



State of Utah

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DAQ-061-15

**MEMORANDUM**

**TO:** Air Quality Board

**THROUGH:** Bryce C. Bird, Executive Secretary

**FROM:** Jay Baker, Environmental Scientist

**DATE:** September 23, 2015

**SUBJECT:** FINAL ADOPTION: Section XX. Part N. Enforceable Commitments for the Utah Regional Haze SIP.

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EPA's ability to approve the recently submitted Alternative to Bart Regional Haze State Implementation Plan (SIP) is contingent on the submittal to the EPA of enforceable commitments for the SIP. On July 27, 2015, the Board proposed for public comment enforceable commitments that certified that Utah would continue to take credit for sulfur dioxide (SO<sub>2</sub>) emission reductions from the Carbon Plant closure in the recently adopted Alternative to Bart Regional Haze SIP, but would not take credit for those SO<sub>2</sub> reductions in the annual Regional Haze SO<sub>2</sub> Milestone Report as required in the original Section 309 Regional Haze SIP. This approach ensures that SO<sub>2</sub> emissions reductions from the Carbon Power Plant closure are not double counted in the Regional Haze SIP.

A public comment period was held from August 15 to September 15, 2015. During the public comment period, we received comments from the EPA and various conservation organizations. Please see the attached document for a summary of the comments and responses.

Staff Recommendation: Staff recommends that the Board adopt the attached SIP Section XX, Part N, Enforceable Commitments for the Utah Regional Haze SIP.

## N. ENFORCEABLE COMMITMENTS FOR THE UTAH REGIONAL HAZE SIP.

Utah has found that, in order to ensure that certain emissions reductions are not double counted and that the Regional Haze SIP is enforceable as a practical matter, circumstances warrant creation of an enforceable commitment SIP. The intent of this section is to meet sections 110, 169A, and 169B of the Clean Air Act, and to ensure that the EPA can approve the Regional Haze SIP. EPA applies three factors when determining whether to approve an enforceable commitment: (1) whether the commitment addresses a limited portion of the statutorily-required program; (2) whether the state is capable of fulfilling its commitment; and (3) whether the commitment is for a reasonable and appropriate period of time. Once approved as part of this SIP, these commitments are enforceable by both EPA and citizens under the Clean Air Act. Utah therefore commits to the following:

1. In Section D.6.c of this plan, Carbon Units 1 and 2 ~~are required to will be~~ shut down. As of April 14, 2015, the plants ceased operation. This enforceable shutdown ~~will result~~ in SO<sub>2</sub> reductions of 3,388 tons/year from Unit 1 and 4,617 tons/year from Unit 2, resulting in a total of 8,005 tons/year. The resulting combined annual emissions of NO<sub>x</sub>, SO<sub>2</sub>, and PM will be 2,876 tons lower than the ~~alternative Better than BART~~ most stringent controls. Simultaneously, as part of the annual milestone reports required by the Utah SIP and Section 309 of the Federal Regional Haze Rule (40 CFR Part 51), Utah tracks SO<sub>2</sub> emissions from applicable stationary sources and compares those to milestones set in the initial Utah 309 plan. If the 8,005 tons/year were removed in subsequent milestone reports, the State would be counting the reductions obtained from closure of the Carbon units twice. The State commits to resolving this double counting issue by revising the Utah 309 plan to specifically state that the 8,005 tons of SO<sub>2</sub> emissions from the Carbon units will be added into the annual milestone reports from 2016 through the life of the backstop trading program, thereby removing any credit for that emissions reduction in meeting the levels specified in the Utah 309 plan.
2. This SIP is limited to addressing the SO<sub>2</sub> emissions from the Carbon units only. Emissions reductions in the Alternative to BART SIP include SO<sub>2</sub> and NO<sub>x</sub> reductions from the Hunter, Huntington, and Carbon Units. The total reduction in SO<sub>2</sub> and NO<sub>x</sub> is 42,016 tons. These emissions are a small part of the overall 42,016 tons of emissions reductions from SO<sub>2</sub> and NO<sub>x</sub>. These commitments only address the 8,005 tons of SO<sub>2</sub> from the Carbon Units. Thus, the amount of the reduction is limited to 8,005 tons. The Regional Haze SO<sub>2</sub> milestone for 2018 is 141,849 tons. As reported in the 2013 Regional SO<sub>2</sub> Emissions and Milestone Report, the average adjusted SO<sub>2</sub> emissions for 2011, 2012, and 2013 are 105,402 tons. Without counting the reductions from the Carbon facility, the region has already achieved the 2018 milestone.

3. 40 CFR 51.309 sets forth emissions inventory requirements for tracking compliance with the SO<sub>2</sub> milestones. SIP Section XX.D.3.c and Rule 307-150 specify the mechanism used to implement this tracking requirement in Utah, and require all stationary sources with actual emissions of 100 tons/year or more of SO<sub>2</sub> in the year 2000 or in any subsequent year to submit an annual inventory of SO<sub>2</sub> emissions, beginning with the 2003 emission inventory. A source that meets these criteria and then emits less than 100 tons/year in a later year must continue to submit an SO<sub>2</sub> inventory for tracking compliance with the regional SO<sub>2</sub> milestones until 2018. As necessary, SIP Section XX.D.3.c and R307-150 will be revised to supplement Utah's inventory requirements and to satisfy the needs of ~~this~~ these enforceable Ccommitments ~~SIP~~. Other applicable provisions that may be identified in the future will be amended as well.
4. Utah will resolve the double-counting issue by including the 8,005 tons of SO<sub>2</sub> emissions from the Carbon Power Plants in each required annual Section 309 Milestone Report from 2016 through the life of the backstop trading program. All required amendments to this SIP will be done through the State's SIP adoption process. The SIP is adopted by the Governor-appointed Air Quality Board through a rulemaking process that includes public comment periods and an opportunity for a public hearing.
5. Utah will submit an approvable SIP revision to EPA, along with any supporting document(s) by March 2018 to allow EPA to take final action before the end of the milestone commitment. Additionally, Utah will include the 8,005 tons/year of SO<sub>2</sub> emissions reported by the Carbon units in the annual report of SO<sub>2</sub> emissions used to trigger the backstop trading program.
6. Utah will work with EPA and take appropriate action to resolve any completeness or approvability issues that arise regarding the proposed SIP revision by March 2018.

# Response to Comments

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1. [EPA] Paragraph N.1: There appears to be a typographical error in the third sentence which should read, "The resulting combined annual emissions of NO<sub>x</sub>, SO<sub>2</sub> and PM will be 2,876 tons lower than the most stringent BART controls."

**Response:** The error is corrected in the version proposed for adoption.

2. [EPA] Paragraph N.2: Please explain in more detail how these commitments address limited portions in each of the required SIP programs, including a basis for characterizing the amounts as limited. Additionally, please explain the derivation of any emissions figures referenced. For example, it is unclear how the figure of 42,016 tons of SO<sub>2</sub> and NO<sub>x</sub> emissions reductions was derived.

**Response:** Emissions reductions in the Alternative to BART SIP include SO<sub>2</sub> and NO<sub>x</sub> reductions from the Hunter, Huntington, and Carbon Units. The total reduction in SO<sub>2</sub> and NO<sub>x</sub> is 42,016 tons. These commitments only address the 8,005 tons of SO<sub>2</sub> from the Carbon Units. The Regional Haze SO<sub>2</sub> milestone for 2018 is 141,849 tons. As reported in the 2013 Regional SO<sub>2</sub> Emissions and Milestone Report, the average adjusted SO<sub>2</sub> emissions for 2011, 2012, and 2013 are 105,402 tons. Without counting the reductions from the Carbon facility, the region is already well below the 2018 milestone.

3. [HEAL Utah, National Parks Conservation Association, Sierra Club, Powder River Basin Resource Council, and San Juan Citizens Alliance (hereinafter Conservation Organizations)] The Enforceable Commitment erroneously assumes that the RH SIP will effectuate SO<sub>2</sub> reductions at the Carbon plant. Utah's proposed SIP incorrectly states, "In Section D.6.c of this plan, Carbon Units 1 and 2 will be shut down."<sup>2</sup> This statement erroneously conveys that the Carbon Units are still operating and Utah's regional haze SIP will mandate closure of the plant. This statement is factually incorrect because the Carbon Units ceased operation as of April 15, 2015 and are currently being dismantled. PacifiCorp, the owner of the Carbon Units, decided years ago to retire these units rather than retrofit the plant to comply with the mercury and air toxics (MATS) rule. Thus, the Carbon unit retirements have already occurred and were never a component of Utah's regional haze SIP until after the units ceased operation.

**Response:** Section D.6.c of the Regional Haze SIP created an enforceable requirement for the shutdown of the Carbon Units. While the federal Mercury and Air Toxics (MATS) Rule may have created an additional incentive to retire the plant, it did not specifically require it, and the Supreme Court stay on the rule could have allowed the plant to continue operation until the final MATS Rule is in place. Including the Carbon Plants in the Regional Haze SIP ensured that the retirement plans would be permanent and

enforceable, regardless of legal status of the MATS Rule. The language in the Enforceable Commitments has been changed to reflect that the Carbon Units are no longer operating.

4. [Conservation Organizations] UDAQ is impermissibly attempting to fit a square peg in a round hole. Utah's proposed Enforceable Commitment (EC) SIP states that its purpose is to "ensure[s] that SO<sub>2</sub> emissions reductions from the Carbon power plant closure are *not double counted* in the Regional Haze SIP." However, the EC SIP fails to address the fundamental issue of whether the SO<sub>2</sub> emissions from the Carbon units should be counted at all in its NO<sub>x</sub>/PM regional haze SIP.

**Response:** It is not the purpose of the Enforceable Commitments to address whether the SO<sub>2</sub> emissions from the Carbon units should be counted in the regional haze SIP. As stated, the only purpose is to resolve the issue of double counting the Carbon emissions.

5. [Conservation Organizations] UDAQ's proposed post-hoc amendment of its SO<sub>2</sub> RH SIP would undermine the legal justification for EPA's approval of that SIP. Utah proposes to amend its SO<sub>2</sub> RH SIP by somehow extracting the previously relied upon Carbon plant SO<sub>2</sub> reductions and apply these reductions to its NO<sub>x</sub>/PM BART SIP for Hunter and Huntington. But Utah's proposal would effectively undermine EPA's legal justification for approving the Section 309 alternative program. Having touted the 309 Program's ability to garner SO<sub>2</sub> emission reductions from "smaller, non-BART sources" such as the Carbon Plant, Utah may not now extract such sources from the program without nullifying its previous "better than BART" determination and the legal underpinnings for the 309 Program approval.

Further, if Utah's proposed omission of the Carbon Plant from the 309 Program were permissible, there would be nothing to stop Utah and the other states participating in the Program from removing other "smaller, non-BART sources" from the Program. The result would strip the 309 Program of its justification under the Regional Haze regulations. Such maneuverings would also undermine the essence of the regional haze program to compel reasonable progress towards clear skies and place achievement of the natural conditions goal out of reach.

**Response:** The 309 Program did not rely on reductions from the Carbon Plant and the Hunter 3 Unit as stated in staff's response to comments and the Staff Review for the recently submitted SIP. In fact, that same response states that "emission reductions from the Carbon Plant and Hunter 3 were not necessary for other states to meet their reasonable progress goals and therefore provide an added benefit." Removing sources that were relied upon from the Program is not allowed. This Enforceable Commitment is limited to emissions from the closure of the Carbon Units. That is a new requirement in the latest revision of Utah's Regional Haze SIP and will pre-date any requirements that may come out in a future MATS Rule.

6. [Conservation Organizations] EPA's Regional Haze Regulations prohibit Utah's proposed emission reduction accounting proposal. Section 309 of the Regional Haze regulations establishes the rules for the accounting of SO<sub>2</sub> emissions under the SO<sub>2</sub> Backstop Trading Program. 40 C.F.R. §51.309. More specifically, the regional haze regulations state that Utah's 309 plan "must include provisions requiring the monitoring, recordkeeping, and annual reporting of actual stationary source SO<sub>2</sub> emissions within the State." 40 C.F.R. §51.309(d)(4)(iii). Utah's proposed EC SIP would violate this provision by arbitrarily including over 8,000 tons of SO<sub>2</sub> emissions from the Carbon plant in future inventory reports, when in fact the actual emissions from the Carbon plant from 2016-2018 will be zero.

**Response:** Comparing the reported emissions with the milestone would not allow the monitoring, recordkeeping, and reporting data to be sufficient to determine annually whether the milestone for each year through 2018 is achieved. 40 CFR §51.309(d)(4)(iii). Additionally, the approved Utah 309 SIP requires each milestone report to include actual regional sulfur dioxide emissions in tons per year and adjustments to account for changes in emission monitoring or calculation methods. We can report zero actual emissions for the Carbon Plant in the milestone reports then adjust it to reflect a change in the calculation method so that the reductions are not accounted for twice. This will result in a much more conservative comparison of present day emissions to projected emissions in the Regional Haze SIP.

7. [Conservation Organizations] UDAQ's delay until March 2018 to revise its SIPs is arbitrary and capricious. Utah's proposed EC SIP purports to resolve the "double counting" of SO<sub>2</sub> emission reductions from the Carbon plant in both the Utah RH SO<sub>2</sub> SIP and the EPA pending RH NO<sub>x</sub>/PM SIP. However, Utah's proposed EC SIP fails to resolve anything but instead unlawfully delays agency action until 2018, at the soonest.

**Response:** The Milestone program will end in 2018, the same time as the end of the current Regional Haze planning period as determined by the EPA. Utah is committed to resolving the double counting issue before March 2018 so that it is completed before the conclusion of the Milestone program. While the SIP amendment may not occur immediately, the Enforceable Commitment ensures that emissions are accurately counted immediately.

8. [Conservation Organizations] UDAQ's EC SIP amendments create irreconcilable accounting methodologies among the three-state Western Backstop Trading Program. All states in the Western Backstop Trading Program must use the same inventory methodology. Indeed, Section 309 specifically recognizes that, "...all States in the program [must] use the same methodology." 40 C.F.R. §51.309(d)(4)(i). While Utah's EC SIP makes vague promises to resolve its SIP discrepancies by 2018, it fails to mandate similar changes to the Wyoming and New Mexico SO<sub>2</sub> SIPs. Nothing

in the Utah EC SIP prevents Wyoming and New Mexico from counting the Carbon SO2 emission reductions in their future annual milestone reports.

**Response:** Section 309 specifically recognizes that “**During the first two years of the program**, compliance with the milestones may be measured by a methodology of the States' choosing, so long as all States in the program use the same methodology.” (Emphasis added) 40 CFR §51.309(d)(4)(i). Because each state’s emissions are reported separately and then compiled for the milestone report, other states cannot count emissions reductions from Utah as part of their inventory. Utah’s adjustment will not affect the other states’ reporting for their own emissions, but will impact the total emissions reported to EPA.