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PUBLIC WORKSHOP NO. 3
REGIONAL HAZE STATE IMPLEMENTATION PLAN (SIP)
BEST AVAILABLE RETROFIT TECHNOLOGY (BART)

Tuesday, May 29, 2007, 1:00 p.m.

Anchorage, Alaska

Volume I - Pages 1 - 128, inclusive

1 PUBLIC WORKSHOP

2 REGIONAL HAZE STATE IMPLEMENTATION PLAN (SIP)

3 BEST AVAILABLE RETROFIT TECHNOLOGY (BART)

4

5 taken at 555 Cordova Street, First Floor Conference Room,
6 Anchorage, Alaska, before Mary A. Vavrik, Registered Merit
7 Reporter for Alaska Stenotype Reporters and Notary Public
8 for the State of Alaska.

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A-P-P-E-A-R-A-N-C-E-S

Tom Turner, Alaska Department of Environmental Conservation
John Kuterbach, Alaska Department of Environmental Conservation
Conservation
Tom Chapple, Alaska Department of Environmental Conservation
Al Trbovich, Hoefler Consulting Group
Lindsay Wolter, Office of the Attorney General
Bob Price, Municipal Light & Power
Brad Thomas, Alyeska Pipeline
Chris Drechsel, Tesoro
Matt Cohen, Heller Ehrman
Marilyn Crockett, Alaska Oil and Gas Association
Michelle Grzybowksi, Tesoro Kenai Refinery
Bud Rice, National Park Service
Attending by phone:
Rebecca Smith, Alaska Department of Environmental Conservation
Alice Edwards, Alaska Department of Environmental Conservation
Ann Mebane, Forest Service (Wyoming)
Bruce Polkowsky, National Park Service (Colorado)
Tim Allen, Fish and Wildlife Service (Colorado)
Andrea Blakesley, National Park Service (Denali)
Ken Richmond, GeoMatrix (Bothel, Washington)
John Vimont, National Park Service (Colorado)
John Notar, National Park Service (Colorado)
Kristy McCullough, Agrium
Tom Gibbons, Steigers Corporation

1 Anchorage, Alaska, Tuesday, May 29, 2007, 1:00 p.m.

2 MR. TURNER: We are now on record. I want
3 to thank Mary and Alaska Stenotype for -- she just came
4 back from Poland, got off the plane, like, last night and
5 found out she had to come deal with us again. So I want
6 to thank her for being willing to join us.

7 Today we are participating in a public workshop for
8 the Best Available Retrofit Technology, or what we call
9 BART. We will be looking at 18 AAC 50 BART regulations.
10 It's a public comment draft. It was signed by the
11 commission on April 27th. I believe it was officially
12 posted on May 1st. It's been on the website. I have
13 copies available over here if you do not have a copy. If
14 someone is on the phone and would like a copy, Becca can
15 send them to you.

16 MR. KUTERBACH: It's on the web.

17 MR. TURNER: It's also on the web. So
18 Becca can always -- you can e-mail Becca or she can run
19 out and do it. What we would like to do is just go around
20 the room one more time and do introductions. We're going
21 to start in Anchorage. We're doing this both for voice
22 check, but also to get everybody officially now on the
23 record.

24 My name is Tom Turner. I'm with the Department of
25 Environmental Conservation. I'll go to my right.

1 MR. CHAPPLE: Tom Chapple, DEC Air

2 quality.

3 MR. DRECHSEL: Chris Drechsel with Tesoro

4 Companies.

5 MS. CROCKETT: I'm Marilyn Crockett,

6 Alaska Oil and Gas Association.

7 MR. COHEN: I'm Matt Cohen with the Heller

8 Ehrman law firm, and I'm representing the BART coalition.

9 MR. TRBOVICH: Al Trbovich with Hoefler

10 Consulting Group.

11 MR. PRICE: Bob Price with Municipal Light

12 & Power.

13 MR. THOMAS: Brad Thomas with Alyeska

14 Pipeline.

15 MR. KUTERBACH: John Kuterbach with DEC.

16 MS. WOLTER: And Lindsay Wolter with the

17 Department of Law.

18 THE ARBITRATOR: That's all we have in

19 Anchorage. I'd like to go to the phones. I'm going to

20 start with Juneau DEC Office with Rebecca.

21 MS. SMITH: Rebecca Smith, DEC.

22 MR. TURNER: Is anybody else with you?

23 MS. SMITH: Alice isn't here yet.

24 MR. TURNER: Okay. I'll go to the federal

25 land managers. I'll start with Tim Allen, and we can go

1 through the federal land manager list and see if anybody
2 else has joined us.

3 MR. ALLEN: Tim Allen with the Fish &
4 Wildlife Service. I'm in Denver.

5 MR. VIMONT: This is John Vimont with the
6 National Park Service in Denver, although I will have to
7 depart here in a little while.

8 MR. ALLEN: I am assuming that Bruce
9 Polkowsky will be joining us in about an hour from the
10 Park Service.

11 MS. BLAKESLEY: Andrea Blakesley, Denali
12 National Park.

13 MS. MEBANE: Ann Mebane, U.S. Forest
14 Service.

15 MR. TURNER: Any other federal land
16 managers? Okay. We will start again with the other
17 people on the phone. Consultants, we'll start with Ken
18 Richmond.

19 MR. RICHMOND: Ken Richmond with GeoMatrix
20 in Seattle.

21 MR. GIBBONS: Tom Gibbons with Steigers
22 Corporation, Littleton, Colorado.

23 MR. TURNER: Anybody else join us? Okay.
24 We will start with anybody else that's on the phone. I
25 think Kristy, you are there, right?

1 MS. MCCULLOUGH: Yes. Kristy McCoullough
2 with Agrium.

3 MR. TURNER: Anybody else who has joined
4 us on the phone? Okay. So we will go ahead and proceed.
5 I do have an agenda. It's kind of a quick agenda, but
6 basically I did talk to Marilyn about this. We are in a
7 public comment period. There is a public hearing on May
8 31st. What we discussed happening is we would take
9 sections of the rule that's out and we will go ahead and
10 talk about what we are trying to do with the rule or what
11 the purpose of that section is, and then we would open it
12 up for comments.

13 If you guys have one spokesperson, that's fine. If
14 other people want to comment, that's also fine. We can
15 then have any questions. We may have questions back. We
16 can go through potential additions or deletions and then
17 we will have next steps. There are some people that have
18 informed me in various formats that they may have other
19 pressing meetings or other things they have to attend to.
20 I've gotten basically permission, since one of them is the
21 director, that I will proceed with the hearing even though
22 people may come and go. If I see that we need a break
23 halfway through this, I'll call one. Any other questions?

24 MS. CROCKETT: I have a request.

25 MR. TURNER: Go.

1 MS. CROCKETT: I wonder if there might be
2 an opportunity right now at the very beginning just to
3 make some opening remarks, including any opening remarks
4 the department might want to make, but we have got one or
5 two things that we would like to say at the outset that
6 don't violate your public comment process procedures.

7 MR. TURNER: That's fine. Okay. Any
8 other changes to the agenda or requests?

9 MR. COHEN: Has the agenda been
10 distributed?

11 MR. TURNER: I'll be happy to pass one
12 out. Okay. And I'd like to remind the Anchorage people
13 to sign in, and then phone people, please send an e-mail
14 to Rebecca Smith -- I believe you all have her e-mail --
15 to let her know that you attended. And we have one more
16 person joining us, so for the record, would you please
17 introduce yourself and tell us who you are with.

18 MS. GRZYBOWSKI: Michelle Grzybowski with
19 the Tesoro Kenai refinery.

20 MR. TURNER: Okay. I get to meet you.
21 I've seen you on e-mail. Okay. All right. We are going
22 to go ahead and proceed, then. BART coalition, you asked
23 for comments. You have the floor.

24 MS. CROCKETT: I'd like to turn it over to
25 Matt Cohen, please.

1 MR. COHEN: A two-minute summary. We
2 think that the proposed rule, in an effort to expedite the
3 process in order to meet the EPA's SIP submittal deadline,
4 has taken some shortcuts. And I don't mean that
5 pejoratively. I just mean in an effort to jump start the
6 process, the department has taken some shortcuts which
7 leave the proposed rule on a shaky foundation.

8 In particular, the -- the cause or contribute to
9 Class I visibility impacts modeling performed by a
10 contractor for WRAP for the department departed from the
11 BART modeling -- the EPA BART guideline in some
12 significant ways that have resulted in significant
13 overstatements of the visibility impact of a few -- well,
14 maybe all of the six sources, but it turns out to be
15 critical, we think, for maybe three of them.

16 The three of the BART eligible sources in Alaska have
17 a realistic opportunity to model out of the process if the
18 department designed its rules in accordance with the EPA
19 guideline to -- to screen out sources that don't cause or
20 contribute to visibility impairment. And the WRAP
21 modeling contains enough errors so that it's probably not
22 a solid foundation to do even a presumptive
23 subject-to-BART determination, which is how it's used in
24 the proposed rule.

25 But even that error could be -- could be managed and

1 dealt with if the rule had a realistic schedule for
2 performing exemption modeling per the guideline and for
3 sources that remain in the game after the exemption
4 modeling is completed to submit a BART controlled
5 technology analysis.

6 The schedule in the rule for requesting an exemption
7 from BART is -- seems to us highly unrealistic, and the
8 schedule for doing a BART-controlled technology analysis
9 also seems unrealistic in that, A, it just doesn't allow
10 enough time for the work that has to be performed, and we
11 will try to -- we will try to provide some specific
12 examples of what we think needs to be done that can't be
13 accomplished within the time frame contemplated by the
14 rule.

15 And the rule doesn't currently acknowledge or provide
16 for the fact that the department quite reasonably wants to
17 approve and buy off on a number of intermediate steps
18 along the way. So the schedule for the sources to
19 complete various tasks runs from the effective date of the
20 rule without any acknowledgment that, you know, they
21 submit a modeling protocol. The rule says it has to be
22 reviewed and approved by the department in consultation
23 with the FLMS and EPA, but there is no allowance in the
24 rule for the time it takes for the department and the FLMS
25 to review and approve the protocol. And there are a

1 number of intermediate steps in this process that the
2 department wants to exercise some oversight over.

3 And it seems to us unfair and unrealistic to have the
4 deadlines for the sources running from the effective date
5 of the rule without acknowledgment of the fact that we
6 don't control the time that the department requires to do
7 its work and provide its approvals.

8 Those are the biggest issues, I think, we have with
9 the proposed rule. There is -- there is an incorporation
10 into the rule of a requirement that conflicts with the
11 BART guideline that the visibility impact of a source
12 should be based on the maximum daily visibility impact for
13 each year in the -- in the meteorological data set.

14 The rule that -- the BART guideline provides that
15 those determinations should be based on the 98th
16 percentile value. We have talked about that before, and
17 the difference is quite significant because the largest --
18 you know, the worst day is often a statistical outlier
19 that EPA considered inappropriate as a basis for making
20 controlled technology decisions, and we would like to
21 encourage the department to follow that guidance. And the
22 rule, as we read it, doesn't allow for that now, and it
23 should.

24 I think, in summary, that's probably as much time as
25 we should take. We are ready to go through the proposed

1 rule. Tom, we understood that was the format that you
2 wanted to follow, and we can amplify what we are saying
3 with reference to the language of the proposed rule.

4 MR. TURNER: Okay. John has a question,
5 John Kuterbach.

6 MR. KUTERBACH: I just want to ask, does
7 anybody else have kind of an opening statement or anything
8 that they want to say before we go through the rule?

9 MR. TURNER: Anyone on the phone? Federal
10 land managers, do you wish to have an opening statement?

11 MR. ALLEN: No, thanks. We are good.

12 MR. TURNER: Okay. We have one other
13 person who has joined us in the room. Sir, if you can
14 switch your name tag around.

15 MR. RICE: Bud Rice with the National Park
16 Service.

17 MR. TURNER: Bud Rice with the National
18 Park Service has joined us. Bud, for the record, can you
19 state your name and where you are from?

20 MR. RICE: Bud Rice, National Park
21 Service. I just, basically, as a federal land manager,
22 wanted to state that we support the DEC proposed rule in
23 general.

24 MR. TURNER: Okay. Any other people that
25 choose to have a comment, opening statement? I just want

1 to refresh everyone's memory from the last workshop. I
2 will probably be a little bit -- I shouldn't say
3 heavy-handed, but please, for the record, when you speak,
4 particularly the people on the phone, please state your
5 name just so that the recorder, who has been here before
6 and did a great job -- if I see you not doing it
7 regularly, I'll probably remind you. Fortunately,
8 everyone knows who I am, so I can get away with that one.
9 So we are going to go ahead.

10 All right. We are going to go through the rule. I
11 hope everybody has a copy with them. I have mine with its
12 little notes. Okay. We are going to be looking on page 1
13 of the Air Quality Control Public Comment Draft, April 27,
14 2007, with the comment period ending on June 5, June 5th
15 at 5:00 p.m. We are looking on page 1, and we are going
16 to go ahead and start off with Section 18 AAC 50.260,
17 Guidelines for Best Available Retrofit Technology
18 underneath the Regional Haze Rule. Becca, this is yours.
19 Why don't you tell us what it does here.

20 MS. SMITH: In this section we are
21 adopting both the guidelines for the BART determinations
22 under the Regional Haze Rule, the Federal Register 40 CFR,
23 Part 51, Appendix Y, which sets out the guidelines for
24 doing BART determinations, and also a section of 40 CFR
25 51.301, which incorporates some BART definitions.

1 It's been general longstanding policy of the
2 department to adopt Federal Registers into the regulations
3 rather than writing out the language, and so this is
4 standard policy for the department. And so it's -- are
5 there any comments about our decision to adopt the Federal
6 Registers by reference?

7 MR. TURNER: Comments from the floor?

8 MR. COHEN: Just one. We think it's a
9 great thing that the public comment draft incorporated the
10 definitions needed to implement BART, the 40 CFR 51.301
11 definitions, and those definitions conflict in a few
12 instances with definitions of the same terms that
13 currently appear in 18 AAC 15.990. Examples include the
14 term reconstruction, which is defined slightly differently
15 in the Federal 51.301. And I think impairment of
16 visibility is another example.

17 In the sort of -- in the proposed version of the
18 rules that the coalition submitted as an attachment to our
19 letter of May 17, 2007 to John Kuterbach, we provided a
20 couple of suggested edits to reconcile those definitions
21 so that it's not left to -- so that it's clear where, you
22 know, a definition can have different meanings for
23 different purposes in the Clean Air Act, and the goal of
24 the edits is to clarify that for purposes of the regional
25 haze program, the definitions have the meaning in 51.301,

1 but it doesn't change the meaning of the same term for
2 other purposes in the Alaska rules. It's not -- it's not
3 a big conceptual problem. It's an editing detail.

4 MR. TURNER: Questions or comments from
5 the Anchorage floor?

6 MR. KUTERBACH: Well, I have a question
7 about that. You are changing impairment of visibility
8 definition. As that is our -- basically our opacity
9 regulation, wouldn't that change all our SIP regulations
10 and require a SIP submittal?

11 MR. COHEN: John, to my knowledge, I have
12 never associated that term with opacity. Impairment of
13 visibility -- and I didn't bring the Alaska rules with me.

14 MR. KUTERBACH: I've got a copy.

15 MR. COHEN: Okay. The term is a -- it's a
16 visibility impairment term used in the federal visibility
17 protection rules that predated Regional Haze, but the
18 current version in 51.301 has an element in it that your
19 definition omits. And I don't think it has anything to do
20 with opacity, but forgive me if I'm ignorant of that.

21 MR. KUTERBACH: Well, impairment of
22 visibility currently exists in our rules, and we currently
23 don't have a Regional Haze program.

24 MR. COHEN: Right, but you do have a
25 Class I visibility protection program, and I think that's

1 why it may have been added in the first place.

2 MR. KUTERBACH: Yeah, it's a visibility
3 special protection area in .025 has impairment of
4 visibility. So do you see any conflict between impairment
5 of visibility and reduced visibility?

6 MR. COHEN: Reduced visibility?

7 MR. KUTERBACH: Let me just read you what
8 I'm thinking of.

9 MR. TURNER: Tom, would you please speak
10 up?

11 MR. KUTERBACH: Visible emissions
12 excluding condensed water vapor may not reduce visibility
13 through the exhaust effluent by -- so you don't see this
14 as conflicting with reduced visibility through --

15 MR. COHEN: No. I don't think those terms
16 have any connection or correlation. I've never seen --
17 I've never seen them applied as -- in a synonymous way.

18 MR. KUTERBACH: Okay. And then this
19 visibility and other special protection areas, I believe
20 that's incorporated into our SIP right now. So it
21 wouldn't change the definition for that.

22 MR. COHEN: I think it would, John. If
23 you look at page 15 of the letter we submitted on May
24 17th, it includes an amended version of 18 AAC 15.990(47).
25 What's missing from the definition in 990 today is the

1 concept of loss -- or light extinction. And that's --
2 that's now in 51.301. And I believe that definition is
3 used for all of the federal visibility protection
4 programs. So your definition, I think, is not square with
5 the federal definition as it exists today.

6 MR. KUTERBACH: Okay. So that includes
7 the -- does that include the PSD portion of --

8 MR. COHEN: I think so.

9 MR. KUTERBACH: You think so.

10 MR. COHEN: I think so. All I know is
11 that you have got one definition. 51.301 has another one.
12 And I think it would be helpful to reconcile them or to
13 update yours if you deem it appropriate to do so. You
14 don't want to have a conflict.

15 MR. KUTERBACH: Is there any other way to
16 handle the issue to make sure that it's just for BART?

17 MR. COHEN: You could do that. And we
18 propose to do exactly that in the definition of
19 reconstruction, which is used differently in different
20 federal programs. But I'm not sure you want to do it in
21 this case. That's -- you know, that's a -- I didn't
22 delve --

23 MR. KUTERBACH: What would be the downside
24 of doing it in this case?

25 MR. COHEN: I suspect that that impairment

1 of visibility definition is used for purposes of all of
2 the visibility protection programs, and the fact that
3 light extinction is missing from it is probably a defect
4 for purposes of all of the federal programs. But I invite
5 the federal land managers to correct me if I'm wrong about
6 that.

7 MR. TURNER: Since you asked the question,
8 federal land managers, do you have an opinion on that?

9 MR. ALLEN: Can you restate the question,
10 please?

11 MR. COHEN: The question is, the current
12 definition of visibility impairment in 18 AAC 50.301 [sic]
13 talks about a change in visibility, including light
14 extinction. And the question is: Does that reference to
15 light extinction have meaning for any of the federal
16 visibility protection programs other than BART, other than
17 Regional Haze? Should the Alaska definition of visibility
18 impairment include the 51.301 definition for all purposes
19 is really the question.

20 MR. VIMONT: I understood you were
21 adopting the -- 51.301, you are adopting that as part of
22 the BART regulation?

23 MR. KUTERBACH: Yeah. That was -- just to
24 clarify, that's what our proposal was. What Matt Cohen
25 had suggested is rather than just reference the 301, that

1 we change the definition of impairment of visibility which
2 we currently have in our regulations to include light
3 extinction, which is what apparently it is missing. And
4 the question was -- now I'm not sure what the question
5 was. Whether --

6 MR. COHEN: You were wondering whether it
7 should be done for all uses of that term or whether it's
8 meaningful only for Regional Haze.

9 MR. TURNER: So in effect, by adopting --
10 just so I'm clear -- in effect, by adopting 51.301, do we,
11 in effect, then, satisfy the BART regulation by having the
12 light extinction included through that definition, or do
13 we need to go back and change our regulations to include
14 light extinction?

15 MR. COHEN: There is something being
16 missed here. You could adopt the 51.301 definitions only
17 for purposes of the BART Regional Haze rule. Okay? But
18 the way it looks right now, you have two definitions of
19 the same term that are equally applicable. There is
20 nothing in -- there is nothing in the BART proposed rule
21 that would say you use the one in 51.301 to trump the one
22 in 18 AAC 15.990. It's a drafting problem. You don't
23 want to have two equally applicable definitions of the
24 same term. You want to have the rule -- you want to flag
25 the one you want to be used if the department believes

1 that there is reason to continue with two of them.

2 MR. VIMONT: And which visibility metric
3 is identified in the State's regulation? You said that
4 light extinction was not included in that.

5 MR. NOTAR: Sounds like it was an opacity
6 issue for right near the stack, at the exit of the stack.

7 MR. ALLEN: It sounds like your 18 AAC or
8 whatever, it's really referring to opacity at the exit of
9 the stack, whereas haze issues are farther away than that.

10 MR. VIMONT: My question was what
11 exactly -- I'm sorry. I didn't hear everything that was
12 going on, but you said that the State regulations did not
13 include light extinction. What exactly is included in the
14 State regulation in terms of visibility parameters that
15 are used?

16 MR. KUTERBACH: For purposes of Regional
17 Haze, our proposed regulation would just adopt the 301
18 standard definition of visibility impairment.

19 MR. VIMONT: Sounds sufficient to us.

20 MR. TURNER: What was your comment?

21 MR. VIMONT: Adopting 51.301 definitions
22 sounded sufficient to us.

23 MR. KUTERBACH: Okay. Now, the question
24 was, we already, for purposes of our State implementation
25 plan, prior to any Regional Haze stuff, have a visibility

1 special protection area -- several visibility special
2 protection areas identified. And they are identified to
3 prevent impairment of visibility. The State regulations
4 have a term defined impairment of visibility. What Matt
5 Cohen had suggested was those two terms are so similar,
6 impairment of visibility and visibility impairment, that
7 they are really one definition and we should just use the
8 301 definition. My question back to him was does that
9 change anything in any other SIP that we are going to have
10 to worry about. And Matt didn't believe that it did, that
11 the 301 definition is used for all visibility purposes
12 under the federal programs. And we are inviting comment
13 from the federal land managers, whether they agree with
14 that, disagree, don't know, don't care, whatever.

15 MR. VIMONT: The -- I do not have the
16 visibility impairment definition in front of me, but my
17 recollection of it is that it is relatively
18 all-encompassing, discussing the various metrics being
19 used to describe visibility impairment in the 51.301 and
20 would be sufficient for all visibility related programs.

21 MR. KUTERBACH: Okay. Then I have one
22 further question: Is it important to you, Matt, that --
23 impairment of visibility or visibility impairment that
24 this be written out in regulation and not just refer to
25 301?

1 MR. COHEN: It's not important that it be
2 written out in regulation, but it is important that the
3 BART rule provide a clear signal as to which definition
4 applies. If you are going to have two of them, tell us
5 which one applies for purposes of doing BART.

6 MR. KUTERBACH: Perhaps you misunderstood
7 my question. My question was: You have this written as a
8 single definition, and you have it written out. If we
9 made it a single definition but just referred to the 301
10 and incorporate it by reference, would that suffice?

11 MR. COHEN: Would you repeal 15.990(47)?

12 MR. KUTERBACH: Well, the actual
13 mechanism -- I don't know what the actual mechanism --
14 whether we would appeal it or modify it to say that it
15 refers to -- that it's as defined in 301. I mean, we
16 could do it either way. You can repeal it and put out a
17 brand-new one. You can modify it and say it's about the
18 301 --

19 MR. COHEN: Any of those solutions would
20 work, John. The only concern is that the rule should
21 provide a clear signal as to which definition the
22 department and the sources will follow. So I don't
23 think -- the mere fact that 18 AAC 50.260 incorporates --
24 adopts by reference 51.301 doesn't say that that
25 definition trumps the one in 18 AAC 15.990. There should

1 be one clear signal as to which definition you want us to
2 use.

3 MR. KUTERBACH: Okay. And then I have
4 another question. I don't want to take too much time, but
5 on the reconstruction one, did our draft rule refer to
6 reconstruct or reconstruction anywhere?

7 MR. TURNER: I don't think it did. Becca?

8 MS. SMITH: Specifically in ours?

9 MR. TURNER: Yes.

10 MR. KUTERBACH: In the proposed rules.

11 MR. TURNER: In the proposed rules do we
12 specifically mention reconstruct or reconstruction?

13 MS. SMITH: No.

14 MR. KUTERBACH: Okay. So, then, I have a
15 question for our Department of Law person. And you might
16 not be able to answer that now. But if we adopt the
17 definitions in 260(a) where it says, "For the purposes of
18 this section, the following are adopted by reference," and
19 within that guidelines for BART determination they have
20 terms that are otherwise defined in our regulations but it
21 doesn't refer to it and here we have the definitions here,
22 would these definitions trump -- to use Matt's word -- the
23 definitions that are in 990 right now? For instance, the
24 guideline -- somewhere in the guideline I'm sure it uses
25 the term reconstruct. All right. We are adopting 51.301,

1 which presumably defines reconstruct for the purposes of
2 that. By adopting it within this specific section, does
3 that solve this problem or do we need to also change 990?
4 Or is it something you have to think about?

5 MS. WOLTER: Let me make sure I'm
6 understanding your question. We have current definitions
7 right now in 990 for reconstruct or reconstruction.

8 MR. KUTERBACH: For a different program.

9 MS. WOLTER: For a different program.

10 MR. COHEN: But it doesn't say that. It
11 just says reconstruct and reconstruction.

12 MR. KUTERBACH: I understand that.

13 MS. WOLTER: And then here we're talking
14 about proposing just adopting the federal regulations
15 which have a different definition. I agree. I think it's
16 clear -- it's better to make it clear which it is that we
17 are using for this program.

18 MR. KUTERBACH: Okay.

19 MR. TURNER: Okay. So I think we have
20 spent some time on this. I think we have had some good
21 comments. John Kuterbach, do you have any other comments
22 on it?

23 MR. KUTERBACH: Just other questions.

24 MR. TURNER: Anybody else in the room?
25 Anybody on the phone that have comments on what we just

1 discussed in regards to the definitions? Okay. Hearing
2 none, we will move on. Any other comments in regards to
3 the 18 AAC 260 guidelines for Best Available Retrofit
4 Technology under Regional Haze(a) through -- well, we
5 talked about the definitions. (a) through (1) and (2)?
6 Any other comments.

7 Okay. We are going to move on to now -- we are going
8 to move on to section (b) where we identify the sources.
9 Any comments on that?

10 MR. COHEN: Yes.

11 MR. TURNER: Mr. Cohen.

12 MR. COHEN: Thank you. The statement in
13 (b) that "No later than ten days after the effective date
14 of the regulations, the department shall notify the owner
15 or operator of each source subject to BART in writing and
16 shall identify the affected Class I areas," it's only
17 possible to do that if you assume the validity of the
18 modeling exercise performed by WRAP for the department.
19 Otherwise you would not have a basis to make the finding
20 that a particular source causes or contributes to
21 visibility impairment. And that -- that statement is the
22 first place in this regulation that brings to focus the
23 validity of the WRAP modeling exercise.

24 MR. KUTERBACH: I don't quite understand
25 that. We took the specific out to make it an individual

1 notice to the owner and operator that we are going to
2 notify -- we took them out of the regulations at your
3 request, but you are saying we didn't really take them
4 out? I don't quite get it.

5 MR. COHEN: John, as near as we can tell,
6 the basis on which you would notify the owner or operator
7 that a source is subject to BART is based on the WRAP
8 modeling.

9 MR. KUTERBACH: And -- what the rule says
10 is that it has to be consistent with section 3. And what
11 you are telling me is that it's not consistent with
12 section 3 in the BART guideline. Is that right?

13 MR. COHEN: Not precisely. There is
14 nowhere in this rule that -- that invites -- this comment
15 could wait several sections to -- there is a place where
16 you adopt the April 7th WRAP modeling results. Okay?

17 MR. KUTERBACH: Uh-huh.

18 MR. COHEN: And we could save this comment
19 until we reach that point. As you know, we have serious
20 concerns with the validity of the WRAP modeling exercise
21 as compared with what the guideline encourages states to
22 do. But it would not be appropriate to skip over this
23 point in the rule to bring up that -- that concern because
24 your ability to designate sources subject to BART ten days
25 after the effective date of the rule or sooner, as you

1 have suggested in this draft that you will, really relies
2 on the WRAP modeling work.

3 MR. KUTERBACH: Uh-huh.

4 MR. COHEN: And so this is the first
5 appropriate place to urge the department not to take that
6 step.

7 MR. KUTERBACH: Not to notify the people
8 under the --

9 MR. COHEN: Not to go the route of saying,
10 hey, we have determined you are subject to BART, but we
11 will allow you to show that we are wrong. For the reasons
12 set forth in that May 17th letter, there are very serious
13 procedural and data specific errors in the WRAP modeling
14 exercise.

15 MR. KUTERBACH: Okay. I understand you
16 don't have -- well, do you have a question, Tom?

17 MR. TURNER: I'm a little confused, so I
18 just want to get some clarification. So what I'm hearing
19 from you is the coalition feels that the rule says that
20 the State had to use modeling to show that you are in
21 BART. Based on our view of the world, based on what we
22 see, can you show us a citation in the federal rule that
23 says that?

24 MR. COHEN: Here is -- I checked -- since
25 the last workshop, I checked the BART guideline closely,

1 and I have come around to your view that it is an option
2 for any state to decide that all BART-eligible sources are
3 subject to BART without any individual showing of causing
4 or contributing to visibility impairment. That is a
5 policy option left open by EPA to each state. Okay?

6 So technically it's true, you don't have to allow
7 sources to -- you don't have to require any showing that a
8 source individually causes or contributes. I will also
9 tell you that no state in the Western United States has
10 taken that route, not one.

11 MR. KUTERBACH: You qualified that as
12 Western United States?

13 MR. COHEN: I don't know what has been
14 done east of the Mississippi, but I did attend the WRAP
15 workshop last November where the western states reported
16 on how they were doing BART. And I know that in every
17 single instance, the state either on its own initiative or
18 invited the sources to show that they individually caused
19 or contributed to visibility impairment.

20 And we -- to the extent that that choice is presented
21 to Alaska, we are hoping that Alaska will also impose BART
22 only on sources that individually cause or contribute to
23 visibility impairment. And the fact that you engaged WRAP
24 to model sources individually, to make that determination
25 suggested to us that there was concurrence on that policy

1 determination. You wouldn't have asked WRAP to do that if
2 you didn't think that it was relevant to show that a
3 source individually causes or contributes.

4 So once you make the determination that that's the
5 policy choice you want to make, it seems important to do
6 it right. And in an effort to get the thing started --
7 Alaska got a very late start in this process. And in an
8 effort to get the ball rolling, you engaged WRAP to do
9 this work without -- really without any input from the
10 affected sources. And that statement is -- we are not --
11 we are not critical of the process you followed, but we
12 are critical of the ways in which it deviates from the EPA
13 guideline. The result is not -- it's really not
14 defensible. And --

15 MR. TURNER: So I'm confused here, Matt.
16 And I've had several conversations with the federal land
17 managers, and they are kind of like our guiding light on
18 this. So a question to the federal land managers: Have
19 we deviated from the federal guidance?

20 MR. ALLEN: I can think of many examples
21 that follow exactly what's happening here. I don't know
22 why there is an artificial -- the Mississippi rule
23 eastward is off limits, but all of the MANE-VU states
24 elected to arbitrarily just say all of them were in. So
25 there was an example of where an entire regional planning

1 organization selected to go ahead and just include
2 everybody and found additional ways to figure out how to
3 screen folks out.

4 But that aside, whether it was CENRAP or WRAP or
5 MWRPO -- I guess that's the Midwest RPO -- there was lots
6 of first screening evaluations done of whether someone who
7 followed the criteria of being eligible for BART was
8 screened in or out for the state's benefits. And in many,
9 many situations, that was less than a perfect message that
10 didn't 100 percent follow the BART guidance. So many of
11 the sources that I'm aware of who took issue with the way
12 the first screening was done, either by an RPO or by a
13 state, went back and used their option to go and rerun
14 that elimination step.

15 And I believe that that's the process right now that
16 Alaska is going through. That option has been offered to
17 the sources. And those sources were given an opportunity,
18 like I say, in other states. And again, just for the fact
19 that it doesn't seem like the guidance was followed to a T
20 is not necessarily completely obvious, but the reason why
21 many of -- or some of the guidance things weren't 100
22 percent followed was because there were other lackings in
23 other things.

24 So if a complete, robust modeling analysis isn't
25 performed, then there was added levels of conservativeness

1 that were requested by the federal land managers in doing
2 that initial screening. So I think it's -- this, as far
3 as I'm concerned, is following what other states are
4 doing, very much so.

5 MR. KUTERBACH: So, if I get it right,
6 then, if we did the modeling without any errors and
7 without deviating from the guidelines, then there would be
8 no need for the exemption modeling off-ramp because the
9 modeling would have been done right, as you say; is that
10 right?

11 MR. ALLEN: Yes.

12 MR. COHEN: If you implement that premise,
13 John -- if instead of using PTE, you used maximum actual
14 emissions, if instead of using the daily maximum impact
15 value you used the 98th percentile, if you -- if you had a
16 -- you know, a three-year meteorological data set, if you
17 had the right universe of BART-eligible units so that you
18 were modeling the emissions of the correct universe of
19 units, then the sources could add nothing to what you had
20 done and there would be either -- oh, and one other thing.
21 If you gave sources the opportunity to take an
22 owner-requested limit to knock down their emissions enough
23 to stay out.

24 If you did those things, all of which are recommended
25 in the guideline, then we would have no reason to do

1 individual exemption modeling. But none of those things
2 were done. And look, it doesn't -- the difference --

3 MR. KUTERBACH: But I think I understand
4 you. I mean, in order to not do -- have the opportunity
5 for exemption modeling, we have to hit all of these
6 individual points. But if we hit all the individual
7 points in the exemption modeling, isn't that just the
8 other side of the same coin? I guess I don't understand
9 why, since we have the exemption modeling, the issue is
10 being handled.

11 MR. COHEN: In other words, you are saying
12 if the off-ramp is robust enough --

13 MR. KUTERBACH: Correct.

14 MR. COHEN: -- we shouldn't worry about
15 it. We shouldn't worry about the fact that the
16 presumptive subject-to-BART determination deviates in many
17 ways from the guideline.

18 MR. KUTERBACH: I -- well, I just don't
19 understand why it wouldn't. You just said if it was
20 robust enough -- if the initial modeling was robust
21 enough, there wouldn't be exemption modeling.

22 MR. COHEN: Right.

23 MR. KUTERBACH: So I don't see why if
24 there is exemption modeling, the converse doesn't hold
25 true.

1 MR. TURNER: Chris had his hand up, so I
2 want to recognize Chris Drechsel with Tesoro.

3 MR. DRECHSEL: I was just going to try to
4 let me interject and summarize. So I think the key issue
5 is that we are starting from the standpoint of we are, in
6 essence, in a hole that we are going to have to dig out
7 of. So you are making the determination that we are
8 subject to BART, a presumptive determination based on
9 modeling that we found a lot of problems with. And we are
10 going to have to dig out of the hole. And I think what
11 Matt's point is is that that would be okay if the
12 exemption or the off-ramp that we are going to talk about
13 in a second and the schedule of that off-ramp was a
14 workable kind of solution. So because it isn't, it's more
15 problematic for us to make that demonstration that -- to
16 the contrary of what's already been assumed.

17 MR. KUTERBACH: Okay. So if the off-ramp
18 had a schedule that you found reasonable, then this
19 applicability thing would end up being a nonissue. You do
20 the modeling, we do the modeling, the modeling gets done.
21 Is that --

22 MR. COHEN: It's not just the schedule,
23 but the schedule is the biggest concern we have. The rule
24 presently incorporates the wrong measure of cause or
25 contribute visibility impairment, that maximum daily

1 value. The guideline could not be --

2 MR. TURNER: Okay. I'm going to step in
3 and be a monitor here. We are starting to go on to the
4 modeling, but I do want to get clear that it was my
5 understanding what I heard the federal land managers say
6 and through the series of questions that, yes, there was
7 probably a series of things that could have been done to
8 go ahead and assure that states were in or out based on
9 the modeling, but due to a whole bunch of limitations that
10 the federal land managers also asked us to do, we did
11 follow the rule. The rule then was applied, and based on
12 recommendations, we put in the exemption modeling as a way
13 of overcoming those sections. And so if the exemption
14 modeling does go ahead, in effect, satisfy the ability of
15 sources to prove themselves in or out, that, in effect,
16 would take care of what we need to do. Is that what I'm
17 hearing?

18 MR. COHEN: Not quite. Tom, we can't
19 agree that the modeling was done right. It wasn't done
20 right. It wasn't done close to right. And some of the
21 errors were gross errors. And I'll just give you an
22 example. In the comments we submitted, there is a little
23 table on page 2 that shows the contrast between potential
24 to emit for Alyeska Valdez terminal and the actual -- the
25 maximum actual emissions. So WRAP modeled PTE. And

1 the -- Alyeska's estimate of the maximum actual daily
2 emissions are for NOx, 22 percent of the value modeled;
3 for SO2, eight percent of the value modeled; for PM10, 23
4 percent. So when --

5 MR. KUTERBACH: And that's -- just so I
6 understand what you are comparing here, that's the maximum
7 24-hour emission rate?

8 MR. COHEN: Right. Okay. So --

9 MR. KUTERBACH: And how was that
10 determined?

11 MR. COHEN: Brad, how was that determined?

12 MR. THOMAS: We have the hourly and daily
13 heat input data for the boilers, the incinerators, and the
14 diesel engines that are identified. And we just picked a
15 day with the highest heat input and applied emission
16 factors to those diesel and gas combustion on those days
17 and came up with the numbers.

18 MR. KUTERBACH: How many years did you
19 look at?

20 MR. THOMAS: 2002 to 2004.

21 MR. COHEN: And John, the issue is not
22 whether those numbers are precisely right. You know, they
23 are going to have to show you that they did it accurately.
24 The issue is that the WRAP modeling didn't even -- they
25 didn't have the data to do actual emissions modeling, so

1 they used the wrong parameter. And the result -- you
2 know, the different -- I mean, if you are modeling
3 emissions that are six or seven times the level of
4 emissions that the guideline says to model, you are going
5 to get dramatically larger visibility impacts.

6 MR. TURNER: Does someone have a comment
7 on the phone?

8 MR. ALLEN: I guess I want to reemphasize
9 the fact that a lot -- not just a few, but a lot of the
10 initial screening runs, whether they were done by WRAP,
11 CENRAP or Midwest RPO, have these types of deficiencies.
12 I think some of them were intentional because they were
13 trying to cut corners because they didn't have resources.
14 Others were not so obvious.

15 I think some of the detail that you are talking about
16 is a single unit's throughput is information that states
17 and RPOs don't generally have. And when they were working
18 on their timelines to get some of these initial screens
19 done, again, it often, in cases with states, many states,
20 were selected to cut corners for just getting that initial
21 list out, knowing very well that the state and the federal
22 land managers and EPA would work with those facilities to
23 try to identify the proper detail that was appropriate to
24 see whether someone was in or out.

25 So although we could rehash over and over and over

1 whether WRAP did it right or wrong, I can already say that
2 in many ways WRAP did things that weren't as precise as it
3 could have been, but I know from my own self that the Fish
4 & Wildlife Service -- and I can speak for the Park Service
5 on this, too -- that we are currently working with
6 consultants and with facilities and the states inside the
7 State of Alaska to help minimize those differences now.
8 We are working towards getting the 98th percentile
9 eligible into the guidance the way that the federal
10 guidance says. In other words, people would be able to
11 use it if they could run the model in a robust way.

12 We have had many discussions about the emission
13 levels and what the criteria are. There was another
14 deficiency of not using observations into the modeling
15 system, and we have had several discussions about all of
16 that.

17 So I think that it's a matter of, yes, there were
18 deficiencies, but we are working right now to help keep
19 this process going quickly and to get it to work out at
20 the level of detail that everybody wants.

21 So I think right now, again, I want to reemphasize I
22 think that the process that the State of Alaska is going
23 through is actually rather common to the same situation
24 that other states, whether they are in the west or the
25 majority in the east, are going through. I have to say

1 that this is -- the RPO for the southeast part of the
2 United States did actually go a little bit farther than
3 most in getting as much of their elimination modeling done
4 correctly the first time. But everybody else that I'm
5 aware of had numerous deficiencies, and many, many
6 facilities elected to go back and exercise their ability
7 to refine an elimination process.

8 So I don't think that this should be discussed as
9 some kind of an anomaly. This is actually rather common
10 and par for the whole BART process that I have been
11 experiencing.

12 MR. COHEN: May I respond to that?

13 MR. TURNER: Of course, Matt.

14 MR. COHEN: Tim, I appreciate -- that was
15 Tim, right?

16 MR. ALLEN: Yes, sir.

17 MR. COHEN: I appreciate what you just
18 said, and I appreciate the willingness of the FLMS to work
19 with the sources and DEC to correct those deficiencies. I
20 think procedurally the difference between the proposed
21 rule here and what a number of other states have done is
22 that the subject-to-BART determination here has preceded
23 the correction process that you describe. The presumptive
24 you are subject to BART in the Alaska proposed rule
25 precedes any effort by the FLMS, the State, and the source

1 to correct the deficiencies, and I don't think that is
2 true in most of the other state rules or, in the absence
3 of rules, in formal processes that I've had a chance to
4 look at.

5 I think the way it works in a number of western
6 states is the state does a first cut at a subject-to-BART
7 analysis, and if a source disagrees with it, they will
8 have the opportunity to do their own modeling exercise in
9 consultation with the FLMS and the state. And the
10 subject-to-BART determination follows rather than precedes
11 that QA check.

12 MR. TURNER: So John has got a question.
13 Tim, do you have a response?

14 MR. ALLEN: Yeah. I'm not a lawyer, and I
15 haven't gone into that level of legal evaluation of the
16 actual regulation, so I don't know that I can respond. I
17 know through the process, though, that, you know, what you
18 described of a first screen and then the facilities having
19 a second chance to refine is certainly what I'm seeing.
20 And that is always what I felt was the intent of what
21 Alaska is doing. So at a legal level, I don't know how
22 the difference is between the states in the west and
23 Alaska are doing. I'll have to defer back to you.

24 MR. TURNER: John has a question.

25 MR. POLKOWSKY: I joined the call. I was

1 on another call with California. I apologize for being
2 late. But my experience with Colorado where I was on
3 their SIP group that worked with their commission before
4 they issued their rule, the State provided information as
5 to what it was going to model and its protocol. Then it
6 modeled, and it used certain assumptions about emissions.
7 It then put out a rule naming the sources that were
8 subject to BART and requiring them to either remodel to
9 say that they are not subject to BART or to do the
10 five-factor BART analysis. And it was at that point the
11 sources then, many of them, did remodel and develop
12 different protocols.

13 So there was a first review, which is what I consider
14 WRAP did for the State of Alaska, and then you are trying
15 to issue your rule. So I don't see it very much different
16 than what Colorado did. And that's the process that was
17 first out of the box about a year ago. So I don't really
18 see much difference between what Alaska is doing here
19 between preliminary information, develop a first cut
20 subject to allow the rule to go out and have sources come
21 back and say whether they are in or out by their own
22 engineering analysis.

23 MR. TURNER: John, you had a comment?

24 MR. KUTERBACH: No. I have questions.

25 Okay. So it's the fact that we have a thing that says we

1 are going to identify people subject to BART consistent
2 with section 3 that's the problem?

3 MR. COHEN: The problem is that you are
4 identifying sources subject to BART based on a defective
5 modeling analysis. And then, as Chris Drechsel put it,
6 the sources then have to dig their way out. The concern
7 is --

8 MR. KUTERBACH: That's where I'm -- I
9 understand you said that, but I really don't understand
10 what the practical difference is. How is it -- what's the
11 practical difference here? I mean, what are you doing
12 differently as -- you know, we work together to come up
13 with exemption modeling. This was something that we had
14 offered back in February.

15 MR. TURNER: February.

16 MR. KUTERBACH: That was, what, three
17 months, almost four months ago that we first offered,
18 okay, we will work with you to get this exemption
19 modeling, and I don't think we have even gotten the full
20 protocol finished yet. And then there was some question
21 about whether or not they could work on it before they got
22 the rules done, so then we pushed forward to try and get
23 the rules done. So I don't understand this perception,
24 the whole thing; what's the practical difference? What's
25 the problem?

1 MR. COHEN: The problem arises if -- if
2 the -- as in many implementation efforts for a new rule,
3 there will be uncertainties in the application of the rule
4 to the facts. There may be differences of opinion. There
5 may be differences of perspective resulting from where a
6 stakeholder starts out. And when you presume that someone
7 is in based on faulty data and then they --

8 MR. KUTERBACH: Screening data. You can
9 call it screening data. I think Tim called it
10 screening.

11 MR. COHEN: Screening data is a very
12 favorable spin on it. Let's call it screening data. If
13 you tell someone that you are in but you can show us that
14 you are out, but to show us you are out you have to meet a
15 certain schedule and you have to satisfy other interested
16 parties, the burden builds up on the source to make the
17 necessary showings and satisfy everyone, and the default
18 position is you are in. And that's okay if the initial
19 screening bears some resemblance to the way it should be
20 done per the guideline, but when the errors are as large
21 and cumulatively significant as those we have noted here,
22 it gets less and less fair to start from that premise.

23 Rather than debate this in the abstract, I'd like to
24 float the proposal we made in our version of this rule.
25 I'm not sure the timeline is any different. We suggested

1 that -- you say within ten days of the effective date of
2 the rules you will notify sources that they are subject to
3 BART. We suggested that you notify sources that they are
4 BART eligible. In other words, here is your source. And
5 you have done this already to a significant extent. You
6 have gotten some comment on it, and you have corrected in
7 at least one, you know, instance your list of
8 BART-eligible units. Okay?

9 MR. KUTERBACH: Is there still some
10 question over whether there are -- the sources are BART
11 eligible?

12 MR. COHEN: There are some questions.
13 There are some interpretive issues that have been raised.
14 Don't go there right -- I don't want to get off the track.
15 We can come back on that one. But where, for instance,
16 you determine that a particular ConocoPhillips unit was
17 improperly included, that initial -- that initial
18 determination would say you are a BART-eligible source.
19 Here are your BART-eligible units. And what we
20 proposed -- and that would happen immediately upon the
21 effective date of the rule. And immediately --

22 MR. KUTERBACH: Immediately upon the
23 effective date?

24 MR. COHEN: We said within five days of
25 the effective date of the rule.

1 MR. KUTERBACH: Tom, could you kind of
2 keep track of what times we are talking about here so I
3 understand it?

4 MR. COHEN: So, our version was within 30
5 days, 60 days?

6 MR. TRBOVICH: Thirty or 60 days. See if
7 I have it.

8 MR. DRECHSEL: Here you go. The bottom
9 list there.

10 MR. COHEN: Right. Within 35 days.

11 MR. KUTERBACH: That's after the five
12 days?

13 MR. COHEN: Uh-huh. The source either
14 submits a minor permit application to cap its emissions
15 and stay out or an exemption modeling protocol. Okay.

16 MR. TRBOVICH: If they do neither --

17 MR. COHEN: If they do neither, it's
18 straight on to the control technology analysis. All
19 right? So we are going to cap our emissions to stay, say,
20 below 250 tons per year. There are some other opt-out
21 tonnage numbers in the EPA guideline that we have asked
22 you to adopt, but take an emissions-based cap to stay out.
23 That's one option. Okay? Or submit a modeling protocol,
24 an exemption modeling protocol. So you are 35 days out at
25 that point. Okay?

1 The department has to approve that protocol. And
2 your proposed rule correctly says that you want the input
3 of the federal land managers and perhaps EPA, as well.
4 Within 60 days after the department has approved that
5 protocol, okay, the source submits exemption modeling
6 demonstrating that it doesn't cause or contribute to
7 visibility impairment, or we have asked for the
8 opportunity to again submit a minor permit application to
9 cap emissions at levels that will keep you below the
10 contribution threshold. You couldn't have done that
11 initially because you didn't have the modeling.

12 Now we have the modeling. And let's say it shows
13 that source X has a, you know, .6 deciview impact on
14 Denali National Park on the -- on whatever the reference
15 day is, and they want to knock down their emissions a
16 little to get it below .5. So on that -- 60 days after
17 you have approved the protocol, they submit the modeling
18 or request to cap their emissions to keep below that .5
19 deciview threshold. These are all outs that are provided
20 for in the guideline. Okay?

21 MR. KUTERBACH: Okay. Now --

22 MR. TURNER: So while John is looking it
23 up, there are some points of clarification I would like to
24 confirm. So to the federal land managers, is it not true
25 that the first WRAP model that was used -- I don't want to

1 belabor the point -- was approved and is the official EPA
2 version? Yes or no? Tim?

3 MR. ALLEN: Could you say the question one
4 more time?

5 MR. TURNER: Is it not true, for the
6 initial WRAP modeling that was done, that that is, in
7 effect, the official EPA version? I want to clarify what
8 Matt said. They talked about this extra layer of
9 approval. Is it not also, it was my understanding, that
10 for the initial model we did that, yes, the EPA and the
11 federal land managers had to approve the model and the
12 various elements that required the data to be put in?

13 MR. ALLEN: Yeah, WRAP did submit their
14 protocol for doing that screening elimination modeling to
15 both the EPA and to the federal land managers and, as far
16 as I know, all the parties agreed to that protocol. And
17 so by having WRAP follow that protocol, it eventually was
18 something that was sanctioned by all of us to do. And in
19 my opinion, which is the Fish & Wildlife Service opinion,
20 if the State of Alaska went ahead and exercised that
21 protocol through WRAP, that that would be a sufficient
22 amount of information to determine whether a source was in
23 or out; in other words, whether they were significant,
24 whether they were exempted out of that process. And yet
25 we also agreed very early on that having what you call the

1 off-ramp and a refined approach was also an acceptable
2 part of that initial protocol.

3 MR. TURNER: Okay. So -- and the reason
4 I'm bringing this up --

5 MR. ALLEN: -- any heartburn over what the
6 intent of this is, and there is, in our mind, a
7 presumption that if you don't exempt out using the
8 screening modeling, that you either need to do something
9 further like Mr. Cohen had described, or you needed to --
10 to exempt out or you needed to go ahead and start your
11 BART in your unit-by-unit evaluation. So doing a BART
12 determination for review.

13 MR. TURNER: Okay. John, you looked up
14 some stuff. Is there a question?

15 MR. KUTERBACH: Well, I just don't -- I
16 don't understand what -- I mean, what is the completeness
17 criteria for an exemption modeling protocol? How can we
18 determine whether something was submitted just to gain
19 more time or to actually do exemption modeling? What
20 would be the approval criteria that we would use? You are
21 throwing out these things, but it seems to me like you
22 have five days, 35 days, then there is a gap because we
23 have to approve it. It doesn't seem like there is any
24 criteria. And I don't know what it -- whether we even get
25 in something that's acceptable. A lot of times we get

1 modeling in and the modeling protocol -- the modeling
2 protocol is completely unacceptable. And then you send it
3 back to them and they don't like the changes. So I just
4 don't understand how you see that back-and-forth process
5 working.

6 MR. COHEN: John, I see that back and
7 forth process working the same way that it works in a PSD
8 modeling --

9 MR. KUTERBACH: How long does it take?

10 MR. COHEN: How long does it take? I
11 don't know.

12 MR. KUTERBACH: You don't know.

13 MR. COHEN: I certainly don't know. But I
14 don't think that there is an absence of criteria. And I
15 guess I -- if you -- I would refer that question to Ken
16 Richmond if he's on, who is an experienced modeler. Ken,
17 are you there?

18 MR. TURNER: Ken, are you still on the
19 line?

20 MR. RICHMOND: Yes, Ken is here. Sorry.
21 I was speaking to nobody with the mute key on. I think
22 that the State of Alaska could probably answer better than
23 I how long it takes them to review a PSD permit from
24 protocol to completeness to getting the permit, but
25 certainly it's not insignificant. So, you know, it can be

1 on the order of -- usually just to determine if the
2 modeling analysis is complete, that's 30 days, so that
3 means everybody takes 29. And depending on -- usually,
4 from my experience, there is probably at least one
5 go-around where you submit something and there is
6 something wrong with it, and you need to correct it. So I
7 mean, it's weeks and months to get something approved like
8 that.

9 MR. TURNER: So that's the approval
10 process. How long does it take you to do this modeling --
11 we are kind of jumping ahead to section (c) of exemption
12 modeling to a degree.

13 MR. KUTERBACH: That's where I'm getting
14 confused. We are trying to hold up the bars and we are
15 discussing Matt's proposal --

16 MR. TURNER: I want to come back to where
17 we are at.

18 MR. KUTERBACH: I think we need to.

19 MR. TURNER: There has been a discussion
20 over whether or not the modeling included us in or out.
21 But the State has recommended within the rule based on all
22 of the discussion that was done, based on what the federal
23 land managers said we followed the rule to, that there
24 would be an exemption modeling to allow you to get out.
25 So I would like to focus our comments on (c), which is

1 what would make a robust section for exemption modeling.
2 So to that question, Ken, how long would it take you --
3 with all the corrections that you need to do for your
4 CALPUFF model, how long would it take you to do your
5 modeling part of it, not the State's approval section of
6 it?

7 MR. RICHMOND: There is kind of two
8 components. One is to compare the meteorological data
9 set. That's the MM5 data set, which we might speak about
10 later. Instead of using one year, we'd use three years.
11 That's going to take about one month of our time. Once we
12 have the meteorological data set and once that's been
13 approved and okayed by everybody, I think we -- I think 60
14 days after that would be how long it would take to do the
15 exemption modeling.

16 MR. TURNER: Sixty days after the
17 approval?

18 MR. RICHMOND: Yes.

19 MR. TURNER: Okay. To actually do the
20 modeling.

21 MR. COHEN: That's the time frame that we
22 put into our proposal.

23 MR. DRECHSEL: He's just talking about
24 MM5, though.

25 MR. RICHMOND: No. I was talking about

1 once we have an MM5 data set, each facility would have to
2 submit a protocol, how it's going to use it and how it's
3 going to apply CALPUFF, and then you have to do the
4 exemption modeling to see if -- the off-ramp modeling to
5 see if you are in or out. And I'm saying that process
6 would probably take on the order of two months.

7 MR. TURNER: To actually run the model?

8 MR. RICHMOND: Yeah.

9 MR. TRBOVICH: Just to clarify, Ken, would
10 the MM5 data set approval and the protocol approval occur
11 simultaneously?

12 MR. RICHMOND: That depends. Some sources
13 may -- some sources may want to wait and see how the MM5
14 modeling goes before they commit to a protocol. We would
15 probably do it in parallel. At least we would submit a
16 protocol to do the BART modeling, the exemption modeling
17 prior to actually having the MM5 data set available.

18 So we would submit the protocol to do the BART
19 modeling. At the same time we would be preparing the MM5
20 data set. But we wouldn't be able to actually begin on
21 the BART exemption modeling till we had the met data set.

22 MR. TURNER: I have a question on that
23 based on all the discussions we've had. Is there anything
24 that prevents you from proceeding with that MM5 modeling
25 data set approval now?

1 MR. RICHMOND: We are proceeding with it.
2 We have a protocol out, and the land managers and the
3 State are reviewing it. Once they have approved it with
4 probably some changes that we can agree upon, we can
5 proceed with that. Our clients probably aren't going to
6 fund us to proceed with it unless they have some assurance
7 that we can use the data set.

8 MR. TURNER: Okay. And to your questions,
9 where do you see within our current regulations where we
10 are not allowing you to use the data set?

11 MR. RICHMOND: It depends on how long it's
12 going to take to get your regulations approved. All your
13 timelines are after approval of the data set. And there
14 is -- where it's, like, 30 days, 60 days, we couldn't
15 finish MM5 modeling and do an exemption modeling analysis
16 in 60 days. It depends on -- 60 days from when?

17 MR. TURNER: That's not my question, Ken.
18 The question is is right now you are proceeding with MM5
19 approval, correct?

20 MR. RICHMOND: We have submitted a
21 protocol to the land managers and the State, yes.

22 MR. TURNER: Correct. Okay. And so
23 where -- my concern here is -- I'm trying to figure this
24 out -- is if you are working on that now, where after the
25 regulations come out does it show that you have to then

1 redo it again? If you already have that data, as soon as
2 the regulations come out you can submit it. You could
3 approve it if it's already been approved prior to the
4 regulations coming out. What's your concern about -- what
5 do you need in the regulations to allow you to make sure
6 that you continue on this path that you are on?

7 MR. RICHMOND: Some allowance for review
8 on the state's part. It seems like the regulations don't
9 have any timelines -- and we can speak about the schedule
10 or the people that are more knowledgeable about the other
11 parts of the schedule than I am, but there's nothing in
12 there that allows for agency review.

13 MR. DRECHSEL: So that the whole issue
14 is -- and we have said this a couple of times. I mean, we
15 are willing to move ahead with the components of the
16 modeling that we can do, but some of those components need
17 to be approved before we can move ahead. So one, the
18 first example would be we have gotten a modeling protocol
19 or an MM5 protocol in. Hey, we're waiting for approval
20 now before we can start on that MM5 met data development
21 process, which is going to take about a month. Isn't that
22 right, Ken? Or thereabouts?

23 MR. RICHMOND: I think the land managers
24 are going to turn around faster than that.

25 MR. DRECHSEL: I'm saying once approved.

1 MR. RICHMOND: Once approved, that's
2 right. It's going to take about a month. And we would
3 submit that we will write a report. The report will
4 include an evaluation of how the model performed, and then
5 the land managers and the State and EPA and our clients
6 would have to agree upon, okay, this looks pretty good.
7 Let's go with that.

8 MR. DRECHSEL: Let me just finish my point
9 here. So, then, after that there is going to be a step of
10 we are going to have to submit a site specific protocol
11 which talks about how, after we get this MM5 data, there
12 is something called a CALMET extraction, and then also
13 just all the other details in terms of emission rates, all
14 the site-specific criteria that go into that, that that,
15 then, needs to be submitted to get approval, as well.

16 And what I'm getting at is the overall concern is
17 that that's a considerable amount of work that needs to be
18 done, and we are going to move as expeditiously as we can.
19 There are several steps in there that require approval,
20 but the concern is is once this becomes effective, all
21 these timelines are going to kick in that we are under,
22 and none of the timelines that are in here right now have
23 any onus on ADEC or other agencies to give us the
24 approvals that we need to proceed.

25 So as soon as the effective date drops, we have 60

1 days to get you a modeling analysis, which best case is
2 maybe we will have approvals for all those, maybe we
3 won't; but the point being is that once the effective date
4 drops, we are under the 60-day clock with no kind of
5 intermediary step or approval steps back with you guys.

6 So what we have proposed in our letter that we sent
7 you is more of a step-wise schedule that has, okay, we
8 will submit this by such-and-such a date after the
9 effective date. You get us approval -- or upon your
10 approval, then we will move to this next stage. There is
11 none of that incorporated into this timeline.

12 MR. TURNER: So your concern is that you
13 feel there needs to be more clarification on what the
14 State's approval is. So --

15 MR. COHEN: No, no. The concern is that
16 it's totally unfair and unrealistic to set deadlines for
17 the submittal of exemption modeling that run from the
18 effective date of the rule where those deadlines don't
19 allow for department approvals of intermediary steps for
20 which you want to exercise review and approval authority.
21 Of all the schedule concerns we have, that is the
22 paramount concern.

23 MR. TURNER: So I was bringing it up, and
24 then you guys kind of jumped in on me. So let me finish.
25 So if there was something that said upon department

1 approval, which would then indicate that there was an
2 element of department approval there, would that be
3 acceptable?

4 MR. COHEN: It would.

5 MR. TURNER: Okay. Thank you for letting
6 me finish.

7 MR. COHEN: I'm sorry.

8 MR. KUTERBACH: Is there -- are you -- in
9 your concept here, is there a possibility of the
10 department saying, you know, there is unresponsiveness, we
11 are just going to call a halt to it and submit us your
12 thing in 60 days; is that part of the concept of what you
13 are looking at?

14 MR. COHEN: You know, in every permitting
15 program, the goal ultimately is to get a permit. And in
16 every -- in every permitting program PSD is a great
17 example -- where the department says, you know, this
18 aspect of your submittal is inadequate, you have to fix
19 it, if -- if the source doesn't respond to that concern,
20 ultimately you can pull the plug on it. And this is no
21 exception. Where a source is unresponsive to a concern,
22 at a certain point you can say we can't approve this
23 protocol. Get on and do BART, whatever the -- you know,
24 the next step in the process is. I'm not aware in my
25 career of a situation in which a source did not -- chose

1 not to respond to a technical concern raised by the
2 department. But you hold the ultimate authority to make
3 those calls.

4 MR. ALLEN: Could I ask people to please
5 continue to identify themselves at the beginning of their
6 talking? It really does help us on the phone.

7 MR. TURNER: That was Matt Cohen, and my
8 apologies as moderator not to catch that, but I was
9 getting involved. That was John that asked the question.
10 So what I'm hearing -- I'm going to go back to our rule on
11 section (c), (1) through -- (1) (A), (B), and (C), there
12 was some concern that the schedule does not reflect the
13 adequate time to do it. One thing I'm hearing that the
14 schedule, when we wrote this, did not envision was the
15 need to redo the MM5 data, which is an element that wasn't
16 considered. And so just to also be clear, I'm also
17 hearing that you would like some more clarification about
18 what the department's role is or upon department approval
19 so you know when the clock kicks back in again.

20 MR. KUTERBACH: And I do want one
21 clarification that I want to get. I'm not quite sure.
22 Back when we talked a while ago, we thought we could get
23 along and get some stuff done ahead of time and get things
24 moving, and this schedule that you have suggested presumes
25 that we start back at square one when the rule is adopted

1 because that's the BART-eligible thing which we did
2 several months ago, and we sorted out the list and we got
3 feedback and worked on it, but we are going to have to do
4 that again under what you had proposed. And that kind of
5 starts the schedule from the time that we finally get this
6 rule adopted. Is that your intent, that we start all over
7 at the beginning?

8 MR. COHEN: It isn't, really. And here is
9 the kicker. In the, what is it, four months it will take
10 you to finalize this rule, we are ready and able and have
11 committed the resources to move this process along before
12 you have a final rule. Okay? If -- and you know, you
13 have already seen that the sources have invested the
14 resources to develop the MM5 data in consultation with the
15 department and the FLMS. We are ready to go.

16 But in order to make that work, the department has to
17 be willing to make those interim determinations in a
18 binding fashion that will enable us to say, okay, the MM5
19 data set -- the protocol for developing the MM5 data has
20 been approved and now we are going to do the MM5 data
21 development. You have approved the exemption modeling
22 protocol. Now we can proceed with the exemption modeling.
23 If you can provide those determinations in advance of the
24 final effective date of the rule, we are ready to go.

25 MR. THOMAS: It doesn't start over.

1 MR. KUTERBACH: What do you mean by
2 binding determinations?

3 MR. COHEN: Well, if you can review and
4 approve an exemption modeling protocol that's submitted to
5 you before the rule takes effect, then the source will be
6 in a position to go ahead and do the exemption modeling
7 before the rule takes effect.

8 MR. TURNER: We might ask the same
9 question. Where does it say that we can't approve that
10 prior to the rule?

11 MR. COHEN: It doesn't. We are just
12 asking, can you do it?

13 MR. KUTERBACH: I thought under (c) that
14 you had crafted something that would allow us to bind the
15 exemptions that we approved prior.

16 MR. TURNER: Correct. So under (c) what
17 we put in here was, if you look on page 4(B), a modi --
18 let's see.

19 MR. KUTERBACH: No, no, under (c).

20 MR. TURNER: Under (c). Let me get my
21 correction here. Under (c), we put in here that --

22 MR. THOMAS: Second sentence.

23 MR. TURNER: Yeah. "Exemptions from BART
24 approved by the department in writing prior to (effective
25 date)... shall have the same effect as those approved

1 under this subsection." So we, in effect, could approve
2 it prior to the regulations coming out.

3 MR. TRBOVICH: I think what we are trying
4 to say is that in order to have made that exemption
5 demonstration prior to the rule going into effect, first
6 we need something from ADEC saying, yes, the MM5 data is
7 approved. Then we need something from ADEC saying, yes,
8 your modeling protocol is approved. If ADEC can do all
9 those things before the rule is effective, then the
10 sources can also move down the track before the rule is
11 effective. What we don't want to happen is after the rule
12 becomes effective, ADEC then says, no, we don't like that
13 particular MM5 protocol. We want to change it.

14 MR. TURNER: So I am confused here, Al.
15 Where have we not been working with you folks to approve
16 it, since it's now currently sitting and where in the
17 regulations does it say that we won't approve it?

18 MR. TRBOVICH: We are not saying that you
19 haven't been working with us. We are not saying that we
20 expect you not to work with us. We just want to make sure
21 that ADEC understands that for the schedule to work, we
22 need to keep going down this path of getting these
23 approvals in as timely a manner as possible. If for some
24 reason ADEC were to get, say, the MM5 protocol that you
25 have now, and rather than approving that protocol in 15

1 days it takes 45 days, ADEC needs to understand that we,
2 as BART-affected sources, cannot move forward for that 45
3 days while ADEC is doing their approval process.

4 MR. CHAPPLE: So Al, let me just capsule
5 what I think you are saying. You are asking that, in
6 essence, if we correspond back on MM5 modeling and say
7 this is approved, that we do so clearly to indicate that
8 it will satisfy the pending regulations. And so as I am
9 just inferring, you are not asking for other additional
10 process in the rule. You are just asking for a commitment
11 that any decisions we make that are in the form of a
12 letter like this will affirm that it will be consistent
13 with the rule when it's finally adopted, that the decision
14 will be consistent, incorporate the provisions of the
15 rule.

16 MR. THOMAS: What we are asking for is the
17 schedule to be built on the dates -- the clock to start
18 upon department approval in the event that the up-front
19 work that we do doesn't bear the fruit that we hope. In
20 other words, we don't agree, we don't get approved
21 modeling, it takes a lot more work than what we
22 anticipate. So in the event the rule goes final before we
23 get this up-front exemption modeling done and the
24 approvals in place, the clock will start upon department
25 approval down the road. Does that make sense?

1 MR. TURNER: Correct. I heard that
2 before. That's why I clarified it when they corrected me
3 on that, if we put it upon approval. I do want to get to
4 this point.

5 MR. CHAPPLE: These are two pieces you are
6 looking at. You are looking at one for the regs to
7 incorporate -- you will take step 2 once we approve step
8 1. And the second piece being that you are expecting if
9 the department approves, for example, MM5 modeling prior
10 to the regs being adopted, that that approval will
11 continue through so that our correspondence will indicate
12 that it will satisfy these regs. Both are in place. Is
13 that correct?

14 MR. KUTERBACH: I think I'm almost to it.
15 So if they had -- say we approve a modeling protocol prior
16 to these rules becoming effective. Okay? And we go ahead
17 and -- you are not going to model until after the rules
18 are effective, is that right?

19 MR. COHEN: Not necessarily. We will
20 model as soon as you approve the protocol.

21 MR. KUTERBACH: You will model as soon as
22 we approve the protocol.

23 MR. COHEN: Right.

24 MR. KUTERBACH: And so if the rules say
25 submit the modeling so many days after department approval

1 even if that approval was prior to the regulations, that
2 timeline, that length of time for you to model would still
3 be the same. So, for instance, we approve your protocol,
4 I don't know, a couple of weeks before the regs are
5 effective or even a month before they are effective.
6 Okay? And it says you have to submit your modeling
7 within, what did you have, 60 days. So it will be 60 days
8 from when we approved it, not 60 days from the effective
9 date of the rule and not 60 days into it. And that would
10 be okay with everybody?

11 MS. CROCKETT: I think what we are trying
12 to avoid is an unintended consequence where DEC, because
13 of workload or whatever, finds it can't approve, using
14 this example that we are talking about, the protocol until
15 the day before the regs become effective. Now we only
16 have 60 days the way that it's written right now to finish
17 all that work. That's really what we're trying to avoid.
18 So, yeah, we are willing to make the commitment to start
19 the work once we have the approvals that we need, even
20 though the regulations haven't been sitting on the
21 Lieutenant Governor's desk for 30 days. Correct.

22 MR. DRECHSEL: And then it's two parts.
23 And then the regulation does need to be adjusted in the
24 event that that doesn't all pan out and we get to where
25 day one -- currently as the regulations reads is there is

1 no kind of intermediate approval steps within the --

2 MR. TURNER: So I did hear clearly -- I'm
3 being a cynical regulator, even though I'm usually not, by
4 the way. I usually give the benefit of the doubt to
5 folks. That I know that folks are working on the MM5. I
6 had a conversation, just to update people, with Allen
7 today about I want to make sure EPA signed off so you guys
8 wouldn't have to go through that hassle. So we had that
9 conversation of seeing what could be done.

10 But my concern is, as a regulator, if we put in an
11 extended time period into the regulations short of your
12 current commitment now -- which I need to probably hear
13 again and again -- that I don't want to see the
14 regulations come out and then we want to -- then my
15 question is, you are going to wait until the regulations
16 come out in order to do the work or are you going to
17 proceed doing the work now. That's the concern we have
18 with the timeline. If we put the extended long timeline
19 in there, what guarantee do we have that this work is
20 going to get done prior to it?

21 MR. DRECHSEL: I don't think we are asking
22 for a substantially extended timeline. We are just asking
23 for the immediate -- for the approval steps to be in
24 there. Otherwise, again, the way it reads now, the
25 effective date of the regulation drops. We have 60 days

1 to get a -- our analysis in with also requirement to get
2 our protocol in and approval on protocol with no
3 requirement for a response on any of those approvals.

4 MR. TURNER: I understand, then, I think.
5 We have been going a long time. I think we have discussed
6 this timetable at length. Matt, you have been kind of
7 jumping up your hand while everyone else speaks. Do you
8 have a final comment? I do want to take a five-minute
9 break because I think people are getting restless. And so
10 I'd like to take a five-minute break, and then we can come
11 out and start finishing this exemption modeling because I
12 still think there's a couple other issues to look at.

13 So folks on the phone, I have ten to 3:00. I'll
14 start rounding up people at five to 3:00. It's going to
15 be a short break. Any other comments?

16 (A break was taken.)

17 MR. TURNER: So we just finished talking
18 about the timetable for section (c). But probably the
19 lively thing we want to talk about is to -- do we have any
20 more comment on this?

21 MR. RICE: I'd like to make a comment on
22 page 2 having to do with sections (B) and (C), and I'd
23 like to suggest some language, I think, that would resolve
24 some of the problems. I'm fairly new at this, but it
25 seems like logic. On (B), as suggested earlier by Tom

1 Turner, I think you ought preface that statement by saying
2 upon. ADEC approval conduct, et cetera, the rest of it
3 for section (B) on page 2.

4 And then at (C), I think you ought to change this
5 effective date of regulations to state completion of step
6 (B), which you go through this process to approve the
7 protocol and the modeling, et cetera, and then the 60-day
8 clock starts, not right away. And that seems logical to
9 me. As a federal land manager, we want to see air quality
10 in these Class I areas protected, but we have got to do it
11 with a process that works rather than ends up in
12 litigation.

13 MR. KUTERBACH: Yeah. I think this was a
14 -- Tom, you can correct me if I'm wrong. Wasn't this a
15 holdover from when we talked back in February? We thought
16 that people would be working on it ahead of time and we
17 were going to get the regulations done. Everybody was
18 going to already have their exemption modeling ready.

19 MR. TURNER: Correct. It was underneath
20 that assumption.

21 MR. RICE: That's a good assumption,
22 except that you are not done with the public comment. And
23 my concern would be you'll end up with a ringer comment
24 here. And there's engineers and people looking at this
25 stuff. And the assumptions that you approved MM5 and some

1 protocol gets shot, I don't know; I just think you ought
2 to change the language in a manner that works even if you
3 don't get anything started until after the effective date
4 of the regulation, just to be safe.

5 MR. TURNER: Okay.

6 MR. RICE: I'd like to see this thing
7 succeed. We support the DEC regulation in general, but we
8 want this thing to succeed without too many hiccups.

9 MR. TURNER: I'm going to go ahead and
10 proceed so we can keep moving through all this. Go ahead,
11 Chris.

12 MR. DRECHSEL: Were you going to move past
13 section (c)?

14 MR. TURNER: I wanted to get into section
15 (g) because I think that's where the main part of our
16 discussion could take. So hearing no other comments on
17 section (c) --

18 MR. COHEN: Wait. We have got at least
19 one more comment on section (c).

20 MR. DRECHSEL: That's what I was going to
21 say is I just have one more comment before you move off of
22 that. There is something that we have alluded to and
23 talked around multiple times in these workshops and we
24 also proposed in our letter to you, John Kuterbach, which
25 is, the majority of the other states that I've done BART

1 work in and familiar with allow -- and in addition to EPA
2 BART guidance, allow for a source of the exemption
3 modeling stage to request a limitation upon their
4 emissions -- their BART-eligible units at that site such
5 that with that limitation you stay below the .05 deciview
6 impact threshold.

7 So in other words, you might have an exemption
8 modeling analysis that demonstrates a .6, a .65. EPA
9 guidance allows for a limitation to be proposed, and that
10 limitation to be submitted along with the supporting
11 modeling that demonstrates that you are below that .5
12 deciview. That limitation would obviously need to be
13 incorporated into -- we proposed it as an owner-requested
14 limit under your minor permit program, and that should be
15 another element that would be allowed under -- and I think
16 we are kind of deciding what would be the best place to
17 plunk that in, and I think section (c) would be the --
18 some place would be the appropriate way to do that.

19 MR. KUTERBACH: So what other states were
20 you familiar with that used this exemption limiting rule?

21 MR. DRECHSEL: The other Region 10 states,
22 Washington, Idaho, and Oregon is what I'm most familiar
23 with. I'm sure there are various others.

24 MR. KUTERBACH: And they have it -- do
25 they have it specifically for BART?

1 MR. DRECHSEL: Yes, yes. And I point
2 you towards the --

3 MR. COHEN: One clarification on that.
4 Not all of the Region 10 states are adopting rules, John.
5 So there is -- what Washington said is we will -- we will
6 approve the exemption of a source based on a showing that
7 you have taken -- Washington has vehicles to establish
8 owner-requested limits, but they don't have a BART rule.
9 But the -- sort of the de facto manager of the BART
10 program told the sources we will -- you may exempt out by
11 taking a limit such that your deciview impact is below the
12 contribution level.

13 MR. TURNER: I'm sorry. De facto manager
14 of the BART process?

15 MR. COHEN: A guy named Allen Newman who
16 has been with the Washington Department of --

17 MR. TURNER: So that's Washington state.
18 Just to carry that conversation, Tim, since you are
19 familiar with a lot of the other states, is a lot of
20 states allowing some type of owner-requested limit that
21 you are aware of?

22 MR. ALLEN: Yeah. I can't give any
23 specific examples, but I am aware that several states have
24 permits or facilities that are at least requesting to take
25 a voluntary reduction in their permit limits in order to

1 exempt out of BART. I think one of the issues that you
2 have to address when you start considering that, though,
3 is that we were originally with the state of Alaska
4 modeling PCEs, and now we are talking about refining that
5 to actuals. You have to address how exactly a voluntary
6 reduction in their permit to keep their actuals down would
7 still have some kind of validity in what you would put in
8 for their PTE, depending on how you wrote the permit to
9 account for maybe upset conditions or start and stop and
10 all that normal stuff that sometimes gets incorporated in
11 with a standard permit.

12 So it's perhaps not as easy as just saying I'll
13 voluntarily take a lower limit because the devil is in the
14 details, but I can confirm that I've heard from -- I think
15 I can think of about three or four examples in different
16 states where people have asked for voluntary reductions in
17 order to exempt out.

18 MR. DRECHSEL: My last comment would be is
19 I just refer you to -- there is an EPA question and answer
20 document that you guys have posted on your website that
21 discusses this specific issue where somebody asked EPA if
22 this is allowed, and they responded in the affirmative.
23 So I just point you to that, as well.

24 MR. KUTERBACH: So am I understanding you
25 right that it's allowed; it's not kind of set forth in the

1 guideline, but it's not prohibited by the guideline?

2 MR. COHEN: It's endorsed by the
3 guideline.

4 MR. KUTERBACH: It's endorsed by the
5 guideline.

6 MR. COHEN: The use of owner-requested
7 limits or -- both on -- let me be more careful here. The
8 guideline endorses State rules that permit a source to
9 take an emissions-based cap to stay out. Okay? That's in
10 the guideline. The next step and what Chris has asked for
11 is a modeling-based exemption, which would be an emissions
12 cap -- and I agree with Tim Allen. It would have to be an
13 allowables cap that would take you below your actual
14 emissions on which the exemption modeling was based.
15 Okay?

16 But the concept was let us take a cap on our
17 emissions such that the modeled impact would be less than
18 the contribution threshold. And the EPA Q&A document that
19 Chris referenced also endorses that basis for staying out.

20 MR. KUTERBACH: So when you get one of
21 these limits, that applies to that unit forever, right?

22 MR. COHEN: (Nods head.)

23 MR. KUTERBACH: Is that the common
24 understanding?

25 MR. TURNER: Would someone please answer?

1 I see heads moving, but someone needs to have something
2 verbally.

3 MR. COHEN: What you should see is wheels
4 turning. We are thinking about it, but I think the answer
5 is yes. I would want to -- I would want to think about
6 that. It's a good question, John. I don't --

7 MR. KUTERBACH: I just want to understand
8 what we are talking about.

9 MR. COHEN: I guess what I'm thinking
10 about is could someone take such a limit and then at a
11 later point in time say, hey, you know, we are going to go
12 through a PSD review and we are going to double the size
13 of our plant, and what happens then? And I'm not sure
14 I've worked that out. I don't know whether EPA has
15 thought about it. It's a good question. I don't know the
16 answer to that.

17 MR. ALLEN: We have thought about that,
18 and when Alaska submits their SIP to EPA for approval,
19 they would have to document that a source that was
20 potentially eligible made a voluntary reduction, and they
21 have to document that as part of their whole BART process.
22 And when EPA approves that SIP, my impression is that it
23 becomes federally enforceable. So if somebody came in
24 with a PSD modification, there may be a ramification
25 towards some type of SIP amendment. So it might be

1 possible, but it certainly would be more difficult than
2 just doing a standard PSD modification.

3 MR. KUTERBACH: I have a couple more
4 questions because I really want to understand this
5 limitation thing. Modeling is based on the 24-hour
6 maximum actual emissions. So presumably the limit would
7 have to be set on a 24-hour actual emissions basis, as
8 well. Is that correct?

9 MR. DRECHSEL: I would answer yes.

10 MR. COHEN: I would think you -- since
11 limits are allowables, right, a limit is an allowable
12 limit, I would think you would have to take an allowable
13 limit that was below your -- the 24-hour actual emission
14 rate.

15 MR. DRECHSEL: Twenty-four hours is the
16 question, right?

17 MR. KUTERBACH: That's correct, Chris. My
18 question, is the 24 hours was the question. Does it have
19 to be a 24-hour, a daily actual limit? And it would be an
20 actual emissions limit.

21 MR. DRECHSEL: I don't -- the standard is
22 a 24-hour impact deciview threshold, so I don't know how
23 you would have anything longer than 24 hours.

24 MR. THOMAS: What about the 1,000 ton and
25 the X kilometers away from the Class I area?

1 MR. DRECHSEL: It's a little different.

2 MR. THOMAS: It would still be an ORL. It
3 would be a limit.

4 MR. TURNER: So Brad, just to clarify your
5 comment because if -- see if I understand what you said.
6 You were saying that another possible owner-requested
7 limit -- not to digress from where John is at -- but would
8 be an overall ton limit if they were a certain kilometer
9 away from a Class I area.

10 MR. THOMAS: Consistent with the
11 guideline.

12 MR. TURNER: John, you had another
13 question?

14 MR. KUTERBACH: Yes, I do. And I'm going
15 to ask this directly to Chris Drechsel so we don't have to
16 keep saying John Kuterbach, Chris Drechsel. All right.
17 So Chris -- well, you are the one that has experience with
18 these type of limits. And so since it would be a 24-hour
19 limit, you would have to have daily monitoring for
20 compliance with that, is that correct?

21 MR. DRECHSEL: I would agree with that.
22 There would have to be some type of monitoring associated
23 with that.

24 MR. KUTERBACH: Okay. And so it would
25 have to be monitored and recorded every day, just to be

1 clear on that. And, then, has anybody discussed what the
2 penalty for violating the limits would be? Does it kick
3 you into BART? Do we enforce and charge you thousands of
4 dollars for violating your visibility limit?

5 MR. COHEN: John, you are opening a door
6 that some of the language later in the regulation caused
7 us to ask a similar question. Do you want to get into
8 enforcement sanctions? The short answer is it depends
9 what vehicle you use to impose the limit. So you take an
10 owner-requested limit through a minor permit, the
11 enforcement sanctions for violating that limit are the
12 minor permit sanctions. Once that limit gets approved
13 into the SIP, then you have all of the federal Clean Air
14 Act enforcement sanctions, as well.

15 MR. KUTERBACH: Okay. Just one final
16 question. Why won't 18 AAC 50.225 work?

17 MR. DRECHSEL: You're going to have to
18 help me out on that one. I don't know what that is
19 referring to.

20 MR. TRBOVICH: That's the language that
21 authorizes in Alaska the standard owner-requested limit.
22 And I think that would work for the way to get the ORL, or
23 you could use 508 for the minor permit program, but
24 nothing in here authorizes the owner-requested limit --
25 nothing in here, the proposed regulations, authorize an

1 owner-requested limit to get those actual emissions down
2 to a maximum for a dispersion modeling exemption.

3 MR. KUTERBACH: Well, okay.

4 MR. DRECHSEL: If I could just follow up
5 on that, I think what Al is trying to say is that, as the
6 regulation is currently proposed, it doesn't allow --
7 there has to be some mechanism in the BART rule that
8 allows for a source to request an owner-requested limit to
9 stay below the exemption modeling threshold. There is no
10 tie between the two sections. I agree.

11 MR. KUTERBACH: I guess I don't quite
12 understand that. There is no tie between .225 and the
13 permit program, and yet we use .225 limits to avoid
14 permits. So I'm just -- I mean, it seems pretty broad,
15 the .225.

16 MR. TRBOVICH: With .225, you apply for
17 the ORL before you take any action that would require a
18 permit. In other words, you get the ORL instead of
19 getting a permit. Here we would be submitting a modeling
20 exemption protocol saying that we will accept the ORL, but
21 the ORL is not in place. There is nothing there, and
22 there is nothing in the rule that says we can use that ORL
23 in our exemption model. So from ADEC's point of view,
24 we'd to some point be putting the cart before the horse.
25 We would be assuming an ORL that does not yet exist.

1 MR. KUTERBACH: I'm not -- I don't really
2 follow you.

3 MR. COHEN: The rule -- the BART rule
4 should sanction the acceptance of an owner-requested limit
5 to keep the visibility impact of a source below the
6 contribution level as a tool to exempt out. It doesn't do
7 that yet.

8 MR. TRBOVICH: I believe what the ORL rule
9 says is that the permittee can obtain an ORL to avoid a
10 permitting requirement. The ORL rule does not say that
11 the permittee can avoid BART eligibility by obtaining ORL.
12 There is no permit involved here that we are trying to
13 avoid.

14 MR. TURNER: I have a question. How many
15 sources -- and Kristy, you can answer if you have a yes or
16 no. How many sources are looking at or plan on having
17 some type of owner-requested limit? Which it sounds like
18 it's based on exemption modeling. So just around the room
19 of the sources, how many are even planning on doing this?
20 I mean, is it practical to do it?

21 MR. TRBOVICH: I'm not sure that I can
22 answer the question for my clients until we have run the
23 full three years of MM5 data.

24 MR. COHEN: It depends on the results of
25 the exemption modeling. If you are close, then it may be

1 reasonable to take owner-requested limit to stay out.

2 MR. TURNER: Kristy?

3 MS. MCCOULLOUGH: Yeah, I'm here. I guess
4 I can't really answer that question yet either.

5 MR. TURNER: So you guys don't know.

6 MS. MCCOULLOUGH: No.

7 MR. DRECHSEL: No. And I think the main
8 point is that is an option that's been afforded to other
9 companies in other states that are under the BART program.
10 It's allowed under the EPA guidance, and it should be an
11 option that's -- we feel that it should be an option
12 that's afforded to us in this process, as well.

13 MR. KUTERBACH: Okay. Well, I understand
14 that. I'm not really clear on why you think .225 doesn't
15 afford that opportunity right now. It doesn't refer to
16 just avoiding permits.

17 MR. TRBOVICH: I don't have the language
18 in front of me, so I'm working from memory.

19 MR. KUTERBACH: What it says is, "The
20 owner/operator of an existing or proposed stationary
21 source may request an enforceable limit on the ability to
22 emit air pollutants. The limit approved under this
23 section is an enforceable limit for purposes of
24 determining the stationary source specific allowable
25 emissions and the source's potential to emit." And then

1 when you go into actually describing the limit, the limit
2 would actually specify -- would describe the requirement
3 that the limit allows the owner and operator to avoid.

4 MR. COHEN: So I guess the question as
5 appropriately posed to the department, is that enough of a
6 tool to implement the option that Chris requested to take
7 an owner-requested limit to keep the model impact of a
8 source below the contribution threshold and avoid the BART
9 requirement? Is that good enough for the department?

10 MR. KUTERBACH: If I understand what you
11 are intending to do with the limit, the .225 limit allows
12 you to establish that type of limit. All right. From the
13 comments, I was a little confused as to whether it was the
14 format or the timing of .225 that was the problem or
15 whether you just didn't see it. So that was kind of my
16 question. Did you see something wrong with .225 for this
17 purpose, or you just didn't realize it could be used for
18 avoiding a BART requirement, if that was --

19 MR. THOMAS: I guess the question is, if
20 we use .225 to go after the limit to cap the actual
21 emissions, will that satisfy these timelines. That would
22 happen separate from these timelines. So if we go after
23 an owner-requested limit, it's going to take upwards of,
24 what, four months to get the permit. Would we run afoul
25 of these timelines as a result?

1 MR. TURNER: Let me see if I understand
2 you correctly, Brad. You are saying that if .225 was
3 used, your concern is does it then conflict with the
4 existing timelines?

5 MR. THOMAS: Yeah.

6 MR. TURNER: Thank you.

7 MR. DRECHSEL: I have even a more basic
8 question on does this even -- currently now these BART
9 rules don't discuss it whatsoever. I assume there needs
10 to be a linkage -- there needs to be some reference to
11 here that says instead of submitting a exemption modeling
12 analysis, I would think there needs to be a linkage that
13 would say submit an exemption modeling analysis with your
14 proposed owner-requested limit by X timeline, as well. I
15 would think that there needs to be some kind of
16 connection; otherwise -- I'm not a lawyer but, you know,
17 it seems like it's kind of leaving us out there on whether
18 that's going to be an acceptable practice to you folks
19 without having some kind of linkage between the BART rules
20 and your ORL section in your rules.

21 MR. TURNER: Okay. For time element, I'm
22 going to go ahead. Do we have any more comments on
23 section (c) on 1 (A), (B), (C); 2; 3 (d), (e), (f), or can
24 we go on to (g)?

25 MR. COHEN: There are significant comments

1 on (d).

2 MR. TURNER: On (d).

3 MR. COHEN: Really significant comments on
4 (d).

5 MR. TURNER: Okay. We are going to talk
6 about (c). We are going to talk about section (d), and
7 I'm sure it's about the 120 days.

8 MR. COHEN: It absolutely is about the 120
9 days. But I want to assure you that we have done a pretty
10 good job of covering (c).

11 MR. TURNER: Okay. So do we have any more
12 comments on (d)?

13 MR. COHEN: Yeah.

14 MR. TURNER: Go ahead.

15 MR. COHEN: The only comment on (d) is the
16 time allowed to do a BART-controlled technology analysis.
17 And neither the department nor any of the individuals in
18 this room have worked through that process from start to
19 finish yet, but a couple of the sources have started down
20 that process, and several other states in which these
21 companies are trying to comply with BART have issued
22 rather detailed guidance on how to do a BART controlled
23 technology analysis. And it is a labor-intensive and
24 data-intensive task that requires, I think, more time than
25 120 days. Chris, I think, has more experience than

1 perhaps anyone in this room other than the federal land
2 managers in actually beginning to do BART-controlled
3 technology analysis, so I'd like him to address the task
4 that confronts us.

5 MR. DRECHSEL: As Matt indicated, Tesoro
6 owns a refinery in Anacortes in the state of Washington
7 that has been going through the BART process. We started
8 on the BART process -- it's probably been a couple years
9 ago from the beginning of it, but in terms of the
10 technology review portion of it, that was after we got
11 through the entire exemption modeling phase. In that case
12 we determined that we couldn't exempt out, and so,
13 therefore, moved onto the technology review phase. We
14 started that process in Anacortes in January, February of
15 this year.

16 As it stands out, we have gotten through kind of
17 the -- I guess the first draft or the first round
18 internally of kind of costing everything out, determining
19 what the emission increases or decreases are going to be
20 with each one of the technologies. In that process we
21 have had to do -- I think everybody is familiar with the
22 Best Available Control Technology process, or most of us
23 are. But that process requires a lot of back and forth
24 and almost even down to a bid level cost analysis from
25 these different vendors for the different available

1 technologies that are out there. So that's taken some
2 time, as well.

3 So we are just to the point of kind of that first
4 internal draft. What we haven't even embarked upon yet is
5 -- and what's allowed under the BART process is after we
6 kind of get the cost and the emission decrease information
7 associated with each one of the technologies is there is a
8 modeling component that's allowed, as well. We are
9 allowed to do a similar type of modeling exercise to the
10 exemption modeling where you evaluate kind of what the
11 amount of improvement is with each one of those
12 technologies.

13 So here we stand in the beginning of June. The
14 deadline at one point they were shooting for to get this
15 all submitted was September 1st, which if you go from
16 January to September, that's about a nine-month process.
17 The recent word is, because some other companies in
18 Washington have gotten going on the technology phase later
19 than we have because they just kind of got through the
20 whole exemption modeling step kind of later than we did
21 because ours was an easy question to answer; we have heard
22 that the September deadline is going to slide. So that's
23 going to put us well beyond the nine month or potentially
24 beyond the nine-month timeline that we are dealing with in
25 Washington.

1 So I mean, that's the best -- best that I have.

2 MR. TURNER: Thank you, Chris. Anybody
3 else have any comments in regards to the use of 120 days
4 to submit the BART analysis and affect the TAR?

5 MR. TRBOVICH: The only other thing I
6 would want to point out is that under the rule as
7 proposed, the 120 days is running parallel to the 60 days
8 available to do the exemption modeling. And so even a
9 facility -- even if they thought they were going to model
10 out on the exemption basis, if they were to even have a
11 chance of getting this BART analysis done in a timely
12 manner, would have to start right at day one doing that
13 BART analysis and perhaps wasting some time and some
14 dollars with that analysis if ultimately after the end of
15 60 days they have modeled out. So it would be better to
16 run those in series, not in parallel.

17 MR. TURNER: Any other comments?

18 MR. COHEN: Yes. Following up on Al's
19 comment, the appropriate trigger for the time frame to do
20 a BART-controlled technology analysis is the final
21 subject-to-BART determination. So if the -- whether the
22 department employs an off-ramp or simply asks the sources
23 that are interested to go out and do exemption modeling,
24 when you have made your final determination that a source
25 is subject to BART, that's the -- that should be the

1 trigger for the implementation -- for the work to do the
2 controlled technology analysis.

3 MR. TURNER: Just so I'm clear what you
4 just said, you are saying that when a source has been
5 determined to be subject to BART, that at that point they
6 could start triggering to do the technical analysis?

7 MR. COHEN: The final subject-to-BART
8 determination should be the trigger point.

9 MR. THOMAS: After the exemption question
10 has been answered.

11 MR. COHEN: Yeah.

12 MR. TURNER: Comments on the phone,
13 federal land managers?

14 MR. ALLEN: You know, we read the BART
15 determinations when they come in, but we really don't have
16 a good sense as to how long it takes. Obviously that's
17 very company specific and process specific. So I guess we
18 are just fine with whatever you guys decide.

19 MR. KUTERBACH: I have a couple of
20 questions. So Chris, the September deadline -- this is in
21 Washington state?

22 MR. DRECHSEL: Correct.

23 MR. KUTERBACH: And Washington state
24 doesn't have rules, so their deadlines can be kind of
25 adjusted and flexible and not really deadlines. Are there

1 any other states that anybody is familiar with that have
2 had regulatory deadlines, and do we have a sense of
3 whether those deadlines have been met?

4 HEARING OFFICER: I see no -- I see the
5 people in Anchorage looking around. Tim, do you know of
6 any other states that have deadlines in their regulations?

7 MR. ALLEN: I know the state of Texas had
8 a deadline. I don't know what the start time was, but as
9 of April 30th, everybody that was going to do exemption or
10 BART determination or the technical analysis all had to
11 have it in by April 30th. So I could look into that, or
12 someone else could just go into the Texas regs and see if
13 you can find out what the start and ends date were.

14 MS. SMITH: I actually spoke to a lot of
15 the BART folks in other western states, and quite a number
16 of them that are already completed with the analysis step
17 seem to have taken about somewhere between four and six
18 months. A number of those places gave their units four
19 months. A couple of them had deadlines sort of slide.
20 And I know that Arizona, Oregon, Washington, and Nevada
21 are all proposing somewhere between two and three and a
22 half months. So clearly those have not completed their
23 analyses yet, but that's what they are looking at for
24 proposals.

25 MR. DRECHSEL: I was just going to clarify

1 about Washington. I think what Rebecca may be referring
2 to, if I'm not mistaken, is that Washington has said in
3 terms of getting people on, I guess, a schedule that they
4 would come out on July 1st with basically a regulatory
5 order that says that you have to get it in before
6 September 1st, but that's specifically to get somebody on
7 a schedule. That doesn't mean that folks are necessarily
8 going to complete it in that time period. So we are an
9 example of -- and I think most companies would fall into
10 this box, as well, is where folks have already gotten
11 started on it well in advance of that order coming out.
12 So I would be very surprised if there is a company that
13 truly is going to start on July 1st when those orders are
14 supposedly going to come out, they are actually going to
15 be able to meet the September 1st deadline.

16 MS. SMITH: That is a regulatory order.

17 MR. KUTERBACH: So Chris, are you saying
18 that there was, like, advance work by a lot of folks?

19 MR. DRECHSEL: In our case there was and I
20 think what Rebecca is referring to is that's just the
21 regulatory order time frame that is going to come out in
22 order to get folks on a specific schedule.

23 MR. TURNER: So what difference is two to
24 three months in other states -- I'm confused here. What
25 difference is --

1 MR. KUTERBACH: Could we clarify, Chris, I
2 don't understand the regulatory order versus a regulation.
3 What's the difference?

4 MR. DRECHSEL: Okay. The state of
5 Washington doesn't have a body of BART regulations. And
6 because -- my understanding, because they have a
7 regulatory order process, they don't need a set of
8 regulations. So up until this point, everything has just
9 been done kind of with communications, with letters sent
10 to sources saying finish this by X date. And that is true
11 up until July 1st when there actually is going to be a
12 regulatory order that's going to be issued that's going to
13 put companies on a specific schedule.

14 And my only point is that I think what Rebecca --
15 when they talked to them, they said, yeah, we're going to
16 issue these regulatory orders that's giving three months.
17 My point is I think that the majority of the companies
18 have been doing work in advance of that three months. And
19 if anybody hasn't, I think they're going to be hard
20 pressed to actually meet that three months.

21 MR. KUTERBACH: So you are looking at,
22 like, six months in advance of that three months, if I
23 remember correctly.

24 MR. DRECHSEL: Correct, yes.

25 MR. KUTERBACH: So that's nine months

1 total that you can work. And before that January date,
2 you worked on exemption modeling for five months?

3 MR. DRECHSEL: Right. I believe we
4 started in November --

5 MR. KUTERBACH: November. So two months.

6 MR. DRECHSEL: -- to get our answer in
7 January.

8 MR. COHEN: Can I add something to that?

9 MR. TURNER: Go ahead.

10 MR. COHEN: Washington asked its
11 sources -- there are 15 BART-eligible sources in
12 Washington. And the Department of Ecology asked all of
13 them to -- if they are interested in doing exemption
14 modeling, to pursue exemption modeling, they asked
15 initially that it be completed by the end of January, and
16 there was no order enforcing that requirement; but the
17 sources were responsive, and it took longer than the State
18 or the sources initially planned, but the exemption
19 modeling requests, for the most part, were finished in the
20 spring. And the State has just issued letters to those
21 sources that have modeled out saying you are out.

22 The remaining sources, the ones that were unable to
23 make the demonstration that their visibility impact is
24 less than half a deciview, have been informally directed
25 to get on with the BART modeling with the -- with the

1 BART-controlled technology analysis with the understanding
2 that a regulatory order will be issued shortly; that the
3 significance of July 1st is that the 2007 legislature
4 appropriated money for the Department of Ecology to
5 implement the Regional Haze program money that had not
6 previously been made available. And on July 1, Ecology
7 acquires the resources to administer the program. They
8 are planning to issue regulatory orders to the sources
9 that remain in the game, asking them to submit control
10 technology analyses.

11 I -- based on precedent and practice, I'm quite
12 confident that those orders will be issued after
13 discussion with the sources to determine how much time
14 they need to do the job right. There is -- Washington,
15 like Alaska, is under pressure from EPA to get as close to
16 meeting that SIP submittal deadline as possible, and there
17 is -- there is a sense of urgency in Washington, as there
18 is in Alaska. Nonetheless, the State understands the
19 magnitude of doing a BART analysis, and I think that you
20 will see in those orders a time frame that, even with the
21 lead time that's been provided, is adequate but not
22 generous to get the job done.

23 MR. TURNER: I'm going to do a time check
24 here for this because we do have, I think, one important
25 subject we need to cover. I do want to follow up with a

1 couple of questions just because I'm confused, and I want
2 to make sure that I stay on track. To your question,
3 Chris, you made the comment that you would see people hard
4 pressed of not doing some of the work now and then still
5 meet a regulatory deadline, and you referenced that other
6 states, it's just a regulatory deadline. So my question
7 is, what's the difference here where we are putting in a
8 number that we are averaging out over different states at
9 four months, recognizing that people are working on it in
10 advance, and that we need to have some type of timetable,
11 a deadline; what difference is that than what other states
12 have done?

13 MR. DRECHSEL: I think I might have
14 confused things. The point of my comment was that three
15 months has been thrown out for the state of Washington as
16 being their requirement for conducting a controlled
17 technology review. That's been thrown out last time we
18 were here. It's been thrown out now. My point is that
19 that's not the true timeline that folks are going to
20 complete controlled technology analysis. Either folks are
21 working on it now, such as we have -- in our case it's
22 been a nine-month process. Most likely it will be
23 longer.

24 MR. TURNER: Just a couple clarifications.
25 That's the state of Washington. We also heard other

1 states have some two, some three, some as much as six. So
2 we proposed four, looking at what other states have done
3 and recognizing that this nine-month process actually
4 started back in January. So I just -- I'm having trouble
5 here with the difference between what you just described
6 in our same situation.

7 MR. DRECHSEL: The concern with 120 days
8 is that, as Al Trbovich pointed out, the 120 days has the
9 exemption modeling going concurrently. So as it's written
10 now, you have got 60 days to submit your exemption
11 modeling, then 60 days beyond that you complete your
12 technology review. They are going concurrently. It's
13 going to be hard pressed for us to convince our management
14 to move ahead while we are doing the exemption modeling,
15 which could conclude that we don't have to go to the next
16 phase of the process -- it's going to be hard pressed for
17 us to convince to commit resources to start the technology
18 analysis while that question is being answered.

19 MR. TURNER: Okay. Just -- and I
20 understand that. What I don't understand is -- and I'm
21 writing these regulations from day one and working with
22 the staff to try to accommodate what all the different
23 people want. I have to go with what you said before. And
24 I do have the transcript that Mary did last time in the
25 public workshop here. And so my question, Al, have you

1 changed positions from the last time when I asked the
2 question of whether or not you can do exemption modeling
3 and eligibility at the same time; you said I don't think
4 people would have problems doing the eligibility and doing
5 the exemption modeling; so have you changed that position
6 since the last workshop?

7 MR. DRECHSEL: That's different.

8 MS. CROCKETT: It's different. This is
9 different.

10 MR. TURNER: Why is this different?

11 MS. CROCKETT: It's not eligibility.

12 MR. TURNER: Thank you. I stand
13 corrected.

14 MR. KUTERBACH: I do have a couple of
15 questions because as it's been laid out in Washington,
16 it's very interesting, kind of the process, since it's
17 different from Alaska, but -- so I understand you are
18 working -- there are people who haven't been able to
19 exemption modeling out, even though they don't have a
20 regulatory order from Washington, have been working
21 towards the BART -- the BART analysis portion, is that
22 right? You have been -- you are already working --

23 MR. DRECHSEL: Correct.

24 MR. KUTERBACH: -- in advance of having
25 this regulatory order?

1 MR. DRECHSEL: Correct.

2 MR. KUTERBACH: Now, in our last meeting I
3 thought there was kind of the consensus that people
4 couldn't spend money on a BART analysis until after we had
5 final regulations. Now, is that different?

6 MR. TURNER: That's what I was trying to
7 get to. Thank you, John.

8 MR. TRBOVICH: I think what we were saying
9 and are continuing to say is that people are going to be
10 very reluctant to start the BART analysis until after we
11 have finished the BART eligibility model.

12 MR. KUTERBACH: So it's just the exemption
13 modeling. It's not the final regulations.

14 MR. TRBOVICH: It's just the exemption
15 modeling.

16 MR. KUTERBACH: That's a clarification
17 because that's not what I understood from the last
18 meeting. So glad we got that cleared up.

19 MR. COHEN: One technical point. It's not
20 just the exemption modeling. It's the exemption
21 determination. It's the department's review and action on
22 that modeling.

23 MR. KUTERBACH: So if I could have just
24 one last question, Chris, since you have this experience.
25 You started last November with the exemption modeling.

1 Now, did Washington state do their own modeling ahead of
2 time to say you are subject to BART, we would like you to
3 exemption model if you want to get out; is that how that
4 worked?

5 MR. DRECHSEL: No. And maybe that's
6 why -- back to the original point. Maybe that's why we
7 have kind of been pushing on that is the approach in
8 Washington is they didn't do any modeling at all. They
9 didn't do any exemption modeling at all. So they
10 basically have sent letters to sources that they feel are
11 BART eligible and said do your exemption modeling and
12 based on that we will make the determination if you are
13 subject to BART.

14 MR. ALLEN: I have a comment about the
15 state of Washington. I think that the state of Washington
16 is not really a great example of who we should mimic
17 during this process. I think that early on the state of
18 Washington had realized that they were not funded for
19 performing any type of visibility tasks. So there was
20 some type of an informal agreement with EPA that they were
21 going to pursue a SIP. So the Region 10 from EPA was
22 actually going to do the majority of the work.

23 Due to some disagreements between the companies that
24 were going to be working with EPA and the State, it was
25 decided that the State asked EPA not to conduct any work.

1 And although I know that a little bit of BART exemption
2 modeling was conducted by Herman Long over at Region 10, I
3 don't believe it was for all 15 of the eligible sources.
4 But the stage of July 1st has become very important
5 because that was potentially when their new fiscal year
6 started and when they potentially would have funding to go
7 ahead and begin work on their visibility SIP.

8 So to use Washington state as an example of, oh, they
9 didn't do this until a certain point is unrealistic
10 because officially they didn't actually have a visibility
11 program. They weren't allowed to put any resources to it.
12 So they were actually under a regulatory restraint inside
13 their own agency that did not did not allow them to do
14 work. I think if you want to use them as an example for a
15 few things, that would be fine, but I think they are
16 really one of the more poor states to use as an example
17 for process because their process was literally restricted
18 by their own rules.

19 MR. TURNER: Thank you, Tim. I'm actually
20 going to be heavy-handed. It's quarter to 3:00 now. I'm
21 doing a time check.

22 MR. KUTERBACH: It's quarter to 4:00, Tim.

23 MR. TURNER: It's getting late in the
24 afternoon. We are going to go until 4:30. And unless
25 there are some significant other comments, I think we have

1 addressed the issues in (c). Okay?

2 I'm going to proceed forward to (g), "A visibility
3 impact must," and we have sections 1, 2, 3, and then we
4 have some other parts to it. So do I have any comments in
5 regards to section (g) visibility impact? Who wants to
6 go? Chris?

7 MR. DRECHSEL: I can only -- I have a
8 comment on (g)(1), and then let Matt, you comment on
9 (g)(2). But on (g)(1), my comment would be this section
10 (g) is both referenced for doing exemption modeling and
11 for the controlled technology reviews earlier up in the
12 regulation. But (g)(1) has a statement "use an identical
13 modeling approach for comparing pre-control and
14 post-control impacts," which is specific to a -- the
15 technology review portion of when you would do modeling.
16 So my comment would be --

17 MR. KUTERBACH: If I could break in,
18 Chris, my understanding is No. (2) is also for the pre-
19 and post-control because we are talking about the maximum
20 change in visibility impacts.

21 MR. DRECHSEL: Well, if you read earlier
22 up in the regulations -- see if we can quickly find that
23 section. When it talks about -- I'm on (c)(1) -- (c)(1),
24 which gives you the different options here. (c)(1)(B) is
25 to "conduct a visibility impact analysis in accordance

1 with (g) of this section," which is, in essence, your
2 exemption modeling stage, correct?

3 MR. TURNER: Correct. John that's your
4 understanding?

5 MR. KUTERBACH: Yeah, absolutely.

6 MR. DRECHSEL: That pulls you down to
7 (g)(1). So my comment would be, under an exemption
8 modeling analysis, you wouldn't do any comparison of
9 pre-control to post-control because you are basically
10 modeling how it exists out there right now. So my comment
11 would be -- and this isn't a substantial comment, but I
12 think there needs to be either a breaking up of the
13 modeling that's required for technology review versus
14 exemption or some kind of rewording of this or removal of
15 this sentence.

16 MR. KUTERBACH: Well, obviously we went
17 through several iterations with Strawmans and things like
18 that, and it's -- I mean, it seems -- and I'm going to ask
19 Tom to correct me -- Tom, am I right in that No. (1),
20 which is pre- and post-control impacts, and No. (2),
21 determine the maximum change in visibility impacts, that
22 both of those were really originally drafted for the --
23 our very first Strawman which didn't have the off-ramp?

24 MR. TURNER: Correct. And they also -- we
25 kept them because they referenced the type of modeling

1 controls we would need for the TAR.

2 MR. KUTERBACH: So is it just, then, that
3 we have a mis-cross-reference here between (c) and maybe
4 it shouldn't be referencing (g)(1) and (2); maybe it
5 should just reference (g)(3)?

6 MR. TURNER: We could provide further
7 clarification by referencing the (g)(3).

8 MR. KUTERBACH: Okay. Any other comments?

9 MR. COHEN: Yeah. Thank you. For
10 purposes of doing exemption modeling, you have heard many
11 times that the guideline recommends using the 98th
12 percentile of daily visibility impacts. The coalition has
13 read (g)(2) cross-referenced through (c) as an instruction
14 to use the daily max value for purposes of exemption
15 modeling.

16 MR. KUTERBACH: Okay. So you read maximum
17 change to being daily max value.

18 MR. COHEN: Yeah, we did.

19 MR. KUTERBACH: Okay. I understand.

20 MR. COHEN: If that's not the department's
21 intent, it's necessary somewhere to put in that 98th
22 percentile value because that's the measure of -- that's
23 the -- that's the metric against which the source's
24 visibility impacts have to be evaluated to determine
25 whether you are in or out. It's not a point you can just

1 leave out of the rule.

2 MR. KUTERBACH: And that's a good point,
3 Matt, because I do have a question about that. I was
4 reading the guideline here because I wanted to find out
5 that 98th percent and where the 98 percent was, and I did
6 find it, if I can find my reference to it.

7 MR. COHEN: 39.121, John.

8 MR. KUTERBACH: 39.121. I'm all out of
9 order. 39.121. Here we are. No, that's the discussion.
10 I was looking at -- I was looking at it in the guideline.
11 And in the guideline -- because I'm sure I asked Tom to
12 make it consistent with the guideline. And I did find 98
13 percent in the guideline. And I looked through our rules,
14 and I didn't find 98 percent in our rules. So Tom, where
15 is the 98 percent?

16 MR. TURNER: So the 98th percentile with
17 our intent was underneath (B), "a modified protocol that
18 was first submitted as a draft and made available for EPA
19 and federal land managers and subsequently approved in
20 writing." So our concept here, just for clarification,
21 was that if you wanted to submit the 98th percentile, that
22 you simply submit it within the modeling protocol, we run
23 it through EPA and federal land managers, and if they
24 approve it, they approve it. It doesn't necessarily,
25 then -- my concern when I write regulations is not to make

1 them so prescriptive that you only have one method to use.

2 I'm not a technical expert, but I do recognize the
3 ability of people like Ken Richmond, Tim Allen, Alan
4 Schuler to get together and discuss what is the best way
5 of doing modeling. And so the idea was, in (B), if the
6 technical people get together and it's approved by the
7 federal land managers and EPA and then approved by the
8 department, that the 98th percentile would be allowed.

9 MR. KUTERBACH: So, Tom, if I might ask --
10 I found where I was looking at. It was 39.162 on the
11 third column towards the bottom there where it says, "For
12 these reasons, if you use the modeling approach we
13 recommend, you should compare your contribution against
14 the 98th percentile." Okay. So the 98th percentile is
15 there, but it's conditioned on using the modeling approach
16 they recommend.

17 MR. TURNER: Correct. That's what I was
18 thinking.

19 MR. KUTERBACH: That's why you put it in
20 the protocol?

21 MR. TURNER: Correct, because then it
22 would reference back to the guidelines since the overall
23 regulations reference the federal guidelines. And Matt,
24 to your comment about 39.121, this was the dilemma we got
25 into at the modeling. If you read on 39.121 going down in

1 the paragraphs, it says, "In the proposed BART guideline,
2 we indicated that if the maximum daily visibility value at
3 any receptor over the five years modeled is greater than
4 the 'cause or contribute' threshold, then the State should
5 conclude that the source is subject to BART." And then
6 later it states that the federal -- on the top of
7 paragraph 3, "The federal guidelines state that it would
8 be reasonable for states to compare the 98th percentile
9 CALPUFF modeling results against the contribution."

10 So what we had is when the first modeling was done,
11 back to this whole discussion you had, EPA approved the
12 CALPUFF model. It was approved by the federal land
13 managers. When that model went through, there were some
14 recognizable concerns with how the modeling was done. To
15 be conservative, the federal land managers and the
16 monitors at the time then used the conservative estimate
17 of that daily maximum value.

18 And so now that new information has come about, which
19 we did not have at the time in December to do that, then
20 we recognized, based on all the modeling discussions that
21 Chris has conducted, I've had with Tim, that the 98th
22 percentile is a possibility to be used because you can do
23 the five-year met data or three-year met data, and people
24 are in the process of confirming that. We didn't want to
25 make it so prescriptive that you had to follow it exactly,

1 so what we did is we just put it in (B) where a modified
2 protocol would allow it. So my question to folks, is that
3 acceptable if that's where it's at?

4 MR. COHEN: It's not. Two problems.
5 First, that 98th percentile value is not used just in
6 exemption modeling. It's also used in visibility impact
7 modeling for BART controls. It is --

8 MR. KUTERBACH: Absolutely.

9 MR. COHEN: It is the recommended
10 threshold for evaluating the impacts of a source on
11 visibility in a Class I area. So the problem -- the
12 problem really is what is (g)(2) here for? We read (g)(2)
13 to -- what does that language mean and where does it
14 apply? It seems to us it shouldn't apply anywhere.

15 MR. KUTERBACH: Oh, really? You shouldn't
16 use the comparison of the before and after?

17 MR. COHEN: It's not the before and after,
18 John. It's the maximum change in visibility impacts in
19 daily deciviews.

20 MR. KUTERBACH: Right. It's a -- well,
21 forgive me. I'm a little slow. To me I always thought of
22 a change as having a before and an after. So I just don't
23 understand how we are interpreting it not to.

24 MR. TRBOVICH: The language says the
25 maximum change, not 98th percentile change. That's --

1 those are two different numbers.

2 MR. DRECHSEL: You are getting hung up on
3 the change language, and you are equating the change to
4 the pre and the post. The change -- that's how you
5 measure visibility impacts under BART is it's a delta.
6 It's a change beyond your background conditions. And so
7 this -- that change, maximum change in visibility impacts,
8 doesn't have anything to do with the pre and post. I
9 think you are getting -- if I'm not mistaken, you are
10 getting hung up on that.

11 MR. TURNER: Just so I'm clear on that,
12 wouldn't the background conditions be considered your pre?
13 I mean, that's how I would view it, that the background
14 conditions is what you are initially comparing it to.

15 MR. DRECHSEL: No. The pre and post is
16 intended, if I'm not mistaken, to refer to a pre-control
17 scenario versus a post-control, which is when you get to
18 the technology review phase, you do some analysis of those
19 two measures. And alls I'm pointing out is I think, John,
20 that you are equating that the maximum change in
21 visibility impacts is related to that pre and post. Alls
22 I'm saying is that that maximum change -- or change in
23 visibility or change in deciview is -- is that .5 delta
24 deciview. I mean, that's how you refer to that threshold.

25 And this paragraph, paragraph 2, is basically

1 prescribing that we have to use the maximum rather than
2 the 98th percentile in both the exemption modeling and in
3 the technology review. And as we have been discussing it
4 at length the last several weeks, the 98th percentile is a
5 number that, provided we can work through the MM5 data and
6 get the necessary approvals, is what we are aiming for.
7 And as I read this now, unless you put some ors or
8 something in here, I don't see how that -- as it stands
9 now, how we wouldn't be required to use the maximum even
10 if there is this flexibility to do our own protocol
11 because there is -- it's just a visibility impact must do
12 one, two and three.

13 MR. KUTERBACH: I understand how -- I
14 understand what your comment is now. I do want to ask a
15 question for maybe the federal land managers. I'm hearing
16 that all we have to do is have the MM5 have three years of
17 data and then the 98 percent is mandated. Is that
18 correct?

19 MR. TURNER: Is that what you are hearing?
20 Is that what you asked?

21 MR. KUTERBACH: Is that the understanding
22 that you have?

23 MR. COHEN: Are you asking the coalition
24 or the land managers?

25 MR. KUTERBACH: Well, I was asking the

1 land managers because they haven't weighed in on this, and
2 I know they have some concern about the modeling. They
3 need to review the protocol. And I know that's what I'm
4 hearing from Matt and company is the 98 percent is
5 sacrosanct regardless of anything.

6 MR. RICHMOND: That's not true. They have
7 other problems with the way that the WRAP modeling was
8 conducted. It's not just the three years.

9 MR. TURNER: Excuse me, Ken. Who is they?

10 MR. RICHMOND: So basically I think for
11 this section you should just remove (1) and (2) entirely.
12 And you have (3). Either you did it -- either you redo
13 the modeling exactly like it was done or you have to
14 negotiate a protocol in which all items in the protocol
15 are open to review, including the use of the max or the
16 98th percentile, the first three years of MM5, or
17 anything.

18 MR. TURNER: So I want -- John's question
19 wasn't adequately addressed. So federal land managers,
20 you have heard this discussion. And from what we are
21 hearing from -- I want to -- I'm going to paraphrase. If
22 I'm incorrect, please step in. That the BART coalition
23 believes if they just had the 98th percentile and the MM5
24 data in here, then it would be acceptable to being forward
25 as modeling, is that what I'm hearing?

1 MR. DRECHSEL: I guess we have realized in
2 conversations, I think, what Ken is getting at that, Tom,
3 you have been on and Tim Allen has been on, that there
4 needs to be a review process. So I don't think the
5 federal land managers are going to come out and say as
6 long as we develop this MM5 that it's an automatic thing
7 until they have a chance to review it and everybody buys
8 off on it. So --

9 MR. KUTERBACH: I guess, Chris -- pardon
10 me for breaking in -- I'd like the federal land managers
11 to speak for themselves in the public workshop here.

12 MR. DRECHSEL: Sure. He just asked me to
13 clarify if that was our position, and I clarified.

14 MR. TURNER: Tim, everyone wants you to
15 speak and tell us what you think about this discussion.

16 MR. ALLEN: Ken Richmond is right. It's
17 more than just the three years. There was issues with
18 just the way that the CALMET model was actually run. So
19 by looking at a protocol, we're going to look to see that
20 there is the three years of quality MM5 data; we're going
21 to look that all the observational data sets are ingested
22 into CALMET properly, and that all the settings inside the
23 whole suite, so CALMET, CALPUFF, POSTUTIL and CALPOST are
24 all --

25 The modeling system is made up of several little

1 subpieces. And so the standard pieces are CALMET, which
2 does the meteorology processing; CALPUFF, which is
3 actually the dispersion model; there is a third tool
4 called POSTUTIL, which does some modifications to some of
5 the nitrate chemistry, and CALPOST, which actually gives
6 you reports. And there were issues beyond just the fact
7 that you were using one year of MM5 data. And so Ken and
8 Allen and I have already had some conversations. I guess,
9 Chris, I believe he was on the phone, too, joined us and
10 we have already had some conversations on what a complete
11 CALMET/CALPUFF analysis would look like in order to have
12 it meet all the criteria for the 98th percentile and
13 everything.

14 MR. TURNER: John wants to speak, but I
15 want to ask you a question first. Does not (B), "a
16 modified protocol that was first submitted as a draft and
17 made available" section cover that for you? I mean, it
18 has to go through your approval. It has to go through the
19 EPA approval.

20 MR. ALLEN: Who are you asking the
21 question of?

22 MR. TURNER: You.

23 MR. ALLEN: I don't have the section
24 wording right in front of me but, generally speaking, we
25 are very prescriptive when it comes to the elimination

1 modeling. When it goes into the determination modeling,
2 when you are actually doing your engineering evaluation,
3 we are going to be -- the only real requirement is that
4 your before and after modeling are conducted in the same
5 way because essentially you are reporting on a relative
6 reduction factor.

7 MR. TURNER: But we did have the
8 discussion -- and you don't have (B) in front of you, so I
9 heard somewhat the hesitation in your voice -- but the
10 bottom line is that a modified protocol that could include
11 the 98th percentile and the MM5 data will have some more
12 prescriptive things to it, but that will need to be
13 approved by the federal land managers and EPA, correct?

14 MR. ALLEN: That is correct, but on the
15 other hand, I'd like to say that it does seem very
16 possible to get to that level, too.

17 MR. TURNER: Okay. Thank you. John, you
18 had a question?

19 MR. KUTERBACH: Well, I just have a
20 question to the BART 7. Since we do have this process of
21 doing the protocol and getting it all sorted out, do you
22 think -- do you really think it makes sense to put the 98
23 percent in our rule since there are these considerations
24 where maybe we -- maybe it can't be solved; maybe IT
25 doesn't get solved and we don't get the proper protocol.

1 MR. TURNER: Or -- and being a cynical
2 regulator again, I need some flexibility in the
3 regulations to allow the technical people. Who is to say
4 that in another two months someone finds another CALPUFF
5 model that they want to go ahead and start having a
6 discussion about that they want to use? So I mean, that's
7 why we left it open as an approval basis.

8 MR. TRBOVICH: We are not expecting and
9 are not asking that ADEC put the 98th percentile
10 requirement in (g)(2). What we are asking is that the
11 word maximum be removed so that we don't preclude the use
12 of the 98th percentile.

13 MR. THOMAS: To add to that, by not doing
14 that and leaving in the August 15th, 2006 CALMET/CALPUFF
15 protocol, et cetera, you set a standard of 100 percent or
16 maximum, leaving no reference to the 98 percent. So a
17 staff person at ADEC would have --

18 MR. COHEN: I don't think that's true,
19 Brad. I think the summary of WRAP RMC BART modeling for
20 Alaska embodies the 100 percent, the maximum, and that
21 shouldn't be incorporated by reference, but I don't think
22 the protocol does that. And I agree with Al. It's the
23 word maximum that drives you to the wrong result.

24 And Tom, a -- the ability to approve a modified
25 protocol in (3)(B) does not get around the use of the word

1 maximum in (g)(2) because the requirements of (g) are
2 additive. (1), (2), and (3) all have to be satisfied
3 concurrently. So you can't use a modified protocol to get
4 around the requirements of (g)(2), which is an independent
5 requirement. I think Ken Richmond had one decent
6 suggestion to solve the problem, which is to delete (1)
7 and (2) in their entirety. Another more modest suggestion
8 is to delete the word maximum in (g)(2), which would give
9 you the flexibility to do what the EPA guideline
10 recommends. And John, it's not mandates. It's
11 recommends.

12 MR. KUTERBACH: I just have a question
13 because I remember from a comment just a little while ago
14 that pre and post was important for something, and I can't
15 remember exactly what. So if we eliminate (1) and (2), we
16 are eliminating that pre and post thing which was
17 apparently important for something. So can anybody
18 enlighten me as to what it was important for?

19 MR. DRECHSEL: I think the reason that
20 that was originally in there was back to your original
21 comment, I think, whereas the first draft of this only
22 discussed modeling that had to be done for the technology
23 review. So we have been talking about exemption modeling
24 most of the day today. Down the road when you get to the
25 technology review, there is allowance under the guidance

1 to do some sort of modeling evaluation of each control
2 that you are evaluating as to whether you are going to
3 propose as BART or not. So that is where this language
4 came from.

5 MR. KUTERBACH: And it is important that
6 we do an identical modeling approach for pre- and
7 post-control impacts.

8 MR. COHEN: I heard that from Tim Allen a
9 minute ago.

10 MR. KUTERBACH: I knew I heard it from
11 somebody. I wasn't sure who. Okay.

12 MR. TURNER: And I just do want to be
13 clear that -- did someone want to speak on the phone?

14 MR. ALLEN: I just want to confirm that
15 was Tim Allen that said that.

16 MR. TURNER: I just want to be clear to
17 folks that what I am hearing is that there seems to be
18 some confusion over (1) and (2) because the primary --
19 original intent was to make sure all the modeling stuff
20 was together and some of (1) and (2) was referencing
21 modeling that would be used for determination. But what
22 I'm hearing from the BART coalition, they would like some
23 separation and clarity about what's used in exemption
24 modeling and what would be used in the final determination
25 modeling.

1 just to help Brad for clarification. You do it the
2 original way it was done or you present a modified
3 protocol which, again, the intent was to leave that open
4 for 98th percentile or whatever method is approved by the
5 department, federal land managers, and EPA. It's the or.
6 You can do one or the other. Some people, initially when
7 we wrote this, believed that they could get out using the
8 original CALPUFF model with all of its faults as a
9 possibility of being able to get out. But that doesn't
10 sound like that's happened since then. So do we have any
11 more questions or comments on (g)?

12 MR. COHEN: Just one. Given the
13 discussion we had earlier about the deficiencies in the
14 WRAP modeling runs, there may not have been consensus
15 about how -- how appropriate those runs were for use as a
16 screening analysis, but I think there was consensus that
17 they have deficiencies that can be improved upon and that
18 are not squarely compliant with the guideline. It's
19 inappropriate to adopt a modeling exercise by reference in
20 a regulation as a -- as a measure of the visibility impact
21 of particular sources.

22 It's fine to do a protocol, but when you have -- when
23 you have set up an off-ramp process, you shouldn't -- you
24 shouldn't endorse in that process a visibility impact
25 analysis that has identified deficiencies. You don't need

1 it for the purposes for which you have described the way
2 you are using the WRAP modeling. And it's wrong.

3 MR. TURNER: I just want a clarification.
4 Tim Allen, what is the official EPA WRAP model that we are
5 supposed to be using right now?

6 MR. ALLEN: You asked two questions there.
7 The official EPA version of CALPUFF, 7.11(a), I believe.
8 And there are a number of known bugs in that version. EPA
9 right now is aggressively going through a process to
10 evaluate an updated version of what will become the new
11 regulatorily-approved version of CALMET, CALPUFF, that
12 whole suite. WRAP had used and got approval from the FLMS
13 and EPA and everybody in WRAP was an early version of 6.
14 Version 6 is not a regulatorily-approved version. It was
15 approved on a case-by-case basis for this purpose and this
16 purpose only.

17 So from my conversations with EPA Region 10, their
18 intent right now is to allow anyone that's going to
19 continue on in this process to run CALPUFF to either use
20 the regulatory version, which is 5.711(a) or they can use
21 the version that WRAP used, which I can't remember the
22 numbers, but it's an early version of 6. If someone would
23 like to propose on a case-by-case basis a different
24 version from that, it would also have to go through a
25 case-by-case evaluation by EPA, and certainly the federal

1 land managers and the State will have a review potential,
2 as well.

3 But ultimately the -- Region 10 with EPA ultimately
4 has the final decision, and they would have to write
5 something in writing and send to the State and send to the
6 FLMS their case-by-case waiver if they are going to stray
7 from any of that.

8 Realize that when there are known bugs, that it
9 becomes difficult to say, oh, well, this version or that
10 version is better. The problem is that EPA does have a
11 process that they are exercising very vigorously right now
12 to go and review and try to eliminate those bugs, and that
13 process does not include a very robust case-by-case
14 evaluation because right now there are at least three
15 official versions of the model that I can think of. And
16 if you go into the internal nonpublic versions, there is
17 probably two or three times more than that.

18 And so it becomes very difficult because when people
19 are using nonregulatory versions, we often after the fact
20 will find additional bugs that we weren't aware of, and
21 though it was a great idea to move in that direction, it
22 turns out that the application or how that code was
23 actually implemented may or may not be worthy of use. So
24 it's a very difficult process.

25 MR. TURNER: Thank you, Tim. I'm going to

1 have one more little comment on regards to the exemption
2 modeling because we do have other issues and it's 4:15. I
3 want to do a time check.

4 MR. ALLEN: Can I make one more comment?

5 MR. TURNER: Yes.

6 MR. ALLEN: There has been several
7 comments about the BART determination modeling and that
8 the end points -- I made the comment initially that the
9 end points have to be the same. But there's been a great
10 deal of emphasis on the modeling itself that I just wanted
11 to reclarify that when you are doing BART determination,
12 that's one of five factors that gets evaluated during that
13 determination. And so although the modeling of the before
14 and after is very important, there is four other factors
15 that a state will need to go through in making a
16 determination of what's reasonable.

17 Then when a state goes back and does not just the
18 BART emissions, but when they evaluate all of their
19 emissions as part of their long-term strategy and their
20 reasonable progress goals, it is within their ability to
21 go back and re-evaluate those BART determinations as well
22 to see how that larger mix fits in.

23 So I guess, although I acknowledge that the modeling
24 is a facet of this process later on, the BART
25 determination process is more involved and the State has a

1 great deal of discretion in making those evaluations.

2 MR. TURNER: Any other comments? I'm
3 going to proceed forward. We have 15 minutes left, and I
4 would -- I think we have kind of covered potential
5 additions or deletions. I would like to spend time on
6 next steps, but are there any other specific sections of
7 the regulations that people would like to comment on?

8 MR. COHEN: Yes.

9 MR. TURNER: I'm sure there would be.
10 That's why I'm bringing that up. Mr. Cohen.

11 MR. COHEN: Subsection (i), we have --
12 this section raises more questions than comments in -- or
13 I would say questions that may trigger comments. We don't
14 understand -- the coalition does not yet understand the
15 meaning of the term preliminary BART determination in
16 subsection (i), and in particular it says, "The department
17 shall review each analysis of control options and issue a
18 preliminary BART determination for each emission unit," et
19 cetera. We are trying to understand what form that
20 determination would take. Can someone with the department
21 answer that question?

22 MR. TURNER: You want to take it, John?

23 MR. KUTERBACH: Well, I mean, I don't
24 understand your question. What do you mean what form? It
25 would be a written document.

1 MR. COHEN: Any particular type of
2 document? A -- is it -- is this something -- it wouldn't
3 be a permit.

4 MR. KUTERBACH: It would be a
5 determination, preliminary BART determination. Yes.

6 MR. COHEN: And that determination
7 would -- would it have -- would it be an enforceable
8 document?

9 MR. KUTERBACH: No. It's preliminary,
10 Matt.

11 MR. COHEN: So when it becomes -- and then
12 you will take -- you will take comment on it and issue in
13 subsection -- subsection (k) a final BART determination.

14 MR. KUTERBACH: That's right.

15 MR. COHEN: What form would that
16 determination take?

17 MR. KUTERBACH: That would also be a
18 written document.

19 MR. COHEN: Okay. And would that document
20 be an enforceable -- would that be an enforceable -- would
21 it be enforceable in some fashion?

22 MR. KUTERBACH: Enforcing -- well, yeah.
23 The final determination is made enforceable I think
24 somewhere in here. Oh, yeah, under (n).

25 MR. COHEN: (n). Okay.

1 MR. KUTERBACH: (m) and (n). It's
2 enforceable through the SIP submittal under (m) and (n).

3 MR. COHEN: So would you take the set of
4 BART final determinations and then adopt them as a rule?
5 We are trying to figure out -- of the various vehicles
6 available to the department to create enforceable limits,
7 we are trying to figure out which this would be.

8 MR. KUTERBACH: (i) through (k).

9 MR. COHEN: John, you can do a rule. The
10 department doesn't do orders.

11 MR. KUTERBACH: That's what the rule --
12 (i) through (k) is a rule. I don't understand your
13 question.

14 MR. COHEN: So the result -- the set of
15 final BART determinations would have the effect of a rule?

16 MR. KUTERBACH: When they are under (m),
17 when it is included in the SIP and submitted and approved
18 by EPA, then they must comply with it, yeah.

19 MR. COHEN: Okay. But not prior to
20 introduction or approval as part of the SIP.

21 MR. KUTERBACH: Well, Tom, can you help me
22 out? What does that mean?

23 MR. TURNER: Come here and see what it
24 says. "Upon EPA approval of the Regional Haze SIP, the
25 owner or operator of a source that is subject to the final

1 BART determination under this section shall comply with
2 the requirements established in that determination as
3 expeditiously as practicable, but in no case later than
4 five years." So after the EPA approves the Regional Haze
5 SIP, then you do this as quickly as you can, but no later
6 than five years. And the final BART determination will
7 depend upon what your units are, whether you are
8 choosing -- it's tons of other options in there. It would
9 be some type of written document that says this is how you
10 are going to comply with the final BART determination.

11 MR. COHEN: Another question perhaps best
12 addressed by Lindsay. The subsection (1) offers an
13 adjudicatory hearing on the final BART determination per
14 18 AAC 15.195 and .340. Is an adjudicatory hearing
15 available for a document sort of adopted or proposed as an
16 SIP amendment?

17 MS. WOLTER: I think I need to go back and
18 look at those regulations. I think they say a final
19 determination or a final decision would be subject to an
20 adjudicatory hearing, but I need to look at that and we
21 can talk about that, because I see where you are going
22 with these questions. I see what you are asking about.

23 MR. COHEN: We really mistakenly assumed
24 that the department intended to implement BART through
25 Title V. And so we just now are going back and trying to

1 figure out what your real plan is. And this is -- this
2 is -- these are genuine questions for which you are
3 providing useful answers. The answers have some
4 implications. And one of them is are we entitled to
5 challenge the conditions of a final BART determination in
6 an adjudicatory hearing or an informal review, whatever
7 the vehicles that are set out in subsection (1)?

8 Switching from question mode to comment mode, we
9 proposed an alternative vehicle for the department to
10 implement BART through the minor permit program which
11 would require some changes to minor permit program rules,
12 changes that we think are within your statutory authority.

13 MR. KUTERBACH: And I do have a question
14 about that because I saw you referenced minor permits.
15 Under what authority in our statutory rules would you see
16 that minor permit fall?

17 MR. COHEN: Right. Let's see if I brought
18 it. It's in --

19 MR. KUTERBACH: 46.14.130.

20 MR. COHEN: Yeah. "Owner and operator
21 shall obtain a minor permit from the department if the
22 stationary source is of the type classified under AS
23 46.14.020 under a finding by the department that public
24 health or air quality effects provide a reasonable basis
25 to regulate the stationary source."

1 here because people are leaving, and it's 4:35 maybe.

2 MR. COHEN: You are raising a --

3 MR. THOMAS: 4:20.

4 MR. TURNER: Anyhow, so the issue has been
5 brought up about whether or not a minor permit could be
6 another vehicle. I do have one quick question with
7 regards to what a BART determination is. What happens if
8 the department determines and it's a written document that
9 says they can't do anything to adhere to BART because they
10 have done everything possible that they have ever done? I
11 mean, that would go through the same type of process. I
12 mean, you know, we could have public comments where
13 someone says we want them to do more.

14 So I guess my question is, I mean, one of the
15 reasons, you know, looking at that is it's done that way
16 because we really don't know what the BART determinations
17 are going to look like, except that they will have to be
18 incorporated back into the Title V permit with those
19 corrections. Correct? Is that your understanding?

20 MR. COHEN: Upon an approval of the SIP,
21 they would have to incorporate it in the Title V permits,
22 yeah.

23 MR. TURNER: Thank you. So because of
24 time element, I'm going to go into next steps. I've gone
25 ahead and I've put some different timelines on here, but I

1 want to talk about the timing as it relates to the
2 regulation process to get these through the Lieutenant
3 Governor's office. So currently we are on 30-day -- we
4 are on a public hearing and public comment process. We
5 have a public hearing scheduled for June 5th between 7:00
6 and 8:30 here at DEC.

7 MS. SMITH: May 31st.

8 MR. TURNER: Let me recorrect myself.
9 Thank you, Becca.

10 MS. SMITH: Public comment period ends
11 June 5.

12 MR. TURNER: The public hearing will be
13 May 31st between 7:00 and 8:30 p.m. here at DEC. The
14 comment period ends June 5th at 5:00 p.m. Thank you,
15 Becca, for catching me. Okay. So that is the current
16 process that we are at. I would encourage everyone here
17 to please submit written comments if you have them. And
18 then after that we will have a response to comment period.
19 Okay? That's the current timeline. Comments?

20 MS. CROCKETT: I have a question. And
21 maybe Lindsay can help here. Can you give us an estimate
22 of what the average time -- what do you think the
23 effective date of the rule is going to be? Maybe that's a
24 better question. How long is this going to take?

25 MR. TURNER: Well, it depends upon a

1 couple of factors but, you know, if we got back response
2 to comments within 30 days, if then they go in front of
3 the Lieutenant Governor's office, it could be anywhere
4 between -- and then it has to be posted for 30 days. Law
5 review. Becca, go ahead.

6 MS. SMITH: So after we get through doing
7 our public comments, response to public comments, then we
8 have to go through adoption by the commissioner, then they
9 go off to the Department of Law for Department of Law
10 review. We have absolutely no control over that time
11 frame. And I'm not going to speak for Lindsay on that
12 one. And after they go through the Department of Law
13 review, if any changes have been made, they have to come
14 back to the department for readoption, after which we
15 transmit them back to the Department of Law; Department of
16 Law transmits them to the Lieutenant Governor's office.
17 Once the Lieutenant Governor signs them, they become
18 effective 30 days after they are signed and filed.

19 So we have to wait out from there. If we can get
20 response to comments done in 30 days, plus the 30 days
21 after signing to become effective, then really the rest of
22 that time frame depends on how long it takes the
23 Department of Law to review them and do whatever.

24 MR. TURNER: The short one would probably
25 be 90 days; the long one would be four to six months.

1 MS. CROCKETT: That's really what I was
2 looking for is your best guess of, given all the work that
3 you have done, is how much time -- when you think the
4 effective date is going to be. So that's helpful.

5 MR. TURNER: That doesn't include any
6 opening for further comments or anything else. That is as
7 the schedule exists now with no other significant
8 adjustments. Any other questions or comments? Okay.
9 It's late and people are done.

10 First off, I want to thank the people on the phone
11 that are in a time zone now and are way past their
12 dinnertime for their patience and participation. I know
13 that's a big commitment for a lot of people. So thank you
14 very much for Tim and the rest of the crowd that's still
15 on the -- probably it's around 6:00 down there now. So I
16 really appreciate that. It's actually, 6:30. Again,
17 Mary, thank you very much for your effort.

18 Short of any other comments, this closes this public
19 workshop. Thank you very much, everyone, for their time.

20 (Proceedings adjourned at 4:30 p.m.)

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REPORTER'S CERTIFICATE

I, MARY A. VAVRIK, RMR, Notary Public in and for the State of Alaska do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that the proceedings were reported stenographically by me and later transcribed under my direction by computer transcription; that the foregoing is a true record of the proceedings taken at that time; and that I am not a party to nor have I any interest in the outcome of the action herein contained.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed my seal this _____ day of _____ 2007.

MARY A. VAVRIK,
Registered Merit Reporter
Notary Public for Alaska

My Commission Expires: November 5, 2008