



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R10-OAR-2015-0398: FRL -9937-11-Region 10]

### Approval of Regional Haze BART Alternative Measure: Washington

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a Best Available Retrofit Technology (BART) alternative measure for the BP Cherry Point Refinery located near Ferndale, Washington. The BART alternative measure increases the oxides of nitrogen (NO<sub>x</sub>) emission limit from the R-1 HC Reactor Heater (R-1 Heater), a BART-eligible source currently subject to BART emission limits on NO<sub>x</sub>. To offset the increase in NO<sub>x</sub> emissions from this emission unit, the NO<sub>x</sub> emission limits on the 1st Stage Hydrocracker Fractionator Reboiler (R-1 Reboiler), also a BART-eligible source subject to BART emission limits on NO<sub>x</sub>, will be reduced. The net effect of these changes is a decrease of 10.4 tons per year (tpy) of allowable NO<sub>x</sub> emissions from sources subject to BART at the BP Cherry Point Refinery.

**DATES:** Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No.EPA-R10-OAR-2015-0398, by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
- E-mail: [R10-Public\\_Comments@epa.gov](mailto:R10-Public_Comments@epa.gov)
- Mail: Steve Body, EPA Region 10, Office of Air, Waste and Toxics (AWT-150), 1200

Sixth Avenue, Suite 900, Seattle WA, 98101

- Hand Delivery / Courier: EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle WA, 98101. Attention: Steve Body, Office of Air, Waste and Toxics, AWT - 150. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information

*Instructions:* Direct your comments to Docket ID No. EPA-R10-OAR-2015-0398. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information, the

disclosure of which 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. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle WA, 98101.

**FOR FURTHER INFORMATION CONTACT:** Steve Body at (206) 553-0782, [body.steve@epa.gov](mailto:body.steve@epa.gov), or the above EPA, Region 10 address.

**SUPPLEMENTARY INFORMATION:** Throughout this document, wherever “we”, “us” or “our” are used, it is intended to refer to the EPA.

## **Table of Contents**

- I. Background
- II. Regional Haze Rule Provisions for BART Alternative Measures
- III. Washington’s State Implementation Plan Revision Submittal
- IV. The EPA’s Evaluation of SIP Revision Submittal
- V. The EPA’s Proposed Action
- VI. Incorporation by Reference
- VII. Statutory and Executive Order Reviews

### **I. Background**

In the Clean Air Act (CAA) Amendments of 1977, Congress established a program to protect and improve visibility in the Nation's national parks and wilderness areas. See CAA section 169A. Congress amended the visibility provisions in the CAA in 1990 to focus attention on the problem of regional haze. See CAA section 169B. The EPA promulgated regional haze regulations (RHR) in 1999 to implement sections 169A and 169B of the CAA. These regulations require states to develop and implement plans to ensure reasonable progress toward improving

visibility in mandatory Class I Federal areas <sup>1</sup> (Class I areas). See 64 FR 35714 (July 1, 1999); see also 70 FR 39104 (July 6, 2005) and 71 FR 60612 (October 13, 2006).

Regional haze is impairment of visual range or colorization caused by air pollution, principally fine particulate, produced by numerous sources and activities, located across a broad regional area. The sources include but are not limited to, major and minor stationary sources, mobile sources, and area sources including non-anthropogenic sources. These sources and activities may emit fine particles (PM<sub>2.5</sub>) (*e.g.*, sulfates, nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (*e.g.*, sulfur dioxide (SO<sub>2</sub>), NO<sub>x</sub>, and in some cases, ammonia and volatile organic compounds). Fine particulate can also cause serious health effects and mortality in humans, and contributes to environmental effects such as acid deposition and eutrophication. See 64 FR at 35715. Data from the existing visibility monitoring network, the "Interagency Monitoring of Protected Visual Environments" (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time in most national parks and wilderness areas. The average visual range in many Class I areas in the western United States is 100-150 kilometers, or about one-half to two-thirds the visual range that would exist without manmade air pollution.<sup>2</sup> Visibility impairment also varies day-to-day and by season depending on variations in meteorology and emission rates. The deciview (dv) is the

---

<sup>1</sup> Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, the EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to "mandatory Class I Federal areas." Each mandatory Class I Federal area is the responsibility of a "Federal Land Manager." 42 U.S.C. 7602(i). When we use the term "Class I area" in this action, we mean a "mandatory Class I Federal area."

<sup>2</sup> 64 FR at 35715.

metric by which visibility is measured in the regional haze program. A change of 1 dv is generally considered the change in visual range that the human eye can perceive.

The RHR requires each state's regional haze implementation plan to contain emission limitations representing BART and schedules for compliance with BART for each source subject to BART, unless the state demonstrates that an emissions trading program or other alternative measure will achieve greater reasonable progress toward natural visibility conditions.

## **II. Regional Haze Rule Provisions for BART Alternative Measures**

The RHR contains provisions whereby a state may choose to implement an alternative measure as an alternative to BART if the state can demonstrate that the alternative measure achieves greater reasonable progress toward achieving natural visibility conditions than would be achieved through the installation, operation and maintenance of BART. The requirements for alternative measures are established at 40 CFR 51.308(e)(2). As explained in the RHR, the state must demonstrate that all necessary emission reductions will take place during the first long term strategy period (*i.e.*, by 2018) and that the emissions reductions resulting from the alternative measure will be surplus to those reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP. See 40 CFR 51.308(e)(2)(iii) and (iv). Sources subject to BART must be in compliance with the BART emission limitations as expeditiously as practical but no later than 5 years after EPA approves the implementation plan revision. See 40 CFR 51.308(e)(1)(iv).

## **III. Washington's State Implementation Plan Revision Submittal**

On December 22, 2010, Washington submitted to the EPA for approval a Regional Haze State Implementation Plan (2010 RH SIP) to meet the requirements of 40 CFR 51.308. The SIP submittal covers the planning period of 2008 through 2018 and, among the other required

elements, includes a BART determination for the BP Cherry Point Refinery located near Ferndale Washington. On June 11, 2014, the EPA approved certain BART-related provisions of Washington's 2010 RH SIP, including the final BART determination for the BP Cherry Point Refinery. See 79 FR 33438. That approval incorporated by reference specified conditions of Administrative Order No. 7836 issued by Washington to BP Cherry Point Refinery on July 7, 2010 (Original BART Order). See 40 CFR 52.2470(d).

On May 8, 2015, the State submitted a revision to the 2010 RH SIP that includes a BART alternative measure for the BP Cherry Point Refinery. This BART alternative measure is contained in Administrative Order 7836, Revision 2-Inclusion of BART Alternative, dated May 13, 2015 (Revision 2). The BART alternative measure would revise the BART emission limits in Conditions 2.6.1.2 and 2.7.1 of the original BART Order that apply to the R1-Heater and R1-Boiler, respectively, and are currently incorporated by reference into the Federally-approved SIP for Washington. The current Federally-approved Condition 2.6.1.2 limits NO<sub>x</sub> emissions from the R1-Heater to 3.6 pounds per hour (lb/hr) based on a 24-hour rolling average. Condition 2.5.1.2 of Revision 2 increases the NO<sub>x</sub> emission limit on the R1-Heater to 4.9 lb/hr based on a 24-hour rolling average.

To offset the NO<sub>x</sub> emissions increase at the R1-Heater, Revision 2 contains a BART alternative measure. Revision 2 decreases the NO<sub>x</sub> emission limits for the R1-Boiler associated with the hydrocracker to reflect the installation of ultra-low NO<sub>x</sub> burners that were installed after Washington's submission of the 2010 RH SIP. Condition 2.7.1 of the original BART Order currently approved in the SIP limits NO<sub>x</sub> emissions from the R1-Boiler to 0.07 pounds per million British thermal units (lb/MMBtu) and 56.2 tpy. Condition 2.6.2 of Revision 2 reduces these limits to 0.05 lb/MMBtu and 9.9 lb/hr.

Revision 2 also: 1) adds language clarifying that when an emission unit subject to BART is decommissioned and permanently taken out of service, the BART emission limits no longer apply to that unit and, 2) allows the State to revise the monitoring, recordkeeping, and reporting requirements through issuance of a regulatory order, rather than through a revision of the BART order, provided the revised monitoring, recordkeeping, and reporting provide equal or better information on the compliance status of the emission unit in question.<sup>3</sup>

#### **IV. The EPA's Evaluation of SIP Revision Submittal**

##### **A. BART Alternative Measure**

The EPA evaluated the emission reductions associated with the BART alternative measure. The BART alternative measure revises the 24-hour maximum mass emission limit for the R-1 Heater, but does not revise the concentration limit for this unit. The concentration limit remains 26 parts per million by volume, dry basis, corrected to 7 percent oxygen, based on a 24-hour rolling average. However, Washington requests approval to revise the Federally-approved NO<sub>x</sub> BART mass emission limit on the R1-Heater from 3.6 lb/hr to 4.9 lb/hr of NO<sub>x</sub>, reflecting an increase in operation of the burners from 88 mmBTU/hr to 120 mmBTU/hr. This change results in an increase in the hourly average mass emission limit from the R-1 Heater of 1.3 lb/hr of NO<sub>x</sub>. The increase in annual emissions is 5.7 tons of NO<sub>x</sub> per year.

The increase in the allowable mass NO<sub>x</sub> emissions from the R-1 Heater is offset by a decrease in the emission limit for the R-1 Reboiler. This decrease results from the installation of ultra-low NO<sub>x</sub> burners on the R-1 Reboiler. The emission limit is reduced from the current 0.07

---

<sup>3</sup> Between issuing the original BART Order that was incorporated into the SIP and submission of BART Order Revision 2, Washington issued BP a BART Order Revision 1 in May 2013 (Revision 1). Revision 1 removed from the Original BART Order the conditions for Boilers #6 and #7, two units that were not BART-eligible. Boilers #6 and #7 replaced Boilers #1 and #3 that were subject to BART. This action resulted in a renumbering of conditions in the order. The original BART Order required that Boilers #1 and #3 be decommissioned by no later than March 27, 2010. Boilers #6 and #7 were subject to New Source Review and are not subject to BART. The Conditions in the Original BART Order applicable to Boilers #6 and #7 were not incorporated into the SIP, see 79 FR 33440, and Revision 1 was not submitted by Washington to the EPA as a SIP revision.

lb/MMBtu and 12.8 lb/hr to 0.05 lb/MMBtu and 9.9 lb/hr. The net emission reduction in allowable NO<sub>x</sub> emissions as a result of the BART alternative measure is 1.6 lb/hr, on a 24-hour rolling average. These emission reductions are not otherwise required by the CAA as of the baseline date of Washington's regional haze SIP and thus may be considered surplus.

These are emission reductions that are achieved at the same location and for the same visibility impairing pollutant, NO<sub>x</sub>. Thus, because the BART alternative measure in Washington's submission results in a greater emissions reduction than BART, the BART alternative measure is deemed to achieve greater reasonable progress. See 40 CFR 51.308(e)(3). With reduced NO<sub>x</sub> emissions, reduced visibility impairment from the formation of secondary nitrate would be expected.

The EPA believes the BART alternative measure submitted by Washington as a SIP revision meets the requirements of 40 CFR 51.308(e)(2) and proposes to approve it.

#### B. Decommissioned BART Units

Condition 9 of Revision 2 is a new provision that states the BART requirements for an emission unit specifically listed in Revision 2 do not apply after the BP Cherry Point Refinery has certified in writing to Washington and the local air pollution authority that the named BART emission unit "has been permanently taken out of service and dismantled." The State explains in its submittal that any replacement unit would be subject to new source review and would not be subject to BART. Ecology's SIP meets the requirements for new source review under 40 CFR 51.307 and will ensure that new subject sources will not have an adverse impact on visibility and will be consistent with making reasonable further progress towards the national visibility goal, as applicable. See WAC 173-400-117.

Although not a BART requirement on the BP Cherry Point Refinery, this condition results in a clear statement that BART requirements no longer apply to an emission unit once subject to BART that has been permanently taken out of service and dismantled. The EPA therefore proposes to approve Condition 9.

### C. Revisions to Monitoring, Recordkeeping, and Reporting

As discussed above, Revision 2 includes a provision authorizing the State to revise the monitoring, recordkeeping, and reporting requirements in Revision 2 in a regulatory order. See Revision 2, Condition 10. Washington explains that any revised monitoring, recordkeeping, and reporting requirements approved by the State under Condition 10 will need to be submitted to, and approved by, the EPA as a SIP revision in order to become the applicable federally-enforceable monitoring, recordkeeping, and reporting requirements. Thus, in the interim, both sets of monitoring, recordkeeping, and reporting requirements apply to the source and must be included in the Title V permit. The EPA agrees with this assessment. The EPA has a longstanding interpretation of the CAA that prohibits “director’s discretion” provisions in SIPs if they provide unbounded discretion to allow what would amount to a case-specific revision of the SIP without meeting the statutory requirements of the CAA for SIP revisions. See 80 FR 33840, 22874-75 (June 12, 2015); see also 40 C.F.R. 52.2476 (specifically providing that any change of a provision to the Washington SIP must be submitted by the State for approval by the EPA in accordance with 40 CFR 51.104). Accordingly, the EPA is proposing to not approve Condition 10.

### V. The EPA's Proposed Action

The EPA proposes to approve the BART alternative measure for the BP Cherry Point Refinery located near Ferndale, Washington by incorporating by reference the conditions of Revision 2 identified below. The EPA proposes to remove the BP Cherry Point Refinery, BART Compliance Order No. 7836 currently in the Federally approved SIP at 40 CFR 52.2470(d) and

replace it with provisions of the BP Cherry Point Refinery, BART Compliance Order No. 7836 Revision 2. The EPA is also proposing to approve new Condition 9 of the BART Compliance Order 7836 Revision 2 relating to decommissioned units. The conditions of the BP BART Compliance Order Revision 2 that are proposed for incorporation by reference are:

Condition 1: 1.1, 1.1.1, 1.2, 1.2.1, 1.2.2;

Condition 2: 2.1, 2.1.1, 2.1.2, 2.1.3, 2.1.4, 2.1.5, 2.2, 2.2.1, 2.2.2, 2.3, 2.3.1, 2.3.2, 2.4, 2.4.1, 2.4.2, 2.4.2.1, 2.5, 2.5.1, 2.5.1.1, 2.5.1.2, 2.5.2, 2.5.3, 2.5.4, 2.6, 2.6.1, 2.6.2, 2.6.3, 2.7, 2.7.1, 2.7.2, 2.7.3, 2.7.4, 2.8, 2.8.1, 2.8.2, 2.8.3, 2.8.4, 2.8.5, 2.8.6;

Condition 3, 3.1, 3.1.1, 3.1.2, 3.2, 3.2.1, 3.2.2, 3.2.3, 3.2.4;

Condition 4, 4.1, 4.1.1, 4.1.1.1, 4.1.1.2, 4.1.1.3, 4.1.1.4;

Condition 5, 5.1, 5.2;

Condition 6, 6.1, 6.2, 6.3;

Condition 7; and

Condition 9.

## **VI. Incorporation by Reference**

In accordance with requirements of 1 CFR 51.5, the EPA is proposing to revise our incorporation by reference located in 40 CFR 52.2470(d) – “EPA-Approved State Source-Specific Requirements – Washington” to reflect the proposed approval of the BART alternative measure for the BP Cherry Point Refinery and the provision relating to decommissioned units. Due to the fact that the conditions in the original BART Order were renumbered in Revision 1, which was not submitted as a SIP revision, the EPA is proposing to remove the original IBR entry for “BP Cherry Point Refinery” in its entirety and incorporate in its place the specified conditions of Revision 2 included in the docket for this action. The end result is that all of the

conditions in the Original BART order remain in the SIP (but with different numbers) except as discussed above with respect to the BART alternative measure and the addition of Condition 9. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

## **VII. Statutory and Executive Order Reviews**

Under the CAA, 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, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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 the 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 it will not impose substantial direct costs on tribal governments or preempt tribal law. The SIP is not approved to apply in Indian reservations in the State or to any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction.

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 3, 2015.

Dennis J. McLerran

Regional Administrator.

[FR Doc. 2015-29175 Filed: 11/13/2015 8:45 am; Publication Date: 11/16/2015]