

Appendix B

Summary of Federal Land Manager Comments and Responses

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U.S. Fish and Wildlife Service and National Park Service Comments

New York Draft Regional Haze Rule State Implementation Plan

May 18, 2009

The State of New York (NY) submitted a draft Regional Haze Rule State implementation plan (SIP), pursuant to the requirements codified in federal rule at 40 CFR 51.308(i)(2), that the U.S. Department of the Interior, U.S. Fish and Wildlife Service (FWS) received on February 17, 2009. The FWS and National Park Service Air Quality (NPS) staff participated in a conference call on March 17, 2009, with NY Department of Environmental Conservation (NYDEC) staff to discuss concerns with the draft document. Subsequently, NY decided that the FWS and NPS concerns would be considered and another draft document would be sent to FWS and NPS at a future date. We received the revised draft on April 22, 2009, and the comments below reflect our review of this most recent draft SIP.

We encourage a continued dialog between our offices, and we are willing to work with the NYDEC staff toward resolving the issues discussed below. For further information, please contact Tim Allen, FWS Regional Haze lead at (303) 914-3802.

Overall Comments

1. **Comment:** We commend NYDEC for the hard work required to write the draft SIP and the staffs willingness to discuss and consider our comments on the initial draft. However, at this

time, most of our concerns remain.

Response: Comment acknowledged.

2. Comment: One of our most significant concerns is that the Best Available Retrofit Technology (BART) requirements for this Regional Haze Plan have not been met. It is our understanding that this is due in part to the lack of the State's adoption of a BART Rule that will contain the requirements for BART controls. The NY BART rule will provide affected source owners with the opportunity to conduct "exemption modeling," breaking from the non-exemption agreement made by all Mid-Atlantic Northeastern Visibility Union (MANE-VU) States. This opportunity for the affected sources has not yet been formally extended because the absent NY BART Rule is not expected to become effective until February 2010. Therefore, it is unclear which sources will be required to perform a BART determination in the State. Additionally, the threshold by which a source may be shown to cause or contribute to visibility impairment in Class I areas affected by NY will also be contained in the upcoming NY BART Rule, thus this required information is also missing from this draft SIP. The NY draft SIP acknowledges that each source subject to BART will not be required to submit a plan detailing how it will comply with the BART requirements until mid to late 2010. Nonetheless, the approval requirements in the Environmental Protection Agency (EPA) BART Guidelines make it clear that a SIP must include not only commitments, but descriptions as to how the commitments will be implemented, both of which the NY draft SIP lacks. The EPA has many times voiced its concern and objections about States that choose to submit commitment-based SIPs. Therefore, it

is our opinion that without a complete BART analysis and determination evaluation, the SIP fails to meet one of the basic requirements intended for Regional Haze SIPs, and therefore, the NY Regional Haze SIP may not be approvable in its current form.

Response: New York must have an adopted rule in place to apply BART requirements. Promulgation of this rule is in process.

3. Comment: Additionally, the State does not provide sufficient summary or support showing that controls will account for NY's "share" of impact at affected Class I areas. The State may use information provided by the MANE-VU. However, the information provided by MANE-VU is to be used to help form information that is specific to New York, including State specific visibility apportionment. A comparison of visibility before and after NY's emission reduction efforts is imperative toward demonstrating the effectiveness of NY's SIP.

Response: Revisions have been incorporated throughout the SIP to address this comment and clarify the state-specific application of the information in this SIP. State-specific visibility apportionment information is not required or necessary, was not developed during the technical work conducted while this SIP was being prepared, and will not be available.

4. Comment: Specifically regarding Reasonable Progress evaluation and Long Term Strategies, although NY does not have any Class I areas within its boundary, it must still conduct, summarize, and conclude that controls meet the level of "reasonable." Documents

provided from MANE-VU can support this effort. However, NYDEC should provide its technical evaluation and description of its decision-making rationale. Please provide additional information explaining control level selections and the reasoning of how NYDEC supports the conclusion of reasonable control. Please relate and support the State's conclusions by using the four factors identified in the statute and rule.

Response: New York participated in consultations with the Class I states and other members of MANE-VU, and it was determined during the consultation process that the proposed levels of controls were reasonable on both a regional and state-specific basis. The means by which this determination was made is described in detail in the SIP and in Appendix J, “*Assessment of Reasonable Progress for Regional Haze in MANE-VU Class I Areas*,” Final, July 9, 2007, otherwise known as the Reasonable Progress Report. New York has committed to implementing these controls both in its participation in the regional SIP process and through direct statements in the SIP itself.

5. Comment: Furthermore, NYDEC does not specifically identify the inconsistencies of using MANE-VU based Reasonable Progress Goal calculations. These final runs are based on Clean Air Interstate Rule (CAIR), MANE-VU “asks,” and emission redistribution control assumptions. These controls are presently not realized, nor are the control commitments from other States' implementation plans which NYDEC is depending upon to accomplish reductions in the NY SIP. Therefore, more information should supplement the document that fully describes the uncertainty and whether the State or MANE-VU has any efforts planned (or in

progress) to minimize these uncertainties. Specifically addressing these future estimates with more specific projections in the State's year 2013 midterm review is important.

Response: The SIP is based on cooperative planning among the MANE-VU states. Each state must implement emission reductions that will enable the achievement of the Reasonable Progress Goals in the appropriate years. New York has no control over the other states. If controls that are required to be implemented have not been put in place and therefore, the Reasonable Progress Goals are not achieved, EPA will need to deal with the states that are involved. SIPs are not required to contain failure analyses and so this is not included in New York's document. Uncertainties related to the CAIR program can only be dealt with when the replacement program is promulgated. At this time, states are forced to assume that emission reductions under the replacement program will be equal to those assumed under the adopted and implemented CAIR rules.

6. Comment: The regional haze rule has specific requirements including that the SIP demonstrate how controls meet BART and reasonable progress.

Response: Comment acknowledged.

7. Comment: Finally, the modeling discussion does not provide sufficient detail to allow the reader to understand the strengths and limitations of the modeling exercise and how it specifically applies to NY. For example; the modeling discussion should provide a narrative

summarizing the State's description and performance evaluation of all models used, as well as a narrative that presents performance assurances for both regional and State levels including whether model projections were used in a relative or absolute manner. It is not enough to merely reference the Appendix containing the MANE-VU modeling report.

Response: The type of detail requested here belongs in an Appendix and, indeed, appears in Appendix R - "MANE-VU Modeling for Reasonable Progress Goals Model performance evaluation, pollution apportionment, and control measure benefits." However, additional detail has been added to the SIP document briefly discussing model performance.

Document Specific Comments

The remaining comments below are intended to provide specific suggestions on sections of the report which include some of the issues raised above. These comments are consistent with the priorities that we presented in our August 1, 2006, letter to the States (enclosed) that we reference in our cover letter. Our hope is that these specific comments will be helpful to NYDEC toward providing direction for building the narrative of the NY Draft SIP to satisfy the content areas mentioned above where we believe deficiencies exist.

1.0 Background and Overview of the Federal Regional Haze Regulation

8. Comment: Section 1.3, page 1-3 - We initially commented that a 2 percent contribution

of sulfate was deemed by MANE-VU as an appropriate "area of influence" for visibility impacts on Class 1 areas. We asked that NYDEC summarize in more detail the method used to make this determination. We went on to say that the State should communicate in this section why they think this method is appropriate. The discussion NYDEC provided in its April 22, 2009, reply to our initial comments will suffice. Please include it in the final SIP. That text is copied here for reference:

"MANE-VU prepared a contribution assessment document in order to identify states where emissions are most likely to influence visibility in MANE-VU Class 1 areas. Based on this analysis, MANE-VU concluded that it was appropriate to define an area of influence including all of the states participating in MANE-VU plus other states that modeling indicated contributed at least 2% of the sulfate ion at MANE-VU Class I areas in 2002. The 2% was arrived at after a review of the back trajectory and modeling results showing that states contributing 2% (or more) make up about 90-95% of total light extinction. For states contributing 5% (or more), only about 75-80% of total light extinction is accounted for. New York agrees with the 2% criteria, given the high percentage of light extinction for which it accounts. New York believes that the 2% criteria represents a level of contribution for visibility impairment from any state that needs to be assessed for mitigation. Failure to do so will result in Class I areas failing to reach their reasonable progress goals and ultimately delay needed improvements in air quality."

Response: This language has been included in the SIP in Section 1.3.

9. Comment: Finally, we are asking again that NYDEC indicate what effect this status has on the SIP.

Response: The discussion under Comment 8 above has no “status.” However, New York agreed with MANE-VU’s assessment and decision to use the 2% rule based on visibility improvement. With the cutoff level of 2%, about 90-95% of total light extinction emissions are accounted for. Using a lower cutoff would provide little return, especially given the accuracy of inventories and models in general which are not usually 100%. Thus, the visibility impacts presented in the SIP are the most accurate that could be expected given the methods and data available.

10. Comment: Section 2.1, page 2-1 - Several paragraphs offer reasons why the SIP was not provided to EPA by the statute-mandated date of December 17, 2007. These paragraphs mislead the reader into thinking that the State had no role or responsibility in the late completion of the NY SIP. In all fairness, NYDEC should communicate in the SIP that the due date of December 17, 2007, was clearly established in the Regional Haze Rule in June 1999, and all States, Regional Planning Organizations (RPOs) and FLMs have been aware of this deadline for some time.

Response: The language in the SIP provides sufficient and appropriate discussion on the

status of the SIP.

11. Comment: Figures 7-1, 7-4, 7-6, 7-7, and 7-10, pages 7-10, 7-14, 7-17, and 7-20 - These figures provide pre-baseline, State specific, and emission levels of several pollutants. In our initial comments, we pointed out that the value of how these figures supported the conclusions of the NY SIP was unclear. We went on to say that regional haze baseline emissions in the draft NY SIP are defined as 2000-2004 and 2002 for monitoring and emissions, respectively. Additionally, tables also are labeled as V2 2002 emissions where the State identifies version 3 as the emission database used. We asked that NYDEC communicate how these figures contributed to the conclusions of the SIP. In response to our comments the State replied that:

"These figures show SO₂, NO_x, PM₁₀, PM_{2.5} and ammonia emissions trends in the MANE-VU states extracted from the NEI for the years 1996, 1999, and the 2002 MANE-VU inventory. Comparing emissions from each year, these figures provide an indication of whether there is an identifiable trend in emissions prior to the base year, as well as to provide the ability to show the relative emissions on a state-specific basis for these three years. The reader is thus able compare the relative emissions from each state as well as to assess whether a trend in emissions is evident over this period. This information is useful in determining what air program-related changes might have been effective in influencing the levels of these pollutants in recent years, and is suggestive of what trends might be seen in the first planning period. For example, the discussion of these figures

related to SO2 suggests that most states show declines in year 2002 as compared to 1996 emissions. Where it occurred, the upward trend in emissions after 1996 likely reflects electricity demand growth during the late 1990s combined with the availability of banked emissions allowances from initial overcompliance with control requirements in Phase 1 of the EPA Acid Rain Program. Understanding the material presented in these graphs is useful in determining how to project emissions and judging whether projections are reasonable. The interpretation of each graph is discussed in detail in the adjacent portions of section 7."

This language is very useful in helping the reader to understand what information NYDEC intends these graphs to communicate. Please include it in this section of the SIP.

Response: This language was inserted in the SIP as new section 7.5.6.

12. Comment: Section 7.6 - NYDEC did an excellent job identifying and discussing how the State's emissions compare with that of MANE-VU's, and the section provides the reader with helpful information.

Response: Comment acknowledged.

8.0 Best Available Retrofit Technology (BART) Requirements

13. Comment: Section 8.4, page 8-6 - In the last paragraph of the page, NYDEC indicates that only after rulemaking is complete (in 2010), will a final list of BART-eligible facilities be identified. This statement and subsequent wording in section 8.5 imply that work toward evaluating BART determinations has not begun. Please explain why the BART process cannot or has not begun as of the submittal of this draft SIP to the FLMs. Our experience from working with other States and RPOs is that BART analysis often begins and proceeds prior to the finalization of BART rulemaking.

Response: New York cannot presume the result of any rulemaking until a state rule is in place. This includes compelling BART-eligible sources to conduct a BART analysis. There is no way to circumvent this under state law. A preliminary analysis has been done by NESCAUM. This analysis says in New York State less than 20 sources are BART-eligible. Until rulemaking is completed, final determinations cannot be made.

14. Comment: As we mentioned above, the Regional Haze SIP as submitted does not contain any BART determinations for sources that have heretofore been identified as likely BART candidates. Kodak Park Division, a chemical manufacturer, and Lafarge Building Materials, Inc., a Portland cement manufacturer, are the only non-CAIR sources expected to be affected by NY BART requirements as identified by MANE-VU and by NYDEC. As we understand, NYDEC will require BART-eligible Electric Generating Units (EGUs) to undergo a BART determination, even though the State promulgated the CAIR under 6 NYCRR Parts 243, 244, and 245. MANE-VU identified 19 EGUs in New York among the top 167 stacks in the

MANE-VU region for which a 90 percent reduction in SO₂ emissions is recommended by the RPO. Table 9-4 provides a listing of these units, along with the planned NO_x and SO₂ emission controls. However, without BART determinations accompanying the draft NY SIP, the reader is left wondering how these proposed emission controls were derived. A review of the listed proposed SO₂ controls concludes that only two of the units will achieve 90 percent SO₂ reduction.

Response: DEC recognizes that not all BART-eligible facilities were accounted for in the modeling. This is not possible given the uncertainty of the list of potential BART sources. However, the modeling done by the RPO (MANE-VU) identified the two largest BART-eligible sources in New York contributing to visibility impairment in downwind Class I areas. Modeling including just these two sources demonstrated that Reasonable Progress Goals will be achieved. Identifying and controlling additional BART-eligible sources, once they are identified (including EGUs that would not otherwise have been required to meet BART control requirements), and requiring controls can only improve the visibility beyond that projected in the SIP.

The expected control efficiencies listed in Table 9-4 are those presently planned under other portions of New York's air program, and are among those that will be evaluated for the best method by which 90% controls will be achieved. In the meantime, New York has committed to achieving 90% control for these source or the equivalent.

15. Comment: The low sulfur fuel oil reduction strategy outlined in Section 9.4c of the NY

draft SIP will revise the State's current fuel sulfur limits (6 NYCRR Part 225) and will implement NY's Reasonable Progress Goals. Since the expected effective date of these provisions is 2012, the NYDEC should consider requiring similar fuel sulfur limits in evaluating BART determinations.

Response: We understand that low sulfur fuel is a control measure for BART at facilities. Fuel sulfur limits are always evaluated as potential control options for those pollutants for which combustion is a contributing process.

16. Comment: Section 9.6 of the New York RH SIP references "eight" non-CAIR sources included in the modeling used to set reasonable progress goals that would likely be controlled under BART alone. The section clarifies that these sources appear in Table 9-6, but this table lists only two of these eight sources. If our understanding is correct, NYDEC should make it clear that these are the only two sources in NY among the eight sources referenced. Upon further discussion, the FLMs said if EPA doesn't receive the states' BART determinations by January 2010, EPA may do the BART determinations.

Response: Two BART sources were included in the modeling due to the high expectation that these sources will be subject to BART controls. See the response to comment 14 for additional detail.

The content of Table 9-4 is sufficiently explained in the text of Section 9.3. The New

York sources can easily be identified in the table's column and row titles, and labeling. We have included a map of New York State in the SIP which shows tentative EGU and non-EGU BART sources.

17. Comment: Section 8.3, page 8-4 - NY's BART rule is expected to provide source owners with the opportunity to conduct "exemption modeling" that demonstrates that the candidate sources do not cause or contribute to visibility impairment in Class I areas. This opportunity is not consistent with agreements made by MANE-VU States and therefore requires a discussion on how this deviation may or may not affect projects made by the MANE-VU organization.

Response: New York is not aware of entering into any agreement not to conduct exemption modeling, nor is this necessary to meet reasonable progress goals. If a potential BART source can demonstrate that its emissions do not "cause or contribute" to visibility impairment in any Class I area, the requirement to install BART controls will not apply under the federal rule, and sources should not be forced unnecessarily to install controls based on an RPO policy, especially to one that which New York has not agreed. Furthermore, arbitrarily requiring that controls be installed by sources that cannot be shown to have a visibility impact would be pointless and a waste of resources both for regulatory agencies and source owners. States have the option of choosing whether to allow for exemption modeling, and New York is fully justified in providing for it.

18. Comment: If NY does intend to reevaluate BART from the original eligible list, the State

should provide in the NY SIP the source names and descriptions that were developed and provided to MANE-VU for analysis several years ago. BART eligibility is based on Federal criteria, and there is no reason that it should be postponed due to the lack of a State rulemaking.

Response: A list of facilities at which potential BART-eligible sources is provided under Section 8.4 along with a New York State map showing their locations. New York cannot apply the requirements of the federal BART rule, including requiring the conduction of BART assessments by potential BART sources, until a state rule is in place. Upon completion of the state rule the BART determinations will be made and BART will be implemented on an expeditious schedule.

9.0 Reasonable Progress Goals (RPGs)

19. Comment: Section 9.1, bottom of page 9-2 - NYDEC commits "to reducing emissions at least equal to those predicted in the model, through the measures described above." Please either summarize the MANE-VU Contribution Assessment (Appendix A) or refer the reader to another section of the main body of the SIP describing this statement. The information presented is not sufficient to explain to the reader how NYDEC will meet this objective.

Response: As the SIP mentions, DEC is committed to reach this objective by implementing the MANE-VU recommendations. This is fully explained in Chapter 9, and specifically in Section 9.4.

20. Comment: Section 9.5, page 9-16 - NYDEC asserts that because the State does not contain a Class I area, the State has no requirement to evaluate NY's emission control strategy using the statutory four factors. This is not accurate. As a significant contributor to visibility impairment at one or more Class I areas, it is the State's responsibility to evaluate emission reduction controls, as the regulatory authority, for reasonableness based on the four factors for each Class I area. Although a State containing the Class I area or the RPO can suggest "reasonable" control levels, each State must make a final determination themselves.

If NYDEC agrees with the analysis of the four factors produced by MANE-VU (or someone else), please present the four factor analysis and clearly state that it represents NYDEC's view in this section.

Response: The language suggesting that New York is not required to evaluate NY's emission control strategy using the statutory four factors was incorrect and was removed.

The four-factor analysis is discussed in detail in section 9.2. Its application in New York is detailed in Section 9.4. The statement at the beginning of the section (“New York State is committed to reducing emissions at least equal to those predicted in the model, through the measures described above. These are reasonable measures designed to meet our CAA Section 110(a)(2)(D) obligations.”) clearly indicates that New York accepts the four factor analysis in the SIP as the basis for the strategy for reducing visibility-impairing pollutants.

21. Comment: Section 9.8 forward - Air quality dispersion modeling results are presented showing improvements to PM concentration resulting from low sulfur fuel strategies and 90 percent reductions in SO₂ to the 167 EGU stacks. Please provide narrative summarizing the State's description and performance evaluation of all models used. Please present performance assurances for both regional and State levels as well as whether model projections were used in relative or absolute sense. The language added in this recent draft SIP does not adequately address the information we are requesting. Again, as stated in our overall comment section, the modeling discussion does not provide enough detail of the caveats associated with the model to enable the reader to fully understand the limitations of the conclusions made based upon the output of the model and how they specifically apply to NY.

The added language does not include a narrative of the State's description and performance evaluation of all the models used; nor does it include a discussion that presents performance assurances for both regional and State levels including whether the models were used in a relative or absolute manner. Again, it is not enough to merely reference the Appendix containing the MANE-VU modeling report. The State must explain how the information was considered by NYDEC and how it was applied specifically to NY.

Response: A brief description of the models and the performance analysis was placed in the text in Section 9.5.1, and has been supplemented. All other detail can be found in Appendix R - "MANE-VU Modeling for Reasonable Progress Goals Model performance evaluation, pollution apportionment, and control measure benefits" as is appropriate.

22. Comment: Section 9.12, page 9-25 - The narrative communicates that because NY is a member of a group of States that are controlling emissions, and that because the group's strategy has been shown through computer modeling to meet the EPA's uniform glide slope guideline for all Class I areas, "NY will therefore meet its obligation under the SIP and Regional Haze Program." This is neither a reasonable nor an appropriate conclusion to make without further details provided in the SIP and a commitment that NY's strategies provide a "share" of reasonable progress.

In order to state that NY is meeting its obligations for the SIP and the Regional Haze program, the State must discuss its specific emission reductions and conclude that the reductions are "reasonable" based on the four factors. As part of this demonstration, the State may also examine its emission reductions that will provide for the State's "share" in reaching a specific Class I area's apportionment request.

For example, in section 7.6, when discussing the RPO and State emissions, NYDEC offered a before-and-after total of Statewide emission levels broken down by pollutant species. NYDEC could take this same approach in demonstrating the before-and-after of visibility impacts at the Class 1 areas affected by emissions originating in NY. If the regional modeling is not sufficient to demonstrate NY's contribution to extinction at the affected Class I areas; the SIP should document the changes in extinction achieved by the regional plan at these Class I areas, by pollutant species, and compare those overall extinction changes with changes in NY's emissions of the associated precursor emissions. This would help assure that the State is

contributing its "share" toward reasonable progress. It may help to discuss the specific sources or regions with significant size/location relationships with a Class I area where controls are located. Although categorical controls are effective, specific control evaluation is very important because Class I areas are not evenly distributed geographically. If NYDEC believes that emissions reductions in any part of the State contributes more or less proportionally toward reductions in associated visibility impairing aerosols in all the affected Class I areas, then the SIP should present that working assumption in support of an assessment of statewide reductions as meeting reasonable progress requirements.

Response: A description of the four factor analysis and the reasonable reductions expected as a result of the analysis are contained in Section 9. The application of this analysis to New York is fully described in the SIP.

Emission reductions resulting from New York's are described in Section 7, Emissions Inventory. However, MANE-VU did not provide New York with state-specific extinction modeling information, nor does it appear to have been a product of the work done by MANE-VU. New York has agreed to implement controls to reduce emissions and has agreed to implement a reasonable control strategy as defined by the Class I states. DEC has thus made commitments to reduce emissions and improve visibility in Class I areas by agreeing to the reasonable measures proposed by MANE-VU.

23. Comment: The State must include in the SIP a discussion that reviews visibility

conditions in affected Class I areas before and after NY control efforts. Otherwise, there is no demonstration that the control efforts will be effective. The Regional Haze Rule makes the requirement for visibility apportionment from each State clear. At 40 CFR 51.308(d)(3)(ii), the rule states:

"The State must demonstrate that it has included in its implementation plan all measures necessary to obtain its share of the emissions reduction needed to meet the progress goal for the area. If the State has participated in a regional planning process, the State must ensure it has included all measures needed to achieve its apportionment of emission reduction obligations agreed upon through the process." (Italics are added for emphasis.)

It is reasonable to assume that in order for the State to ensure it has included all measures needed to achieve its apportionment that each State needs to know what that apportionment is.

At 40 CFR 51.308(d)(3)(iii), the rule states:

"The State may meet this requirement by relying on technical analyses developed by the regional planning organization and approved by all State participants."

The claim that NY State-specific visibility apportionment is not required because MANE-VU has performed the analyses and the member States (including NY) have agreed on the measures to achieve the reasonable progress goal and approved the analyses is insufficient.

MANE-VU did not provide its member States with visibility apportionment information, so therefore NYDEC cannot make claim that it is relying on the RPO's technical analyses because the MANE-VU technical analyses are incomplete. The language in the rule assumes that the technical analyses done through the regional planning process included State-specific apportionment information. Furthermore, the rule states that every State must demonstrate that it has included in its SIP "all measures" necessary to obtain "its share of the emissions reduction" needed to meet the progress goal for the area. NYDEC cannot state or demonstrate that all measures necessary for NY are included in the SIP to meet area progress goals, when the State has no idea how its share of emission reductions will affect visibility in each Class I area.

Response: The comment incorrectly assumes that individual states must discuss their specific emission reductions. The citations provided from 51.308(d)(3), being extremely general, do not support this position. If anything, the second citation at 40 CFR 51.308(d)(3)(iii) validates New York's level of analysis in this document SIP since control measures were identified "by relying on technical analyses developed by the regional planning organization and approved by all State participants."

The control strategy developed in this SIP through MANE-VU was intended to derive a set of control measures based on the four-factor analysis that, if each state that is a member of the RPO adopts them, will enable the visibility of the Class I areas to meet the required reasonable progress goals. State-specific visibility apportionment information was not developed during the technical work conducted while this SIP was being developed and will not

be available. A commitment on the part of New York to implement the control strategies requested by the Class I states (i.e., the “Ask”) is sufficient evidence that New York will meet the reasonable progress goals. Only future monitoring data will be able to determine, if, in fact, the Class I area has met the reasonable progress goal.

DEC is committing to the level of reductions described in the MANE-VU Ask. The required 5-year progress reports and the mid-course review will allow the monitoring of progress and ensure that reasonable progress goals are being achieved.

24. Comment: The State has done a good job discussing its commitment to ensure that the New Source Review/Prevention of Significant Deterioration (PSD) Program in the State will work toward the interests of their regional haze goals. Please provide information on how NYDEC will use future permit review to contribute to progress in the regional haze process. Adding language that NYDEC intends to meet the requirement of full consultation with the FLMs for review of visibility impacts required by the NSR/PSD programs is one suggestion.

Response: The discussion of NSR/PSD in Section 10.3.3 (pp.10-31 through 10-33) contains this information, as well as detailing the need to involve FLMs in the review of projects affected by this program. Sections 10.8 and 10.10 additionally contain a description on how the requirements of the NSR/PSD program are applied through permitting.

10.0 Long Term Strategy

25. Comment: Section 10.2.2, page 10-6 - Consider adding tables similar to 10-1 to include future apportionment modeled predictions in both a percentage and mass basis.

Response: State-specific visibility apportionment information was not produced during the technical work conducted while this SIP was being developed, is not required or necessary, and will not be available.

26. Comment: Section 10.2.4, page 10-16, last paragraph - Simply stating that model performance was conducted by the provider is insufficient. Please provide a summary of RPO and State-level model performance of all tools utilized for the SIP. Please see comment 21.

Response: Please see the response to Comment 22.

27. Comment: Section 10.4.2, page 10-45 - The language added to this section in response to our initial comment is helpful. The language does a great job discussing MANE-VU's approach, but it doesn't include language that concludes that this approach is the approach for NY. Please elaborate in this section to include how the MANE-VU approach applies to the specific nature and sources within NY.

Response: Reviewers should refer to section 9.4 (especially section 9.4.1 which discusses New York's application of this approach in great detail) for the requested information on controls, and section 9.2.2 for the discussion on the application of the four-factor analysis in

deriving these control strategies.

28. Comment: Section 10.5.2, page 10-55 - The section on Agricultural and Forestry Smoke Management is exemplary.

Response: Comment acknowledged.

29. Comment: Section 10.7, page 10-62, second paragraph - This paragraph concludes that measures taken by NYDEC are reasonable and therefore, meet the State's "share." More information is needed in order to substantiate this claim. Please see comment 21.

Response: Please see the response to Comment 22.

**USDA Forest Service Comments Regarding
New York Draft Regional Haze Rule State Implementation Plan (SIP)**

The air program staff of the U.S. Forest Service has reviewed the New York Draft Regional Haze State Implementation Plan (SIP) dated April, 2009, and has developed the comments listed below. We look forward to the New York Department of Environmental Conservation (NY DEC) response to these comments, as required in the Code of Federal Regulations (CFR) per section 40 CFR 51.308(i)(3). For further information regarding these comments, please contact Ralph Perron at (802) 222-1444 (rperron@fs.fed.us) or Rick Gillam at (404) 347-5058 (rgillam@fs.fed.us). The comments below are categorized by the emphasis areas outlined in our letter to Mr. David Shaw dated October, 13, 2006, included as Enclosure 2. That letter discussed our perspectives relevant to Regional Haze SIP preparation.

Overall Comments:

30. Comment: We are interested in the New York Regional Haze SIP because analyses conducted by MANE-VU have shown that air emissions sources located in New York affect visibility in Forest Service Class I areas in the states of Vermont and New Hampshire (see Section 1.4 of Draft SIP and Attachment B – MANE-VU Contribution Assessment). Overall, New York has done a commendable job compiling the Regional Haze SIP and addressing the requirements of the Regional Haze Rule. The following sections provide our comments related to specific sections of the Draft SIP.

Response: Comment acknowledged.

Specific Comments:

Natural Condition and Uniform Rate (Sections 5, 9 and 10 of Draft NY RH SIP)

- No comments.

Emission Inventories (Section 7 of Draft NY RH SIP)

- No comments

Area of Influence (Section 1of Draft NY RH SIP)

- No comments

Reasonable Progress Goals and Long Term Strategy (Sections 9 and 10 of Draft NY RH SIP)

- No comments

Wildland Fire (Section 10.5.2 of Draft NY RH SIP)

31. Comment: On May 6, 2009, we participated in a conference call with representatives from NY DEC to discuss questions related to the Draft Regional Haze SIP. Considering the information that was provided and discussions that occurred during the call, we request that the

following changes be made in Section 10.5.2.

- p. 10-55, 6 lines from bottom, please consider removing the phrase “Steps are taken to ensure that burning will not result in an increase in air pollution...” and replace with “Steps are taken to ensure that air quality impacts are minimized during burning...”
- p. 10-55, 13 lines from top, “Prescribed burns are those that are less than 10 acres in size.” Perhaps the state statute should be listed here, as prescribed burns may be larger than 10 acres in size.
- P. 10-55, 4 lines from bottom, “ ...the prescribed burn plans for an area 10 acres or more must go through a State Environmental Review and Department review process.” Please consider adding a phrase that USDA Forest Service lands and Department of Defense lands are exempt from the review process for all prescribed burns. The Forest Service has processes in place to protect air quality and inform the public and communities prior to the initiation of prescribed burning activities on Forest Service lands and Ft. Drum. We will also continue to notify and keep the State of New York informed of our prescribed fire activities.

Response: The above changes have been made.

Regional Consistency (Section 3 of Draft NY RH SIP)

- No comments.

Verification and Contingencies

- No comments.

Coordination and Consultation (Section 3, 4 and 9.1, and 10.9 of Draft NY RH SIP)

- No comments.

Best Available Retrofit Technology (BART) (Section 8 of Draft NY RH SIP)

32. Comment: The Draft SIP does not contain emissions limitations representing Best Available Retrofit Technology (BART) for sources that have been determined to be BART-eligible. Section 8.0 of the draft SIP indicates that New York “has developed a strategy to implement BART that includes the adoption of a state rule that will contain the requirements for BART controls.” Based on the discussion in Section 8.4 of the draft SIP, it appears that New York’s BART Rule (if unchanged from that described) will address the requirements of the federal BART rule and will require controls to be in place by January 2013. We support New York’s commitment to have the BART determinations completed and to have any necessary emissions controls in place by January 2013. We recognize that this date follows the 5-year timeframe outlined in the Federal BART Rule (based on the regulatory due date for the Regional Haze SIP of December 2007). However, we are concerned that since the process of conducting the BART determinations has not yet begun, and that New York’s BART rule has not yet been finalized, it will be difficult for New York and the affected BART facilities to complete the

process by the January 2013 deadline. We encourage New York to move forward with the BART process as expeditiously as possible.

Response: New York cannot apply the requirements of the federal BART rule, including requiring the conduction of BART assessments by potential BART sources, until a state rule is in place. Upon completion of the state rule the BART determinations will be made and BART will be implemented on an expeditious schedule.

33. Comment: In our preliminary comments on the Draft SIP submitted for FLM review in February 2009, we requested that the Forest Service be provided a 60-day review period on BART determinations. NY DEC responded by stating “New York understands the U.S. Forest Service’s need to review the BART determinations and commits to working with the Federal Land Managers (FLMs) and their other federal partners in implementing the BART program.” We appreciate that New York recognizes the important role of the FLMs in the BART determination process. Section 8.4 of the Draft SIP provides a schedule for the NY BART rulemaking and describes the actions that will be taken to implement the rule. We request that a statement be added to Section 8.4 indicating that the FLMs will be provided a 60-day review period for the BART determinations, including any BART exemption modeling demonstrations.

Response: This statement has been added.

Additional Suggestions:

34. Comment: Page 10-41, 11 lines down from top, “Quebec’s five-year report on their reduction efforts to date discussed the measures taken from 2001 to 20054.” Should 20054 be corrected to 2005?

Response: This correction has been made.