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Environmental Protection Agency

40 CFR Part 52
Approval, Disapproval and Promulgation of Implementation Plans; State of Wyoming; Regional Haze State Implementation Plan; Federal Implementation Plan for Regional Haze; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2012–0026, FRL9905–42–R08]

Approval, Disapproval and Promulgation of Implementation Plans; State of Wyoming; Regional Haze State Implementation Plan; Federal Implementation Plan for Regional Haze

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is partially approving and partially disapproving a State Implementation Plan (SIP) submitted by the State of Wyoming on January 12, 2011, that addresses regional haze. This SIP was submitted to address the requirements of the Clean Air Act (CAA or ''the Act'') and rules that require states to address in specific ways any existing anthropogenic 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''). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. EPA is approving several aspects of Wyoming's regional haze SIP that we had proposed to disapprove in our June 10, 2013 proposed rule in light of public comments and newly available information indicating the adequacy of the SIP with respect to those aspects. EPA is also approving some aspects of the State's SIP that we proposed to approve. EPA is promulgating a Federal Implementation Plan (FIP) to address some of the deficiencies identified in our proposed partial disapproval of Wyoming's regional haze SIP issued on June 10, 2013. EPA is taking this action pursuant to sections 110 and 169A of the CAA.

DATES: This final rule is effective March 3, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2012–0026. All documents in the docket are listed on the *www.regulations.gov* Web site.

Publicly available docket materials are available either electronically through *www.regulations.gov,* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if, at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, Air Program, Mailcode 8P–AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6144, *dygowski.laurel@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

i. The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

ii. The initials *AFUDC* mean or refer to Allowance for Funds Utilized During Construction.

iii. The initials *APA* mean or refer to the Administrative Procedures Act.

iv. The initials *AQRV* mean or refer to Air Quality Related Value.

v. The initials *BACT* mean or refer to Best Available Control Technology.

vi. The initials *BART* mean or refer to Best Available Retrofit Technology.

vii. The initials *CAMD* mean or refer to Clean Air Markets Division.

viii. The initials *CAMx* mean or refer to Comprehensive Air Quality Model.

ix. The initials *CCM* mean or refer to EPA's Control Cost Manual.

x. The initials *CLRC* mean or refer to the Construction Labor Research Council.

xi. The initials *CMAQ* mean or refer to Community Multi-Scale Air Quality modeling system.

xii. The initials *CSAPR* mean or refer to the Cross-State Air Pollution Rule.

xiii. The initial *DEQ* mean or refer to the Wyoming Department of Environmental Quality.

xiv. The initials *EGUs* mean or refer to Electric Generating Units.

xv. The initials *EIS* mean or refer to Environmental Impact Statement.

xvi. The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

xvii. The initials *ESP* mean or refer to electrostatic precipitator.

xviii. The initials *FIP* mean or refer to Federal Implementation Plan.

xix. The initials *FLM* mean or refer to Federal Land Managers.

xx. The initials *FR* mean or refer to the **Federal Register**.

xxi. The initials *GAQM* mean or refer to Guidance on Air Quality Models.

xxii. The initials *IMPROVE* mean or refer to Interagency Monitoring of Protected Visual Environments monitoring network.

xxiii. The initials *IPM* mean or refer to Integrated Planning Model.

xxiv. The initials *IWAQM* mean or refer to Interagency Workgroup on Air Quality Modeling.

xxv. The initials *LNB* mean or refer to low NO_X burners.

xxvi. The initials *LRS* mean or refer to Laramie River Station.

xxvii. The initials *LTS* mean or refer to long term strategy.

xxviii. The initials *MATS* mean or refer to the Mercury and Air Toxics Standard.

xxix. The initials *MW* mean or refer to megawatts.

xxx. The initials *NAAQS* mean or refer to National Ambient Air Quality Standards.

xxxi. The initials *NEPA* mean or refer to National Environmental Policy Act.

xxxii. The initials NH_3 mean or refer to ammonia.

xxxiii. The initials NO_X mean or refer to nitrogen oxides.

xxxiv. The initials *OFA* mean or refer to overfire air.

xxxv. The initials *PM* mean or refer to particulate matter.

xxxvi. The initials $PM_{2.5}$ mean or refer to particulate matter with an aerodynamic diameter of less than 2.5 micrometers.

xxxvii. The initials PM_{10} mean or refer to particulate matter with an aerodynamic diameter of less than 10 micrometers.

xxxviii. The initials *PTE* mean or refer to potential to emit.

xxxix. The initials *RAVI* mean or refer to reasonably attributable visibility impairment.

xl. The initials *RHR* mean or refer to the Regional Haze Rule.

xli. The initials *RIS* mean or refer to Regulatory Impact Statement.

xlii. The initials *RPG* mean or refer to reasonable progress goals.

xliii. The initials *RPO* mean or refer to Regional Planning Organization.

xliv. The initials *SCR* mean or refer to selective catalytic reduction.

xlv. The initials *SIP* mean or refer to State Implementation Plan.

xlvi. The initials *SNCR* mean or refer to selective non-catalytic reduction.

xlvii. The initials SO_2 mean or refer to sulfur dioxide.

xlviii. The initials *SOFA* mean or refer to separated overfire air.

xlix. The initials *UMRA* mean or refer to the Unfunded Mandates Reform Act.

l. The initials *URP* mean or refer to Uniform Rate of Progress.

li. The initials *VOC* mean or refer to volatile organic compounds.

lii. The initials *WAQSR* mean or refer to the Wyoming Air Quality Standards and Regulations.

liii. The initials *WRAP* mean or refer to the Western Regional Air Partnership.

liv. The words *Wyoming* and *State* mean the State of Wyoming.

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was a materiality element to a state's compliance with the BART Guidelines, noting, in particular, that the State's cost estimates were ''more than ten times EPA's stated average costs per ton for th[e] technology, and nearly five times as much as the upper limit of EPA's expected cost range.'' —F.3d—, 2013 U.S. App. LEXIS 14634, at *25 (10th Cir. July 19, 2013). Notably, that case did not involve SCR technology, which the CCM affords a greater amount of flexibility in assessing, and the State had failed to note and explain its deviations from the CCM.

By applying these principles here, the commenter asserted, any deviation from the BART Guidelines and CCM was *de minimis,* and mere harmless error. Certainly, EPA has not shown that the State would have made a different BART selection had it assessed the cost and visibility factors in the manner EPA suggests—particularly as the selection of BART must be made by weighing all five factors, and as the differences between the State's and EPA's assessments of cost and visibility are not so substantial as to necessitate a different result. In other states, EPA has acknowledged that a state's BART determination may be disapproved on account of a claimed error only if the error would have changed the BART determination. In approving Colorado's regional haze SIP, EPA did not disapprove the BART determination for the Martin Drake power plant, despite EPA's disagreement regarding the control efficiency of SCR because the discrepancy would not have changed the outcome. 77 FR 76871, 76875–76 (Dec. 31, 2012) (''[We] find that it was not unreasonable for Colorado to use 0.07 lb/MMBtu to model the predicted visibility improvement from SCR. Moreover, while we do agree that assuming a control efficiency of 0.05 lb/MMBtu would have resulted in greater modeled visibility benefits, we do not agree that the difference in visibility benefits would have led Colorado to a different conclusion given the magnitude of the benefits associated with SCR.''). The commenter advocated that EPA should take a similar approach in Wyoming.

The commenter finished by stating that if there is a question as to whether the State might have made a different BART selection had it assessed cost and visibility in the manner suggested by EPA, EPA should return the issue to the State to reweigh the BART factors with that information. *See SKF USA Inc.* v. *United States,* 254 F.3d 1022, 1029 (Fed. Cir. 2001) (courts may remand matters to the agency upon request to correct ''clerical errors, transcription errors, or erroneous calculations'').

Response: The cases cited to by the commenter all concern standards by which courts evaluate agency action, not standards by which EPA, an administrative agency, evaluates SIP submissions for compliance with the requirements of the CAA. The cases are therefore inapposite. Nevertheless, in situations where a state's SIP reaches a reasonable result overall despite violations of certain statutory or regulatory requirements, EPA believes that approving the SIP is sometimes a better use of scarce administrative resources and more in line with principles of cooperative federalism than promulgating a FIP. This approach is arguably similar to the principle of ''harmless error'' that courts adhere to in the context of judicial review.

In this situation, however, the errors committed by Wyoming in its regional haze SIP were neither harmless nor *de minimis.* As we have explained previously, because Wyoming did not properly calculate the costs of the various control options or accurately estimate the visibility improvement associated with these controls, the State's ultimate selection of BART for several EGUs did not represent the best system of continuous emission reduction. As the Eighth and Tenth Circuits have recently held, EPA acts within its power under section 169A of the CAA when it rejects a BART determination on the basis that a state did not properly take into consideration the costs of compliance as a result of methodological or data flaws. *See Oklahoma* v. *EPA,* 723 F.3d 1201, 1212 (10th Cir. 2013); *North Dakota* v. *EPA,* 730 F.3d 750 (8th Cir. 2013). This same reasoning applies equally to the other statutory BART factors, such as visibility improvement.

We also disagree with the commenter that our action on the Colorado regional haze SIP implies that a similar outcome is warranted here. In that action, we stated that ''it was not unreasonable for Colorado to use 0.07 lb/MMBtu to model the predicted visibility improvement from SCR.'' 77 FR 76871, 76875 (Dec. 31, 2012). Thus, we did not disagree with Colorado's choice of control efficiency, as the commenter claims, and the situation bears no relationship to this one, where we have carefully explained our disagreement with multiple aspects of Wyoming's NO_X BART determinations.

Finally, we decline to ''return the issue to the State,'' as the commenter proposes. At this time, the Wyoming regional haze SIP is many years overdue, and the deadline for EPA to issue a FIP has long since passed. We note, however, that Wyoming is free to submit a SIP revision at any time that, if approved, could replace all or a portion of EPA's FIP.

Comment: EPA's proposal to disapprove Wyoming's BART determination for Laramie River not only overrides the State's technical judgment but also renders moot with a stroke of a pen the extensive judicial, administrative, and political processes developed by the State to implement its obligations under the CAA as a separate sovereign. Wyoming has enacted a robust and independent set of administrative and judicial procedures to review and potentially overturn BART decisions made by the State. These procedures are part of the State's SIP expressly approved by EPA, 40 CFR 52.2620, making them federally enforceable.

Wyoming's air quality regulations require a source subject to BART to apply for and obtain a BART permit. In this case, Laramie River Station's BART permit was issued pursuant to Wyoming Air Quality Standards and Regulations (WAQSR) Chapter 6, Sections 2 and 9. The rules requiring BART permits in Wyoming were adopted on October 9, 2006 as a new section to meet the requirements of EPA's RHR. Chapter 6 requires facilities seeking permits to comply with all the rules and regulations of Wyoming. Chapter 6, Section 9 of the Air Quality Division's rules and regulations govern BART permits. Section 9(e)(iv) requires that the opportunity for public comment on BART permits follow the procedures specified in Chapter 6, Section 2(m). That section, in turn, establishes a notice and comment procedure that specifically requires a copy of the public notice to be sent to EPA. Thus, EPA approved Wyoming's plan that specifically contemplates EPA's inclusion in State administrative review proceedings. *See* 40 CFR 52.2620; *see also US Magnesium, LLC* v. *EPA,* 690 F.3d 1157, 1159 (10th Cir. 2012) (EPA's approval of a State's SIP gave the SIP the force and effect of federal law).

Here, EPA received the required notice at every step of the proceedings. EPA, however, chose to participate to only a limited extent. After submitting August 3, 2009 comments to the State's BART Application Analysis and proposed permit and October 26, 2009 comments to Wyoming's draft regional haze SIP, EPA excised itself from the process. Despite its prior comments on Basin Electric's BART permit and the regional haze SIP, EPA did not seek to intervene in Basin Electric's administrative appeal to the

Environmental Quality Council or comment on Basin Electric's settlement agreement with the Environmental Quality Council. EPA could have advised the Environmental Quality Council that it believed the proposed settlement violated the CAA or was otherwise arbitrary and capricious, but it did not. Instead, illustrating its disregard for State primacy, EPA now proposes to disapprove the NO_X BART emissions limits in the settlement agreement and final SIP, years after the administrative process concluded.

As the dissenters in *ADEC* described, EPA should not be permitted to avoid a ''more painstaking state process by a mere stroke of the pen under the agency's letterhead.'' 540 U.S. at 509 (Kennedy, J., dissenting) (discussing an analogous process for BACT determinations). The CAA's ''strict'' division of authority creates a ''statutory federalism bar [that] prohibits EPA from using the SIP process to force States to adopt specific control measures.'' *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7, 29 (D.C. Cir. 2012) (citing *Virginia,* 108 F.3d at 1410). But that is precisely what EPA seeks to do here. EPA's approach both confuses the CAA ''with a general administrative law statute like the [APA]'' and upsets ''the balance between State and Federal Governments.'' *See ADEC,* 540 U.S. at 507–17 (Kennedy, J., dissenting). Simply put, it is inappropriate for EPA to dodge the administrative and judicial review process established in the State of Wyoming through overturning of Wyoming's BART decision by administrative fiat. *See id.* at 510 (Kennedy, J., dissenting). It was only after Wyoming submitted its regional haze SIP to EPA that EPA announced it found the settlement ''unreasonable'' and something with which it ''disagreed.'' Based upon these assertions, and without demonstrating that the BART permit actually violates the CAA, EPA now proposes to void all the extensive administrative proceedings, processes, comment periods, and permit finality accorded under State law.

This improperly impinges upon state authority. Under the regional haze program, deference to state authority is far more compelling than issues related to public health under the BACT program, and so the Supreme Court's holding in *ADEC* that EPA may not require ''recourse to state processes'' is inapplicable to BART decisions. *ADEC,* 541 U.S. at 492. EPA should conduct itself in accordance with the spirit of its representation to the Supreme Court that it has never sought to override a state court judgment, and should not seek to override a state BART decision that has been litigated to administrative conclusion under state law, particularly where, as here, EPA never advised the State adjudicators or the parties to the State proceedings that it considered the permit to be invalid under the CAA. EPA could have participated in the State administrative appeal proceeding or, at a minimum, appeared in the proceeding to register an objection to the settlement agreement. Having elected not to do so, EPA should respect the result of the State's process. Alternatively, EPA is precluded from overruling the Laramie River BART permit decision that resulted from that process. *ADEC,* 540 U.S. at 491 n.14. EPA had notice and ample opportunity to contest the appropriateness and legality of the BART permit in Wyoming, but simply chose not to do so.

EPA is not free to let parties like Basin Electric spend thousands of dollars and years of effort resolving the terms of a BART permit, only to find the process wasted because EPA disagrees yet chose to ignore multiple notices of the State proceedings. Absent application of claim preclusion under these circumstances, EPA could effectively ''rescind[ ] state authority to make the many sensitive and policy choices that a pollution control regime demands.'' *Virginia,* 108 F.3d at 1406–07 (citation omitted). Here, EPA does not intrude upon state political processes; it ignores them, upsetting ''the balance between State and Federal Governments.'' *See ADEC,* 540 U.S. at 507–17 (Kennedy, J., dissenting).

EPA's interference with State's prerogatives also violates the Tenth Amendment to the United States Constitution. ''[T]he Tenth Amendment confirms that the power of the Federal Government is subject to limits that may, in a given instance, reserve power to the States.'' *New York* v. *United States,* 505 U.S. 144, 157 (1992). *See also* U.S. Const. amend. X (''The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.''). Here, EPA's rejection of Wyoming's BART decision and imposition of its own not only overrides Congress' resolution to leave localized BART analyses in the hands of the states, but also infringes on Wyoming's (and its citizens') Tenth Amendment right to have those decisions made *and adjudicated* by the State. *See Arlington,* 133 S.Ct. at 1874 (although *Chevron* deference generally applies to an agency's interpretation of the scope of its authority, ''[w]here Congress has established a clear line, the agency cannot go beyond it; and where Congress has established an ambiguous line, the agency can go no further than the ambiguity will fairly allow''); *Hodel* v. *Va. Surface Min. & Reclamation Ass'n,* 452 U.S. 264, 289 (1981) (statute survived Tenth Amendment scrutiny because it ''establishes a program of cooperative federalism that allows the States, within limits established by federal minimum standards, to enact and administer their own regulatory programs, structured to meet their own particular needs,'' instead of ''commandeer[ing] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program'').

Earlier comments provided similar arguments, by noting that Wyoming issued its BART Application Analysis and proposed permit on May 28, 2009, and accepted public comments on its analysis and proposed permit for a period of 60 days, followed by a public hearing on August 6, 2009. Numerous comments were received, including comments from EPA dated August 3, 2009. EPA did not comment that Wyoming's proposed BART determination violated the CAA. Nor did EPA identify any action taken by Wyoming in connection with the permit that was arbitrary or capricious. While EPA regularly encouraged Wyoming to consider both SNCR and SCR technologies, at no point did EPA advise Wyoming that BART controls of LNBs and OFA for the Laramie River Station would violate the CAA or otherwise be arbitrary and capricious. Basin Electric appealed its BART permit to the Environmental Quality Council, arguing that Wyoming's imposition of additional technology requirements in 2018 as part of its long term goals exceeded its authority for terms contained in a BART permit. In its appeal, Basin Electric accepted LNB and OFA as BART but objected to the additional permit condition related to long term strategies.

Basin Electric served its Petition for Review before the Environmental Quality Council on EPA, and EPA received this notice of appeal, as indicated by its acceptance of the certified mail forwarding the appeal. Thereafter, EPA chose not to comment or otherwise participate in Basin Electric's appeal and never informed the parties or the Environmental Quality Council that EPA considered Wyoming's BART decision to violate the CAA. In fact, no contention was made, by any person or entity, that the BART permit issued by Wyoming violated the CAA.

After litigation, Basin Electric's appeal was settled. Wyoming agreed to remove the provision related to future

control strategies in exchange for Basin Electric's agreement to reduce emission levels further than those proposed in the original permit and provide even further reductions by the end of 2017. This proposed settlement was presented to the Environmental Quality Council for approval. No persons or entities objected to the proposed settlement, including EPA.

Only after Wyoming's regional haze SIP was submitted to EPA did EPA announce that it found the settlement ''unreasonable'' and something with which it ''disagreed.'' Based upon these assertions, and without demonstrating that the BART permit actually violates the CAA, EPA now proposes to void all of the extensive administrative proceedings, processes, comment periods and permit finality accorded under state law.

This violates the explicit representations EPA made to the United States Supreme Court that decisions to over-ride state technology choices are rarely undertaken and therefore do not pose a threat to state adjudicative processes. In footnote 14 of the *ADEC* decision, the Court quoted EPA for the proposition that EPA has engaged in ''restrained and moderate'' use of its authority to overrule specific technology choices and has never ''asserted authority to override a state-court judgment.'' Based upon this understanding, the majority in *ADEC* dismissed concerns expressed by the dissent about state/federal relations, stating that ''[e]xperience . . . affords no grounding for the dissent's predictions that EPA oversight . . . will 'rewor[k] . . . the balance between State and Federal Governments' and threaten state courts' independence.'' *ADEC,* 540 U.S. at 493 n. 16. With its proposed action here, however, EPA is doing precisely what the dissent in *ADEC* predicted, ignoring the extended contested case process afforded under state law and the final administrative litigation resolution reached under state law.

While Basin Electric's appeal ended short of a court proceeding, the distinction between a litigated judgment in an administrative appeal and a judgment in a state court proceeding is not significant. In both cases, EPA's proposed action fails to respect the cooperative federalism that underlies the CAA in general. Under the RHR deference to state authority is far more compelling than issues related to public health under the BACT program, and so the Supreme Court's holding in *ADEC* that EPA may not require ''recourse to state processes'' is inapplicable to BART decisions. *ADEC,* 541 U.S. at 492. EPA should conduct itself in accordance with the spirit of its representation to the Supreme Court that it has never sought to override a state-court judgment, and should not attempt to override a state BART decision that has been litigated to an administrative conclusion under state law particularly where, as here, EPA never advised the state adjudicators or the parties to the state proceedings that it considered the permit to be invalid under the CAA. EPA could have participated in the State administrative appeal proceeding or at a minimum appeared therein to register an objection to the settlement agreement. Having elected not to do so, EPA should respect the result of the State's process.

Response: EPA disagrees with this comment. As an initial matter, as provided in detail elsewhere in this section and in the docket for this action, we provided feedback to the State in our comment letters on the proposed SIP and in meeting with State and company officials; therefore, the State and companies were aware of our expectations.

That WAQSR Chapter 6, Section 2 has been approved into the SIP does not somehow commit EPA to participate in Wyoming's BART permit process. The Act and the RHR do not require that BART be determined through a permit process that is subject to administrative appeal or through a permit process at all. The SIP-approved provision in Chapter 6, Section 2 for notice to EPA of permit actions meets the requirements of 40 CFR 51.161(d), regarding public procedures for review of *new or modified sources,* not BART sources. Furthermore, nothing in Chapter 6, Section 2 suggests that notice to EPA of a permit process somehow binds EPA to participate in that process.

The commenter provides no statutory, regulatory, or judicial authority to support the proposition that EPA must participate in state administrative or judicial procedures. With respect to state judicial procedures, the Supreme Court has stated: ''[i]t would be unusual, to say the least, for Congress to remit a federal agency enforcing federal law solely to state court.'' *Alaska Dep't of Envtl. Conservation* v. *EPA,* 540 U.S. 461, 493 (2004). Thus the Court ''decline[d] to read such an uncommon regime into the [CAA].'' *Id.* The commenter's notion that the *ADEC* opinion (which concerned a BACT determination under the PSD program) is inapplicable to BART determinations, merely because BART determination are part of a program to improve visibility rather than public health, finds no support in the *ADEC* opinion or anywhere in the CAA. We elsewhere respond to comments that argue that the language of the CAA itself requires a greater level of deference to states BART determinations.

With respect to the dissent in *ADEC,* that dissent of course does not represent the opinion of the Supreme Court. Nonetheless, EPA is not undoing the State's process through the ''mere stroke of a pen on the Agency's letterhead,'' but instead is acting on the State's regional haze submittal through notice-and-comment rulemaking that is potentially subject to judicial review. Furthermore, EPA is not confusing the CAA with the APA; our authority and duty to review the State's regional haze SIP for compliance with the CAA and the RHR stems from the CAA itself. As we discuss elsewhere, EPA's role in reviewing SIPs differs in many key aspects from that of a court reviewing agency action under the APA.

Under the CAA, states are required to submit SIPS that contain emissions limits necessary to protect visibility, and EPA is required to disapprove of any inadequate SIPs and promulgate FIPs in their place. 42 U.S.C. 7491(b)(2); Section 7410(c)(1)(A). The CAA does not require EPA to participate in state proceedings related to its SIP submission, nor does it preclude EPA from carrying out its statutory duty to disapprove an inadequate SIP if EPA does not participate in state proceedings. The notion that BART determinations are insulated from EPA review simply because the State has an administrative appeal process not only has no support in the Act, it is contrary to the purposes of the Act and EPA's express obligation to approve only SIP submittals that meet the requirements of the Act.

Moreover, any state BART decisions made under an unapproved SIP are not federally enforceable because any SIP ''shall not be treated as meeting the requirements of this chapter until the Administrator approves the entire plan revision as complying with the applicable requirements.'' 42 U.S.C. 7410(k)(3); *see also Gen. Motors Corp.* v. *United States,* 496 U.S. 530, 540 (1990) (holding EPA may bring enforcement action under an existing SIP while a SIP proposal is pending).

Finally, this action does not violate the Tenth Amendment. The Supreme Court has explained that ''where Congress has the authority to regulate private activity under the Commerce Clause, we have recognized Congress' power to offer States the choice of regulating that activity according to federal standards or having state law pre-empted by federal regulation.'' *New*