

**State of New Jersey  
Department of Environmental Protection**

**State Implementation Plan (SIP)  
For Regional Haze  
Proposal**

**Appendix A: Background and History of the  
Regional Haze Rule and the Clean Air Act Amendments**

**September 5, 2008**

## **Appendix A**

### **Background and Overview of the Regional Haze Regulations**

#### **History of the Federal Regional Haze Rule and 1990 Clean Air Act Amendments**

In amendments to the Clean Air Act in 1977, Congress added 42 U.S.C. § 7491 (Section 169A) setting forth the following national visibility goal:

*Congress hereby declares as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from man-made air pollution.*

The USEPA addressed the problem of visibility impairment in two phases. The 1980 USEPA regulations addressed what was termed “reasonably attributable” visibility impairment or “plume blight.” This reasonably attributable visibility impairment is the result of emissions from one or a few sources that are generally located in close proximity to a specific Class I area.<sup>1</sup> “Plume blight” is a term used when one sees a discrete or coherent plume of pollution moving across the horizon or across one’s scenic view.

In accordance with 40 C.F.R. § 51.300-307, the USEPA in a Federal Register notice,<sup>2</sup> as amended,<sup>3</sup> incorporated the needed requirements of 40 C.F.R. §§ 52.26 and 52.28 into the Prevention of Significant Deterioration permit review process, an analysis of the impact on visibility in any Class I area from any new or modified source located within an attainment and nonattainment area.

When the Clean Air Act was amended in 1990, Congress added 42 U.S.C. § 7492 (Section 169B) to strengthen and reaffirm the national goal. Section 169B(e) calls for “[the US]EPA to carry out the Administrator’s regulatory responsibilities under [Section 169A], including criteria for measuring ‘reasonable progress’ toward the national goal.” Congress also added to Section 169B authorization for further research and regular assessments of the progress made so far. In 1993, the National Academy of Sciences concluded that “current scientific knowledge is adequate and control technologies are available for taking regulatory action to improve and protect visibility.”

The second phase of the USEPA’s attempts to reduce visibility impairment in national parks and wilderness areas was the adoption of the federal Regional Haze Rule in 1999. The Regional Haze Rule slightly modified 40 C.F.R. § 51.300 - 307, including the addition of a few definitions in 40 C.F.R. § 51.301, and added new 40 C.F.R. §§ 51.308 and 51.309 to address regional haze visibility impairment on a national level and to specifically address visibility impairment in the Grand Canyon area of the United States.

This federal rule-making for regional haze was controversial. On May 24, 2002 the United States Court of Appeals, Washington D.C. District Court ruled on the challenge brought by the

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<sup>1</sup> The regulations addressing reasonably attributable visibility impairment are 40 C.F.R. § 51.300 - 307.

<sup>2</sup> 51 Fed. Reg. 23759 (July 1, 1986).

<sup>3</sup> 52 Fed. Reg. 45137 (November 24, 1987).

American Corn Growers Association against the USEPA's Regional Haze Rule. The Court remanded to the USEPA the Best Available Retrofit Technology (BART) provisions of the rule and denied industry's challenge to the haze rule goals of natural visibility and no degradation requirements. The Court found that while returning visibility conditions to their natural state in all Class I areas, with an absence of all manmade pollution by the year 2064, was challenging, Congress was within its legal and Constitutional authority to set this as a goal to be achieved. The absence of all manmade pollution in all Class I areas by the year 2064 is, therefore, still the legally binding goal that is the focus and impetus for this and all other States Regional Haze SIPs. The court agreed to the industry challenges in one area and remanded the BART section of the rule back to the USEPA who subsequently re-issued that section of the rule as discussed in Section 6 of this document. The outcome of this Court ruling, upholding the majority of the Regional Haze rule, means that states – even those without Class I Areas – are required to participate in regional haze reduction efforts.

The goal of the Regional Haze Rule is to improve visibility to natural background levels by the year 2064 in all federally designated Class I areas (42 U.S.C. § 7492). This goal is to be achieved by requiring all states to periodically conduct an analysis of available reasonable measures and implement these measures. The analysis and measures must be included in a State Implementation Plan (SIP). States with Class I areas are further required to establish Reasonable Progress Goals for Class I areas within their borders, using the results of the analysis of reasonable measures, as a way to demonstrate movement towards the national goal of the absence of all manmade pollution from our national parks and wilderness areas by 2064. States are required to reassess the progress to the established 2064 goal in five and ten year increments with the first progress assessment occurring around 2013 for the first milestone year 2018 (40 C.F.R. § 51.308 (f) and (g)). The five-year reassessment of progress is intended to keep the States on-target to meeting the ten-year goal established for the area.

The federal rule at 40 C.F.R. § 51.308 (d) (1) (i) (B) requires each state with a Class I area to compare their projected rate of improvement with the steady, uniform, rate to attain natural visibility conditions by the year 2064 with 10-year incremental mid-term goals to be attained along the way. If the first progress goal can be attained at the steady (uniform) rate or faster, based on the review of available reasonable measures, the State should adopt these as the visibility goal for the area. If a slower than uniform rate to achieve the first progress goal cannot be made in the Class I area based on the review of available reasonable measures and appropriate consultation with other States, then the State may adopt a slower than uniform rate of progress for their Class I area in accordance with the Regional Haze Rule.