine has accomplished and encouraged the State of Maine to continue to reduce regional haze. The following discussion summarizes and responds to the relevant comments received on EPA's proposed approval of Maine's Regional Haze SIP.

Comment: NPCA commented that in light of the \$/ton limits accepted by other States (e.g., \$7,300/ton in Oregon, \$5,000/ton in Colorado, and \$7,000 - \$10,000/ton in Wisconsin), Maine lacks a State cost effectiveness threshold in its Best Available Retrofit Technology (BART) determinations.¹

Response: While States have the option to develop a cost effectiveness threshold, the Regional Haze Rule does not require States to set a bright line threshold for cost effectiveness. Pursuant to Section 51.308(e)(A), the State is required to consider five factors when determining the appropriate level of BART control: the cost of compliance; the energy and non-air quality environmental impacts; any pollution control equipment in use at the source; the remaining useful life of the source; and the degree of improvement which may be reasonably anticipated to result from the use of such technology. Even though the cited States adopted a dollar per ton

¹ NPS also compared Maine's determinations of cost effectiveness to the determinations made by these States.

threshold, controls with costs below the established cost threshold were sometimes rejected when considered in conjunction with the other factors. In Oregon, only one BART-eligible source was subject to BART: the PGE Boardman coal-fired EGU. Although the technology option of new Low NO_x Burners with modified over-fire air (NLNB/MOFA) plus selective non-catalytic reduction (SNCR) could be considered cost effective (\$1,816/ton) for the PGE Boardman, the Oregon Department of Environmental Quality (ODEQ) rejected this technology option because adding SNCR only provided an additional 0.18 deciview (dv) of visibility improvement over NLNB/MOFA at the Mt. Hood Wilderness Area and because ODEQ was concerned with the potential for excess ammonia emissions from the SNCR (commonly referred to as ammonia slip) which could result in increased rates of secondary particulate matter (ammonium sulfate). In addition, ODEQ rejected Semi-dry Flue Gas Desulfurization (SDFGD) at a cost of \$5,535/ton SO₂ removed (\$7,200/ton incremental cost) in favor for Dry Sorbent Injection (DSI) at \$3,370/ton SO₂ removed. See 76 FR 12651. The State of Colorado also rejected BART controls with a cost of control less than \$5,000/ton (e.g., DSI at a cost of \$2,482/ton SO₂ removed) due to minimal expected visibility improvement. In the case of Wisconsin, the State only has one non-EGU subject to BART. The BART level of control selected by the State for this source is \$1,580/ton SO₂ removed and \$1,868/ton NO_x removed with a combined visibility improvement of 2.68 dv at the highest impacted Class I Area and 5.03 dv visibility improvement across all four Class I Areas impacted by this BART source. See 77 FR 11928 (February 28, 2012). In addition, all three of the States cited by NPCA applied a 0.5 dv minimum visibility impact threshold for determining what BART-eligible sources would be subject to BART. Maine instead decided that all BART-eligible sources, regardless of their impact on Class I Areas, would be subject to BART. Therefore, the cost effectiveness thresholds cited by NPCA are not

comparable to Maine's determinations. The Regional Haze Rule does not require States to use a set threshold in evaluating cost effectiveness and the lack of a cost effectiveness threshold does not render Maine's BART determinations unreasonable.

Comment: NPS commented that the analysis of lower sulfur fuel oil for Verso Androscoggin Power Boilers 1 and 2 is incomplete, inaccurate, and does not follow BART Guidelines or the MANE-VU recommendations. NPS suggested that EPA should at least evaluate the lower sulfur residual oils for the Verso Androscoggin Power Boilers.

Response: According to Appendix Y to Part 51 – Guidelines for BART Determinations under the Regional Haze Rule (BART Guidelines), “[F]or sources other than 750 MW power plants, however, States retain the discretion to adopt approaches that differ from the guidelines.” See 70 FR 39156 (July 6, 2005). Verso Androscoggin is a pulp and paper plant and Maine's analysis is therefore not required to follow the BART Guidelines. Maine has flexibility in addressing the five factors of the BART analysis.

The MANE-VU recommended level of control for industrial boilers is the use of 0.5% sulfur in fuel #6 oil. Maine's BART limit for Verso Androscoggin Power Boilers 1 and 2 requires the reduction from 1.8% sulfur in fuel oil to the use of 0.7% sulfur in fuel oil by January 1, 2013. The source will, however, be subject to the MANE-VU recommended 0.5% sulfur in fuel limit by no later than January 1, 2018, pursuant to Maine's low sulfur fuel oil legislation, 38 MRSA §603-A, sub-§2(A)² which will become federally enforceable under today's action. Therefore

² www.mainelegislature.org/legis/statutes/38/title38sec603-A.html

these boilers will be required to meet the MANE-VU recommended level of control during the first planning period as part of the long term strategy.

Comment: NPS commented that in its analysis of the switching to natural gas, Verso Androscoggin assumed \$9.43 per thousand cubic feet (MCF) which is more than double the current price. NPS claimed that EPA must reevaluate the costs of switching to natural gas using current cost information.

Response: The Verso Androscoggin analysis of switching to natural gas assumed \$9.43/MCF based on 2009 data. The most recent data from U.S. Energy Information Administration indicates an increase in the 2010 annual industrial price of natural gas to \$11.23/MCF³ and monthly industrial prices are in the range of \$8.61 to \$12.08/MCF for the second half of 2011.⁴ Therefore, the use of \$9.43/MCF is acceptable.

Comment: NPS commented that Maine DEP improperly dismissed application of FGR (Flue Gas Recirculation) at Verso Androscoggin from further evaluation on the premise that it would result in minimal reductions in NO_x emissions. NPS commented that FGR was determined to be technically feasible by Verso Androscoggin and must be fully evaluated if SNCR is not selected as BART.

Response: The State of Maine has flexibility as to how the factors of the BART analysis are weighed and is not required to conduct an analysis that conforms to the requirements of BART

³ www.eia.gov/dnav/ng/ng_pri_sum_dcu_SME_a.htm.

⁴ www.eia.gov/dnav/ng/ng_pri_sum_dcu_SME_m.htm

Guidelines because Verso Androscoggin is not a 750 MW power plant. The State determined that the installation of flue gas recirculation at Verso Androscoggin would require the enlargement of the burner openings in both boilers. When combined with the existing Low NO_x burners, the FGR is only expected to result in a maximum of seven percent reduction in NO_x emissions which would not be expected to provide substantial visibility improvement.⁵ EPA finds that Maine reasonably rejected the installation of FGR.

Comment: NPS commented that Verso Androscoggin did not follow the EPA's Cost Control Manual (CCM) method for evaluating add-on controls and Verso Androscoggin's capital recovery factor is inflated. NPS recalculated the cost effectiveness of the SNCR using a capital recovery factor using 7% interest over a 20-year life as opposed to 12.4% interest over a 10-year life used by the State. NPS found the revised cost to be \$5,553/ton NO_x removed instead of the Maine DEP value of \$5,973/ton NO_x removed. However, due to the assumption of low utilization, NPS suggested that the cost-effectiveness be reevaluated should boiler utilization increase.

Response: The Regional Haze Rule does not require States to use EPA's CCM to evaluate the costs of control technologies, though it represents a good reference tool. See 70 FR 39104, 39127 (July 6, 2005). The analysis provided by NPS, which used the CCM procedure for coal-fired EGUs (including a lower capital recovery factor than the State used) and EPA's IPM model, was only \$420/ton less than Maine's cost determination, supporting the reasonableness of Maine's

⁵ If FGR were installed at the facility without the already installed Low NO_x burners it would achieve the maximum 15% reduction in NO_x. However, when combined with the already installed Low NO_x burners, the FGR only achieves a further reduction of 7% from the already lower NO_x levels generated by the Low NO_x burners.

evaluation. EPA does not believe that this relatively small difference calculated in cost effectiveness calls into question the reasonableness of the State's analysis.⁶

States must determine BART eligibility and controls only during this first planning period and therefore Maine is not required to reevaluate its BART determination if utilization of the boiler increases. The Regional Haze Rule however makes clear that after a BART determination is made, the source is subject to the core requirements of 40 C.F.R. 51.308(d). Therefore, consistent with the Regional Haze Rule, Maine may in subsequent planning periods reevaluate the controls and visibility impact of Verso Androscoggin as part of the State's long term strategy. EPA finds that Maine reasonably concluded that based on the current boiler 20% utilization, SNCR is not a cost effective control for Power Boilers 1 and 2 at Verso Androscoggin.

Comment: NPS commented that if EPA uses incremental cost to override an average cost-effectiveness value (which was at a level found to be reasonable in the Four Corners BART proposal), it must show how the incremental costs of switching to lower sulfur fuels at the Verso Androscoggin mill are higher than other incremental costs that have been accepted.

Response: The Regional Haze Rule grants States the authority to make the initial determination of what constitutes BART. EPA reviews that determination to ensure the appropriate factors were considered and that the determination is reasonable. The Four Corners BART proposal cited by NPS was an EPA proposal for a federal implementation plan (FIP), where EPA has the role of initially determining BART, and is therefore not comparable to EPA's

⁶ EPA rejected a similar argument in regards to the PGE Boardman coal-fired EGU in Oregon. In that case, use of the CCM lead to a cost \$725/ton less than that used by Oregon. We similarly rejected that difference in cost effectiveness as inconsequential to the State's final decision. See 76 FR 38997, 39000 (July 5, 2011).

role in approving Maine's SIP. For the Verso Androscoggin Power Boilers, EPA did not rely on the incremental cost in making its determination. Rather, EPA evaluated Maine's determination that with minimal visibility improvement beyond what would be achieved with 0.7% sulfur #6 fuel oil, the conversion to #2 fuel oil or natural gas was not justified. In addition, as noted above, the Power Boilers at Verso Androscoggin will be subject to a 0.5% sulfur limit no later than January 1, 2018, as part of Maine's long term strategy. EPA finds Maine's determination that 0.7% sulfur fuel oil represents BART for Verso Androscoggin to be reasonable.

Comment: NPS commented that the average cost effectiveness of selective catalytic reduction (SCR) for the Verso Androscoggin WFI is about \$4,200/ton, which is much lower than EPA determined to be acceptable at Four Corners, and is lower than the benchmark \$/ton values used by New York, Colorado, Oregon, and Wisconsin. NPS commented that Maine DEP/US EPA are essentially relying upon the cost of controls versus the resulting visibility improvement in reaching their conclusion. NPS claimed to have shown that the cost/dv for SCR on the Verso Androscoggin Waste Fuel Incinerator (WFI) falls well below the nationwide average, is reasonable, and should constitute BART for the Verso Androscoggin WFI.

Response: The limited usefulness of the thresholds for Colorado, Oregon, and Wisconsin is discussed above. EPA has not yet proposed action on the New York submittal. Verso Androscoggin is a pulp and paper facility. The BART Guidelines do not include a presumptive level of control for this type of facility and Maine is not required to follow the BART Guidelines for setting BART for this unit. Four Corners is a 2,040 MW coal-fired EGU. The presumptive level of control for this type of facility is outlined in the BART Guidelines. The BART

Guidelines do not include a presumptive level of control for pulp and paper facilities like Verso Androscoggin. The greatest visibility impact at any Class I Area due to NO_x from Four Corners is 5.95 dv,⁷ whereas, the highest visibility impact from the WFI at Verso Androscoggin is 0.4 dv. The highest visibility impact from the WFI at Verso Androscoggin is less than the threshold for applying BART to BART-eligible sources established by many States, including Colorado, Oregon, and Wisconsin which use a 0.5 dv threshold. EPA estimates that the cost of installation of SCR for Units 1 through 5 at Four Corners ranges from \$2,515/ton - \$3,163/ton.⁸ NPS estimated a cost of control for the Four Corners units on the order of \$1,326/ton - \$1,882/ton NO_x removed, with an expected visibility improvement of 2.43 dv at the highest impacted Class I Area.⁹ The determination of BART for Four Corners is not directly comparable to EPA's approval of Maine's determinations because of the much greater expected visibility improvement and, as noted above, the fact that the Four Corners proposal is a FIP. EPA finds that Maine reasonably determined that for an expected visibility improvement of 0.4 dv (SCR) or 0.1 dv (SNCR), the installation of SCR at a cost of \$4,200/ton or SNCR at a cost of \$4,950/ton on the 48 MW WFI at Verso Androscoggin is cost prohibitive.

Comment: NPS commented that based on recalculated visibility benefits at several of the nearest Class I Areas on the highest impacting visibility days, NPS determined that lower sulfur (0.5% & 0.3%) fuels at Wyman Station Units #3 and #4 would improve cumulative visibility by a total of 2.0 – 3.4 dv. This results in a cumulative cost-effectiveness value of \$0.8 - \$2.1 million/dv, which NPS claimed is relatively inexpensive compared to the average \$18 million/dv

⁷ 75 FR 64230, October 19, 2010 – EPA's Proposed Source Specific Federal Implementation Plan for Implementing Best Available Retrofit Technology for Four Corners Power Plant: Navajo Nation

⁸ Id.

⁹ Id.

that they are seeing accepted by States and sources that are proposing reductions under BART. NPS claimed that because neither Maine DEP nor EPA had presented any benchmark against which to compare their cost/dv estimates, EPA must agree that BART for Wyman boilers #3 and #4 is the use of 0.3% sulfur residual oil. In addition, NPS claimed that EPA should require the use of 0.3% sulfur fuel oil to meet the 90% reduction in the MANE-VU “Ask”.

Response: The Maine BART limit for Wyman Station requires the reduction from 2.0% sulfur in fuel oil in boiler #3 to the use of 0.7% sulfur in fuel oil and the continued use of 0.7% sulfur in fuel in boiler #4 by January 1, 2013. In addition, as part of Maine’s long term strategy, both boilers, along with the two other boilers on site, will be required to meet a further reduction to 0.5% sulfur limit by January 1, 2018, pursuant to 38 MRSA §603-A, sub-§2(A), which will become federally enforceable under today’s final action. This reduced sulfur limit will result in at least the additional 2.0 dv cumulative visibility improvement indicated in the NPS comments.

While it is helpful additional information in some cases, the BART Guidelines do not require the use of cumulative visibility impact when addressing the visibility factor. NPS calculated that the reduction from 0.5% sulfur to 0.3% sulfur fuel oil would only result in 0.37 dv visibility improvement at the highest impacted area from boiler #3 and 0.41 dv visibility improvement from boiler #4, incurring an annual fuel cost increase of at least \$886,844 and \$4,103,863, respectively.¹⁰ However, NPS’s calculations improperly compare the implementation cost based on lower utilization (most recent two years) with visibility benefits calculated using a higher utilization, suggesting that the true cost effectiveness values at lower utilization values may be

¹⁰ Appendix W to the NPS comment.

higher than those calculated by NPS. Maine reasonably determined that 0.7% sulfur is BART for Wyman Station Units #3 and #4.¹¹

Comment: NPS recommends that emission controls for two Maine sources, Dragon Cement, a Portland cement manufacturing facility, and SD Warren Company (SAPPI), an integrated pulp and paper mill, be evaluated under the reasonable progress provisions of the Regional Haze Rule. Initial BART modeling for these two sources demonstrated that they cause or contribute to visibility impairment at Acadia National Park. These two sources were subsequently found not to be subject to BART. NPS contends that, consistent with EPA Region 6's partial disapproval of Arkansas' Regional Haze SIP (Docket ID: EPA-R06-OAR-2008-0727), these Maine sources must be considered in Maine's reasonable progress analysis.

Response: Under EPA's Guidance for Setting Reasonable Progress Goals under the Regional Haze Program ("Reasonable Progress Guidance"), States may identify key pollutants and source categories for the first planning period.¹² MANE-VU and Maine determined that the key pollutant which contributes to visibility impairment in the Maine Class I Areas is SO₂. Therefore, in accordance with EPA's guidance,¹³ Maine and MANE-VU focused on SO₂ for the first planning period. As a result of the four factor analysis for reasonable progress, MANE-VU and Maine agreed to pursue the following emission reductions strategies to ensure reasonable

¹¹ NPS also claimed that analysis of Wyman must be conducted on the same basis as the analysis conducted at Verso Androscoggin. However, as discussed more fully below, States have discretion in determining the baseline period so long as it represents a reasonable determination of anticipated emissions from the source.

¹² Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program, p. 3-1 (2007), www.epa.gov/ttn/caaa/t1/memoranda/reasonable_progress_guid071307.pdf.

¹³ "In deciding what amount of emission reductions is appropriate in setting the RPG, you (the State) should take into account that the long-term goal of no manmade impairment encompasses several planning periods. It is reasonable for you to defer reductions to later planning periods in order to maintain a consistent glidepath toward the long-term goal.", Id. p. 1-4.

progress for the first planning period: timely implementation of BART; 90% reduction in SO₂ emissions from the 167 highest visibility impacting electrical generating units; a reduction in the sulfur in fuel content of distillate and residual oil; and continued evaluation of other emission reduction strategies. These reduction strategies (the MANE-VU Ask) represent individual reasonable progress goals, to be expressed in deciviews, which MANE-VU States committed to achieving (i.e., each State modeled what reductions would be achieved with these strategies and then converted those reductions into visibility improvement to set their reasonable progress goals). Each State is responsible for crafting a long term strategy that is intended to meet these reasonable progress goals. The SAPPI Power Boiler #1 is subject to control under Maine's long term strategy under the State's low sulfur fuel oil legislation, 38 MRSA §603-A, sub-§2(A). This law limits the SAPPI Power Boiler #1 to burning 0.5% sulfur fuel oil no later than January 1, 2018.

EPA's partial disapproval of the Arkansas SIP was due to a lack of four factor analyses for reasonable progress. However, a full four factor analysis was undertaken at a regional level as part of Maine's role in MANE-VU; this resulted in the MANE-VU Ask discuss above. See 76 FR 73956. The approval of Maine's SIP is therefore not inconsistent with the partial disapproval of Arkansas' SIP. Consistent with the Regional Haze Rule and EPA's Reasonable Progress Guidance, Maine was not required to evaluate additional controls for Dragon Products and SAPPI during this first planning period in setting its reasonable progress goals.

Comment: NPS commented that while Power Boiler #1 at SAPPI is not BART-eligible, MANE-VU modeling across the four Class I Areas modeled in and near Maine shows that Power

Boiler #1 has a cumulative impact of 1.8 dv, with 1.4 dv attributable to sulfates. The greatest impact (0.8 dv) occurs at Acadia National Park. With respect to SAPPI Power Boiler #1, NPS suggested that EPA should evaluate additional emission reductions as required by the reasonable progress provisions of the Regional Haze Rule.

Response: Under Maine's long term strategy, Power Boiler #1 at SAPPI will be required to reduce the current sulfur content of the residual oil from 2.0% to 0.5% by January 1, 2018, pursuant to 38 MRS §603-A, sub-§2(A) which will become federally enforceable in today's action. When developing the emission projection for modeling future visibility conditions resulting from the various control strategies, Maine had originally projected that BART control on Power Boiler #1 would result in an emission reduction of 1,442 tons per year. Maine clarified that the expected reductions from the application of BART are still being met via operation changes. This projection is separate from the additional reductions which will be achieved by the application of the low sulfur fuel oil requirements of Maine's long term strategy. As noted above, Maine's decision to not include controls in addition to the MANE-VU Ask on the SAPPI Power Boiler #1 during this first planning period is consistent with the Regional Haze Rule and EPA's Reasonable Progress Guidance.

Comment: NPS commented that while they agree that Dragon (kiln) is a reconstructed source, they believe that the reasonable progress provisions of the Regional Haze Rule require that Dragon reduce NOx emissions by 45% as expeditiously as possible.

Response: As noted above, Maine conducted a full four factor analysis to set its reasonable progress goals, resulting in the MANE-VU Ask. The long term strategy provision establishes enforceable limits that the State will undertake to meet the reasonable progress goals. We are interpreting NPS's comment as requesting that EPA require Maine to evaluate additional reductions from Dragon Products as part of its long term strategy.

Dragon Products currently operates selective non-catalytic reduction to reduce NOx emissions from the kiln. The estimated efficiency of the current system is 18% - 22% NOx emission reductions. EPA agrees that the kiln is a candidate for future emission reductions as part of Maine's long term strategy during subsequent planning periods. However, consistent with the Regional Haze Rule and EPA's Reasonable Progress Guidance, during this first planning period Maine is reducing the visibility impacts from SO₂, which is the greatest visibility impacting pollutant at its Class I Areas. The major pollutant of concern from Dragon Products is NOx. In subsequent planning periods, Maine will once again determine the pollutant(s) with the greatest impact on visibility and implement appropriate emission reduction measures as part of Maine's long term strategy for future planning periods. Maine was not required to include emissions reductions from Dragon Products during this first planning period.

Comment: NPCA commented that the Dragon Products kiln was not considered subject to the New Source Performance Standards (NSPS) at the time of its modifications. NPCA claims that Dragon Products was appropriately classified as a BART-eligible source and should be subject to the BART determination reached by Maine in its earlier regional haze submittal.

Response: As noted in the proposal, in a letter dated September 14, 2011, Maine DEP informed EPA that it had determined that Dragon Products was a reconstructed source and not obliged to meet BART.¹⁴ EPA's BART Guidelines state that "any emission unit for which reconstruction 'commenced' after August 7, 1977, is not BART-eligible." See 70 FR 39104, 39160 (July 6, 2005). However, as noted above, the BART Guidelines are only mandatory for 750 MW power plants. Therefore, Maine has discretion to follow the BART Guidelines interpretation of BART-eligible or to choose a different, reasonable interpretation. Maine's decision that, as a source that was reconstructed after August 7, 1977, Dragon Products is not BART-eligible is reasonable and not inconsistent with the Regional Haze Rule or the CAA.

That Dragon Products may not have been subject to the NSPS at the time of reconstruction is irrelevant for this purpose. Dragon Products was undisputedly subject to the more stringent Maximum Achievable Control Technology (MACT) standard, and therefore was exempt from the substantive requirements of the NSPS.¹⁵ This does not affect the reasonableness of Maine's determination that Dragon Products is not BART-eligible.

Comment: NPCA commented that Maine's determinations must be judged as to their cost effectiveness in the context of other determinations; they cannot be deemed "not cost effective" without such comparison. NPCA states that the proposed determinations do not include any comparison to a State threshold, cost effectiveness determination from other States, or other

¹⁴ Maine DEP's letter refers both the concepts of BART "eligibility" and being "subject to BART," which are slightly different concepts under 40 CFR 51.308(e)(1). The letter focuses primarily on BART eligibility, and, as explained in this response, Maine had discretion to determine that Dragon Products is not BART-eligible.

¹⁵"If an affected facility subject to this subpart has a different emission limit or requirement for the same pollutant under another regulation in title 40 of this chapter, the owner or operator of the affected facility must comply with the most stringent emission limit or requirement and is exempt from the less stringent requirement." 40 CFR 63.1356(a).

comparative metric to justify rejection of reasonable costs. NPCA also notes that it is precisely because of the comparative nature of a cost effectiveness determination that the values must be calculated by the same method, as well as calibrated to the same period (present day value).

Response: BART determinations are developed based on the five factor analysis, of which cost effectiveness is only one factor. For sources other than 750 MW power plants, States retain the discretion to adopt approaches that differ from the guidelines. See earlier response on cost thresholds.

Comment: NPCA commented that in several of the BART determinations, cost effectiveness determinations relied heavily on significantly lower usage (~20%) of the source in question (e.g., Verso Androscoggin Power Boilers, FPL Wyman), claiming that this results in much higher cost effectiveness values than otherwise would have occurred. NPCA commented that if these capacities are relied upon in BART or reasonable progress determinations, they must be made enforceable, with permit conditions limiting the hours of operation or automatically requiring additional controls in the event that specific annual usage is exceeded.

Response: According to the BART Guidelines, when calculating the average cost of control, “The baseline emission rate should represent a realistic depiction of anticipated annual emissions for the source. In general, for the existing sources subject to BART, you will estimate the anticipated annual emissions from a baseline period. In the absence of enforceable emission limitations, you calculate baseline emissions based upon continuation of past practices.” On the other hand, the BART Guidelines require enforceable limitations if the utilization or other

parameters used to determine future emissions *differ* from past practice. BART Guidelines Section D. Step 4.d. See 70 FR 39156, 39167. The reduced utilization of Wyman Station is based on past practice and is consistent with the Regional Haze Rule.¹⁶

Comment: EPA received a comment letter signed by 911 members of Credo Action stating “As a Maine resident, I urge you to greatly reduce haze pollution at Maine's national parks.

Unfortunately, the plan EPA is currently considering doesn't go far enough. To protect the health of children, communities and our parks, Maine and EPA must do more to hold polluters in the state accountable and require adequate emission reductions.” In addition to the comment letter, 122 signators provided additional comments. Twenty-eight people requested that we protect Maine’s air quality, and an additional thirty-eight specifically mentioned Acadia National Park. Twenty-seven people cited health concerns in regards to the current air quality, twenty-three people expressed a need to reduce air pollution, and twenty-one people stated that we need stronger rules to reduce air pollution.

Response: EPA agrees that it is important to reduce the visibility and health impacts from man-made pollution at the Federal Class I Areas, such as Acadia National Park. EPA’s approval of Maine’s SIP will result in significant reductions in emissions and improvement in visibility. This represents only the first step towards meeting the national goal of natural conditions in federal Class I Areas.

III. FINAL ACTION

¹⁶ As EPA noted in our proposal, for Verso Androscoggin we are not relying on the reduced utilization rate as part of our analysis of Maine’s SIP.

EPA is approving Maine's December 9, 2010 SIP revision as meeting the applicable implementing regulations found in 40 CFR 51.308. EPA is also approving the following license conditions and incorporating them into the SIP: conditions (16) A, B, G, and H of license amendment A-406-77-3-M for Katahdin Paper Company issued on July 8, 2009; license amendment A-214-77-9-M for Rumford Paper Company issued on January 8, 2010; license amendment A-22-77-5-M for Verso Bucksport, LLC issued November 2, 2010; license amendment A-214-77-2-M for Woodland Pulp, LLC (formerly Domtar) issued November 2, 2010; license amendment A-388-77-2-M for FPL Energy Wyman, LLC & Wyman IV, LLC issued November 2, 2010; license amendment A-19-77-5-M for S. D. Warren Company issued November 2, 2010; license amendment A-203-77-11-M for Verso Androscoggin LLC issued November 2, 2010; and license amendment A-180-77-1-A for Red Shield Environmental LLC issued November 29, 2007.

In addition, EPA is approving Maine's low sulfur fuel oil legislation, 38 MRSA §603-A, sub-§2(A), and incorporating this legislation into the Maine SIP. Furthermore, EPA is approving the following Maine state regulation and incorporating it into the SIP: Maine Chapter 150, Control of Emissions from Outdoor Wood Boilers.

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 (Public Law 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 [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 14, 2012

Signed: Ira W. Leighton
Acting Regional Administrator,
EPA Region 1.

PART 52 - [AMENDED]

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

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

Subpart U - Maine

2. Section 52.1020 is amended by:

- a. Adding an entry for “Chapter 150” in numerical order to the table in paragraph (c);
- b. Adding an entry for “38 MRSA §603-A sub §2(A)” at the end of the table in paragraph (c);
- c. Adding eight entries at the end of the table in paragraph (d); and
- d. Adding an entry at the end of the table in paragraph (e).

The additions read as follows:

§. 52.1020 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA Approved Maine Regulations

State Citation	Title/subject	State Effective Date	EPA Approval Date and Citation ¹	Explanations
**	*	*	*	**
Chapter 150	Control of Emissions from Outdoor Wood Boilers	4/11/2010	[Insert date of <u>FR</u> publication] [Insert <u>Federal Register</u> page number where the document begins]	
**	*	*	*	**
38 MRSA §603-A sub §2(A)	“An Act To Improve Maine’s Air Quality and Reduce Regional Haze at Acadia National Park and Other Federally Designated Class I Areas”	9/12/2009	Insert date of <u>FR</u> publication] [Insert <u>Federal Register</u> page number where the document begins]	Only approving Sec. 1. 38 MRSA §603-A, sub-§2, (2) Prohibitions

¹ In order to determine the EPA effective date for a specific provision listed in this table, consult the Federal Register notice cited in this column for the particular provision.

(d) EPA-approved State Source specific requirements.

EPA-Approved Maine Source Specific Requirements

Name of Source	Permit number	State Effective Date	EPA Approval Date and Citation ²	Explanations
**	*	*	*	**
Katahdin Paper Company	A-406-77-3-M	7/8/2009	[Insert date of FR publication] [Insert Federal Register page number where the document begins]	Approving license conditions (16) A, B, G, and H
Rumford Paper Company	A-214-77-9-M	1/8/2010	[Insert date of FR publication] [Insert Federal Register page number where the document begins]	
Verso Bucksport, LLC	A-22-77-5-M	11/2/2010	[Insert date of FR publication] [Insert Federal Register page number where the document begins]	
Woodland Pulp, LLC	A-214-77-2-M	11/2/2010	[Insert date of FR publication] [Insert Federal Register page number where the document begins]	

FPL Energy Wyman, LLC & Wyman IV, LLC	A-388-77-2-M	11/2/2010	[Insert date of FR publication] [Insert Federal Register page number where the document begins]	
S. D. Warren Company	A-19-77-5-M	11/2/2010	[Insert date of FR publication] [Insert Federal Register page number where the document begins]	
Verso Androscoggin, LLC	A-203-77-11-M	11/2/2010	[Insert date of FR publication] [Insert Federal Register page number where the document begins]	
Red Shield Environmental, LLC	A-180-77-1-A	11/29/2007	[Insert date of FR publication] [Insert Federal Register page number where the document begins]	

² In order to determine the EPA effective date for a specific provision listed in this table, consult the Federal Register notice cited in this column for the particular provision.

(e) Non-regulatory.

Maine Non Regulatory

Name of Non Regulatory SIP Provision	Applicable Geographic or Nonattainment Area	State Submittal Date/Effective Date	EPA Approved Date and Citation ³	Explanations
**	*	*	*	**

Maine Regional Haze SIP and its supplements	Statewide	12/9/2010; supplements submitted 9/14/2011 11/9/2011	[Insert date of <u>FR</u> publication] [Insert <u>Federal Register</u> page number where the document begins]	
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³ In order to determine the EPA effective date for a specific provision listed in this table, consult the Federal Register notice cited in this column for the particular provision.

[FR Doc. 2012-9719 Filed 04/23/2012 at 8:45 am; Publication Date: 04/24/2012]