

AGENDA ITEM _____ :

Hearing Officer's Report on Best Available Retrofit Technology Rule

EXPLANATION:

On April 6, 2006 in Winterville and on April 12, 2006 in Candler, Dr. Blanks, Mr. Wakild, and Mr. Curry held public hearings on a proposed new rule on Best Available Retrofit Technology (BART).

15A NCAC 02D .0543, Best Available Retrofit Technology, is proposed for adoption to establish best available retrofit technology requirements for certain older sources of emissions of visibility impairing pollutants impacting visibility in federal parks and wilderness Class I areas as part of efforts required region-wide to address the regional haze problem. The requirements are proposed for adoption in response to federal requirements that states address these emissions in their state implementation plan (SIP) for regional haze.

On July 6, 2005, US EPA promulgated 40 CFR Part 51 Appendix Y Guidelines for Determining Best Available Retrofit Technology (BART) Determinations. The proposed rule establishes a framework for making these determinations and incorporates the 40 CFR Part 51, Appendix Y guidelines by reference.

The proposed rule applies to sources that have the potential to emit 250 tons or more of a visibility impairing pollutant, were in existence on August 7, 1977 and began operation after August 7, 1962, and fall within one of the 26 industrial source categories listed in the guidance. The visibility impairing pollutants for BART purposes are sulfur dioxide (SO₂), nitrogen oxides (NO_x), and fine particulate matter (PM_{2.5}).

The proposed rule allows affected sources to demonstrate in accordance with the guidelines that the source does not contribute to visibility impairment and should be exempted. Non-exempt sources are required to undergo a determination of best available retrofit technology. For sources that are not exempted, the rule establishes a deadline of September 1, 2006 for submittal of permit applications proposing best available retrofit technology. The rule, as proposed, requires that BART controls be installed and begin operation by June 1, 2010. The rule also specifies that compliance with the Clean Air Interstate Rule

(CAIR) by subject electric utility sources constitutes BART for such sources for sulfur dioxide and nitrogen oxides emissions. The rule does not preclude the EMC from adopting additional emission reduction requirements for covered sources if necessary to obtain or maintain an ambient air quality standard or meet other state implementation plan requirements.

Eight people commented on the rule. The majority of comments focused on ensuring the rule incorporates the maximum flexibility provided in the federal rule for the state to approve exemption modeling protocols and demonstrations, BART determinations, and on extending the compliance deadline.

Six persons commented that the rule should incorporate the maximum flexibility afforded by the federal rule. The Division believes that the proposed rule, which incorporates the federal requirements by reference, adopts the maximum flexibility given states; however, language has been added as paragraph (c) to make this explicit to the reader.

Two commenters stated that the Division should be able to approve any exemption modeling methodology it deems technically and scientifically sound methodology and that the EMC should add a paragraph to address modeling protocol issues. Paragraph (c) has been added that reiterates for the reader that the Division has all the authorities afforded it by the federal rule.

One persons commented that the permit application deadline should be extended for EGUs if visibility impact modeling is required for such sources. Another commenter said that due dates for BART information from affected sources should be extended. Language has been added to Paragraph (g) to allow the Director to extend the permit submittal deadline if necessary.

Six commenters said that the compliance deadline should be changed to that in the federal rule to allow adequate time for planning, installation and

operation of any required controls. The compliance deadline has been changed to December 31, 2012 to allow the maximum time for compliance and still allow for inclusion of the benefits of BART controls in the first reasonable progress report to EPA.

Two commenters stated that the rule should specify the elements to be considered in a BART determination. Although they are included in the Clean Air Act, the referenced rule, and guidelines, the factors to be considered in the BART determination have been explicitly added to the rule as Paragraph (e).

Two persons commented that the rule should specify that emission limits don't apply if BART is determined to be no control. No rule change is necessary.

Two commenters stated that the rule should provide emissions trading options to affected sources. The EPA rule on emissions trading for BART purposes has not yet been finalized, therefore no change in rule language has been made.

EPA commented that they concur that compliance with CAIR by EGUs is considered compliance with BART for SO₂ and NO_x. No rule change is necessary.

One person commented that the reasonably attributable visibility impairment provisions should be referenced rather than providing specific information on how to obtain the guidance. The NC rulemaking procedures require such information to be provided for referenced materials, therefore no change is made.

One person commented that language specifying that BART determinations will be incorporated into Title V permits should be added. Language has been added to Paragraph (f) referencing the permitting procedures.

The hearing record was sent to you earlier.

Recommendation:

The Hearing Officers recommend that the Commission adopt the proposed new rules as presented in Chapter II of the hearing record.