Alcoa-Wenatchee Regional Haze Agreed Order
Response to Comments

January 2021

Ecology made the draft Alcoa-Wenatchee Regional Haze Agreed Order available for public review and comment before issuing the final order. Ecology published notice of the opportunity to comment on the draft agreed order on the Ecology website, sent notices to the interested parties list for the facility, and send notices to the Regional Haze and Air Quality State Implementation Plan (SIP) listservs. In the notice, we invited public review of the draft order and provided a 30-day public comment period. On December 1, 2020, Ecology held a public meeting and hearing via webinar. The public meeting included a presentation by Ecology and a question and answer period. There was one attendee at the meeting. The attendee did not choose to provide oral testimony at the hearing. The deadline for submittal of written comments was December 4, 2020.

During the comment period, we received written comments from the following entity:

- National Parks Conservation Association – Sara L. Laumann of Laumann Legal, LLC

The comments and Ecology's responses are presented below. Comments appear in regular text, followed by Ecology's responses in italicized text.

The original comments are part of the legal record for this order. The record is normally available for public review at Ecology's Industrial Section office in Lacey, WA. However, due to the COVID-19 pandemic, files are not currently available for in-person review. Anyone interested in reading the full text of the comments or in obtaining a copy of a particular comment must make a request in one of the following ways:

- Submit a request online - https://ecology.wa.gov/About-us/Accountability-transparency/Public-records-requests
- Download a copy of the records request form available online at https://fortress.wa.gov/ecy/publications/summarypages/ecy01037.html and use it to

  Public Records Office
  Washington Department of Ecology
  P. O. Box 47600
  Olympia, WA 98504-7600

If you need help with the options above, please contact Ecology at recordsofficer@ecy.wa.gov or 360-407-6040.

Ecology will send a copy of the final Regional Haze Agreed Order and Response to Comments to each entity who provided comments.

Ecology will send a notice of the issuance of the final agreed order to all interested parties and will post the documents on the Industrial Section webpage at:

> https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Industrial-facilities-permits/Alcoa-Wenatchee

Comments from National Parks Conservation Association (NPCA) – Sara L. Laumann of Laumann Legal, LLC

Comment 1:

To improve air quality in our most treasured landscapes, Congress passed the visibility protection provisions of the Clean Air Act in 1977, establishing "as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in the mandatory class I Federal areas which impairment results from manmade air pollution." "Manmade air pollution" is defined as "air pollution which results directly or indirectly from human activities." In order to protect Class I areas' "intrinsic beauty and historical and archeological treasures," the regional haze program establishes a national regulatory floor and requires states to design and implement programs to curb haze-causing emissions within their jurisdictions. Each state must submit for EPA review a SIP designed to make reasonable progress toward achieving natural visibility conditions.

A regional haze SIP must provide "emissions limits, schedules of compliance and other measures as may be necessary to make reasonable progress towards meeting the national goal." Two of the most critical features of a regional haze SIP are the requirements for installation of Best Available Retrofit Technology ("BART") limits on pollutant emissions and a long-term strategy for making reasonable progress toward the national visibility goal. The haze requirements in the Clean Air Act present an unparalleled opportunity to protect and restore regional air quality by curbing visibility-impairing emissions from some of the nation's oldest and most polluting facilities.

Unfortunately, instead of acting on Congress's direction, the states and EPA have repeatedly dragged their feet in implementing the visibility protection provisions, which is true in Washington. After failing to control visibility impairing pollutants for these two sources during the first planning period, the Department of Ecology yet again proposes SIP provisions that delay the required reasonable progress analysis and lack enforceable and permanent emission reducing measures. The State's proposals fail to meet the Act's requirements because it would allow both sources to restart, allowing emissions from these sources to impact the Class I areas, leaving them dirty for years to come. Ecology's proposal must be revised to adequately control emissions and contain enforceable and permanent measures in this planning period to ensure the Clean Air Act's regional haze SIP requirements are met from these sources. As discussed in our comments, these measures must be in place before either source restarts.

In developing its long-term strategy, a state must consider its anthropogenic sources of visibility impairment and evaluate different emission reduction strategies including and beyond those prescribed by the BART provisions. A state should consider "major and minor stationary sources, mobile sources and area sources." At a minimum, a state must consider the following elements:

(A) Emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment;
(B) Measures to mitigate the impacts of construction activities;
(C) Emissions limitations and schedules for compliance to achieve the reasonable progress goal;
(D) Source retirement and replacement schedules;
(E) Smoke management techniques for agriculture and forestry management purposes including plans as currently exist within the State for these purposes;
(F) Enforceability of emission limitations and control measures; and
(G) The anticipated net effect on visibility due to projected changes in point, area, and mobile emissions over the period addressed by the long-term strategy.

40 C.F.R. § 51.308(d)(3)(v)(A)-(G). Additionally, a state "must include in its implementation plan a description of the criteria it used to determine which sources or groups of sources it evaluated." In developing its plan, the State must document the technical basis for the SIP, including monitoring data, modeling, and emission information, including the baseline emission inventory upon which its strategies are based. A state's reasonable progress analysis must consider the factors identified in the Clean Air Act and regulations. *See* CAA 169A(g)(1); 40 C.F.R. 308(d)(1)(i)(A)("Consider the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources, and include a demonstration showing how these factors were taken into consideration in selecting the goal.") Finally, the state's SIP revisions must meet certain consultation and procedural requirements (e.g., the state must provide the Federal Land Manager(s) with an opportunity to consult and comment, and there is no information indicating that consultation occurred for these proposed SIP revisions; and the state must provide for public hearing, which has also not been provided.)

Response to Comment 1:

Thank you for your comments dated December 3, 2020, on the Agreed Orders (AOs) for the Intalco and Wenatchee aluminum smelters. AO No. 18100 (Wenatchee facility) and AO 1826 (Intalco facility) address Regional Haze Rule (RHR) requirements at the facilities that are currently curtailed.

NPCA refers to these AOs throughout their comments as State Implementation Plan (SIP) revisions or requirements. These AOs are not the SIP submittal to the Environmental Protection Agency (EPA) to meet RHR requirements.

These AOs will become part of the SIP submittal. By confusing these AOs as the RH SIP submittal, most of the comments are out-of-scope and not applicable.

These two facilities were selected during Ecology's screening process as requiring a four-factor analysis. The four-factor analysis evaluates potential emission control technologies for four statutory factors:

- *The cost of controls,*
- *Time necessary to install controls,*
- *Energy and non-air quality impacts, and*
- *Remaining useful life.*

These four factors are used as the basis to determine if installation of emission controls is reasonable. The RHR does not have a mechanism to require installation and operation of identified controls. The State relies upon other rules and regulations to achieve any reductions identified. If the controls are determined to be reasonable, then the state must use a state law or regulation for enforcement since the RHR does not include a mechanism to achieve change.

Ecology has identified four potential mechanisms to require installation of control equipment determined to be reasonable by a four-factor analysis. Two of these mechanisms require agreement between Ecology and the facility and the other two can be implemented without direct agreement. The four mechanisms are:

- *Agreed Order - requires agreement between parties to implement*
- *Permit Modification - requires the facility to voluntarily submit an application to modify the existing permit*
- *Compliance Order requires the noncompliance remedy and the RH determined actions to be the same*
- *Reasonably Available Control Technology (RACT) - requires following requirements of Washington Revised Code RCW 70A.15.2230*

A four-factor analysis performed on these two facilities while they are curtailed will result in the cost of control, per ton of pollutant removed ($/ton), that exceeds reasonable values. The facilities actual emissions during curtailment are nearly zero tons on an annual basis. This creates a large unreasonable $/ton cost of controls.

If the conditions of the four factor analysis are found to be reasonable and the facilities do not agree to install the respective emission control equipment, Ecology would have to rely upon Washington's RACT law to achieve reductions. However, curtailed facilities would not meet the applicability threshold for using the RACT law.

Both facilities are maintaining all of their environmental permits at this time. This allows the facility to return to operation without applying for new permits.

A four-factor analysis performed at the time the facilities plan to restart could result in a determination that emission controls under the RHR are reasonable. The analysis must reflect conditions that will occur upon restart and those conditions will not be known until a facility restarts.

The AOs for these facilities requires that they perform a four-factor analysis when they plan to restart with the conditions of their operation as part of the analysis. The six month submission date before restart allows time for Ecology to review the analysis and start working with the facility on installation of any identified reasonable controls. The facilities are then allowed up to three years to design, obtain permits and permit modifications, procure, install, and begin operating those controls.

Comment 2:

[B]oth Alcoa Wenatchee and Alcoa Intalco are closed and neither facility produces aluminum. While different terms are used to describe the facility status (e.g., closed, curtailed, fully curtailed idle, temporarily closed, fully shut down), for consistency our comments use "closed" to describe the current status of both facilities.

Response to Comment 2:

NPCA states "for consistency our comments use "closed" to describe the current status of both facilities." Regardless of the term used (e.g. closed or curtailed), the facilities are currently not producing any product, but they are complying with all permit requirements (maintenance, reporting, etc.). This fact is important to remember in that the current permits remain valid and allow the facilities to restart using those permits. The facilities are not required to apply and receive new permits for these facilities before they can restart operations.

Comment 3:

Washington's proposed SIP revisions merely include draft Orders. The proposals fail to include the required reasonable progress Four-Factor Analysis or an enforceable requirement that the facility is shut down and must apply for new air permits and associated reasonable progress and other analyses should it endeavor to come back online. As detailed in these comments, while we have concerns about Ecology's efforts thus far, Ecology has only done part of its job. Thus far, Ecology:

- Evaluated the emissions from these sources and impacts to the Class I area, calculated a Q/d value, and
- Based on the Q/d values, determined that a Four-Factor Analysis is required for the Intalco and Wenatchee facilities.

Ecology cannot stop here. As clearly laid out in EPA's regulations, the duty to ensure the reasonable progress requirements are met for purposes of the SIP rests with the state, not the sources. If the companies are unwilling to respond to Ecology's May 31, 2019, letters, which asked the companies to conduct a Four-Factor Analysis, Ecology must conduct the analyses to inform its reasonable progress determination. While a state may certainly ask that a source conduct and submit a Four-Factor analysis, a state can't ignore the rule requirements if it fails to receive the analysis from a source.

Response to Comment 3:

NPCA indicates that "The proposals fail to include reasonable progress Four-Factor Analysis or an enforceable requirement that the facility is shut down and must apply for new air permits and associated reasonable progress and other analysis should it endeavor to come back online." This comment is out-of-scope as it is related to the RH SIP submittal and not to the intent of these AOs, which is to require the facilities to conduct a four factor analysis if and when the facilities restart.

Comment 4:

Ecology appears to suggest that its proposed Orders are justified because the Alcoa "facility has been curtailed since December 18, 2015" and the Intalco "facility fully curtailed its operations at the end of August 2020." Neither the Clean Air Act nor the regional haze regulations include provisions that allow a state to take a pass on emission control requirements because a facility is closed. Indeed, Ecology's Orders provides no authority for such a deferral.

Response to Comment 4:

NPCA states "Neither the Clean Air Act nor the regional haze regulations include provisions that allow a state to take a pass on emission control requirements because a facility is closed." Ecology agrees with this comment under the stipulation that the four-factor analysis has determined that installation of emission control equipment is reasonable. A four-factor analysis of a curtailed facility would not result in installation of any emission control equipment because the cost of controls would be unreasonable.

Comment 5:

Ecology has two options in this SIP revision: (1) conduct the required four-factor analysis for these two sources, and issue requirements for emission limitations and other measures; or (2) revise the SIP to void the current permits and include requirements for the sources to obtain new construction and operating permits prior to restarting operation.

Response to Comment 5:

This paragraph is out of scope as it is addressing a SIP revision and not these AOs.

Comment 6:

The Clean Air Act requires states to submit implementation plans that "contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal" of achieving natural visibility conditions at all Class I Areas. The Regional Haze Rule requires that states must revise and update its regional haze SIP, and the "periodic comprehensive revisions must include the "enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress as determined pursuant to [51.308](f)(2)(i) through (iv)." The State's proposal is merely a commitment to do something in the future: it lacks the required Four-Factor Analysis, emission limitations and other requirements necessary. Furthermore, EPA's Guidance further explains these requirements:

This provision requires SIPs to include enforceable emission limitations and/or other measures to address regional haze, deadlines for their implementation, and provisions to make the measures practicably enforceable including averaging times, monitoring requirements, and record keeping and reporting requirements.

Washington's proposed SIP revisions do not include emissions limitations with practicably enforceable provisions. Rather, they contain provisions for potential future action, requiring the sources to "install or otherwise implement all reasonable emission reduction measures that are identified in the Four-Factor Analysis and subsequently approved by Ecology." Moreover, EPA's recent Guidance recognizes EPA's long-standing position that while the SIP is the basis for demonstrating and ensuring state plans meet the regional haze requirements, state-issued permits must complement the SIP and SIP requirements. State-issued permits must not frustrate SIP requirements. For example, sources with PSD permits under Title I must not hold permits that allow emissions that conflict with SIP requirements. Additionally, the Act's Title V operating permits collect and implement all the Act's requirements – including the requirements in the SIP – as applicable to the particular permittee. And sources with Title V permits must not hold such permits if they contain permit terms and conditions that conflict with the SIP and Clean Air Act SIP requirements.

The proposed SIP revisions for these two sources lack the required "enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress" and thus would allow both companies to restart and operate without first meeting the regional haze requirements. The draft Orders allow the currently closed sources to restart with emissions at levels that impact the Class I areas for many years without first meeting reasonable progress emission limitation and other necessary requirements. Contrary to the requirement to ensure permits complement the SIP, Washington's proposed SIP revisions do nothing to address the PSD permits issued to Wenatchee and Intalco. The revised SIPs must make clear that reactivation of either facility means it will be treated as operation of a new source for purposes of PSD. Attachment 1 to these comments contains 13 additional concerns with the draft Orders.

Response to Comment 6:

This comment is out of scope as it refers to a SIP submittal and not to the AOs.

Comment 7:

Ecology issued Title V permits to both sources, which Ecology suggests are still effective. Based on the information referenced in the proposal, the Title V permits expired and the sources do not have valid Title V permits. Washington has no information on its website to indicate either facility submitted a timely and complete application to renew its Title V permit and demonstrate an intent to reopen. Therefore, the revised SIP must include provisions that make enforceable the retirement of these facilities as part of this action and also require that the sources each obtain a new Title V permit compliant with the regional haze program should they intend to restart.

Response to Comment 7:

NPCA indicates that the facilities do not have valid Title V permits. Although the Title V permits have expired, the facilities submitted complete applications in a timely manner and are currently under a permit shield. This allows for the facilities to continue operating under the conditions of the expired Title V permit until a renewed Title V permit is issued. The Title V permits include conditions for when the facility is in a curtailed status, so the permit shield is still valid.

NPCA further states that "…the revised SIP must include provisions that make enforceable the retirement of these facilities as part of this action and also require that the sources each obtain a new Title V permit compliant with the regional haze program should the [sic] intend to restart." As mentioned above, the facilities have a Title V permit shield. If a four-factor analysis of a curtailed facility indicates that installation of emission control equipment is not reasonable, there will be no need to modify the Title V permit. The AOs require the facilities to determine the applicability of RHR requirements at the time they restart.

Comment 8:

Washington cannot cover its eyes and act as if emissions from these sources cannot exist or that it is relieved of its obligation to address visibility impairing emissions from sources. Therefore it must revise the SIP to ensure that the reasonable progress measures and Clean Air Act permits properly support the requirements that must be in the SIP.

Response to Comment 8:

The proposed AOs were drafted because Ecology will regulate the future emissions from these facilities. The facilities will have no emissions during curtailment and a four-factor analysis would result in a determination that the installation of emission control devices is unreasonable.

Recognizing that the facilities could restart, these AOs have the facilities perform a four-factor analysis on the emissions from the restart. This offers the best opportunity for installation of emission control devices after restart.

Comment 9:

Finally, it appears the proposed SIP revisions were negotiated between the State and the company, other stakeholders were not invited to participate. In the future, as EPA does, we urge Washington to invite stakeholders to the table when its rule is negotiated.

Response to Comment 9:

These AOs are not SIP revisions, they are orders that have been agreed to between the parties. Ecology drafted the orders and the facilities had an opportunity to comment on them prior to the public review period. The public review period was established to provide other interested parties a chance to comment on the draft orders. A public meeting and hearing was held on December 1, 2020. One person attended but did not testify. Ecology followed its established process in drafting and public noticing the AOs.

Comment 10:

NPCA urges Ecology not to finalize the Washington haze SIP revisions as proposed. Ecology has inappropriately excused and delayed Intalco and Alcoa from meeting the reasonable progress requirements, which is inconsistent with the statutory command to require reasonable progress. Ecology's proposal fails to include the required Four-Factor Analysis or establish measures for these sources that make retirement of these sources enforceable in the regional haze SIP. Furthermore, the proposed SIP revisions fail to include provisions necessary to ensure that should either facility restart, new Ecology-issued permits be required and complement – rather than thwart – SIP requirements. Ecology's proposals for these facilities are inadequately supported and not in keeping with the requirements of the law. NPCA strongly encourages the State of Washington to go back to the drawing board and prepare a reasonable progress SIP for these sources that is consistent with the Act and regulatory requirements, including consideration of retiring the current permits.

Response to Comment 10:

The comments submitted did not provide any information or concerns that would require Ecology to change either of the AOs. No changes to the AOs will be made.