

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

State Implementation Plan (SIP) for Air Quality

To Address Infrastructure Requirements of Section 110(a)(2)(A)-(M) of the Clean Air Act (CAA) to Implement the 2012 Particulate Matter 2.5 (PM_{2.5}) National Ambient Air Quality Standard (NAAQS)

**Adopted
[MONTH & DATE, 2015]**

Kelsey Curran, CIH, Chair
Albuquerque-Bernalillo County Air Quality Control Board

ACKNOWLEDGEMENTS IN THE PREPARATION OF THIS DOCUMENT

Ed Merta, Air Quality Regulation Development Coordinator
Control Strategies Section, Air Quality Program (AQP)
Principal Author, Editor, SIP Submittal

Margaret Nieto, Control Strategies Manager, EHD
Project Oversight

Air Quality Monitoring and Assurance Section, EHD
Air Monitoring and Data Program Information

Regulatory Development Committee, EHD
Peer Review

LIST OF ABBREVIATIONS AND ACRONYMS

$\mu\text{g}/\text{m}^3$	Micrograms per cubic meter
AAMNP	Annual Air Monitoring Network Plan
AQCA	New Mexico Air Quality Control Act (also referred to as “Air Act”)
AQCB	Air Quality Control Board (also referred to as “Air Board”)
AQP	Air Quality Program
AQS	Air Quality System
CAA	Clean Air Act
CFR	Code of Federal Regulations
EPA	Environmental Protection Agency
Fed. Reg.	Federal Register
GHG	Greenhouse gasses
iSIP	Infrastructure State Implementation Plan
NAAQS	National Ambient Air Quality Standards
NEI	National Emissions Inventory
NM	New Mexico
NMAC	New Mexico Administrative Code
NMSA	New Mexico Statutes Annotated
$\text{PM}_{2.5}$	Particulate matter less than 2.5 micrometers in diameter
PM_{10}	Particulate matter less than 10 micrometers in diameter
PSD	Prevention of Significant Deterioration
ROA	Revised Ordinances of the City of Albuquerque
SIP	State Implementation Plan
SLEIS	State and Local Emissions Inventory System

Introduction

A State Implementation Plan (SIP) identifies how the state will attain and maintain the primary and secondary National Ambient Air Quality Standards (NAAQS) under the Clean Air Act (CAA). The SIP contains statutes, regulations, source-specific requirements, non-regulatory items such as plans and inventories, and in some cases additional requirements promulgated by the U.S. Environmental Protection Agency (EPA). The initial SIPs for states were approved by EPA in 1972. 37 Fed. Reg. 10,842-10,906 (May 31, 1972). A state may revise its SIP with EPA approval as necessary. The federally enforceable SIP for New Mexico (including Bernalillo County) is compiled in 40 C.F.R. Part 52, Subpart GG, subsections 1620-1640.

Sections 110(a)(1) and 110(a)(2) of the CAA require that, within three years of EPA promulgation of a new or revised NAAQS, each State must submit a plan known as an “infrastructure SIP” (iSIP). “Infrastructure,” in this context, means the programs, policies, activities, resources and authority by which the state will attain, maintain, and enforce the new NAAQS. The iSIP describes these elements in detail.¹ Section 110(a)(1) of the CAA addresses the timing requirement for the submissions of any iSIP revisions, while Section 110(a)(2) lists the required elements that comprise the iSIP.

On December 14, 2012, the Administrator of the U.S. Environmental Protection Agency, Lisa Jackson, promulgated a new NAAQS for particulate matter less than or equal to 2.5 micrometers in diameter (“PM_{2.5}”) [referred to below as the “2012 PM_{2.5} NAAQS”], effective March 18, 2013.² Based on its review of the air quality criteria and the NAAQS for particulate matter, EPA made revisions to the primary PM_{2.5} NAAQS in order to provide the requisite protection of public health and welfare.³ Specifically, EPA revised the primary (health based) annual PM_{2.5} standard by lowering the level from 15.0 to 12.0 micrograms per cubic meter (µg/m³) so as to provide increased protection against health effects associated with long- and short-term exposures, including premature mortality, increased hospital admissions and emergency department visits, and development of chronic respiratory disease.⁴ EPA also eliminated spatial averaging provisions as part of the form of the annual PM_{2.5} standard to avoid potential disproportionate impacts on at risk population.⁵

Based on existing monitoring data, EPA has issued an initial classification of the Albuquerque - Bernalillo County area as “unclassifiable/attainment” under the 2012 PM_{2.5} NAAQS.⁶ This classification, EPA has stated, is used “for areas that are monitoring attainment and for areas that do not have monitors but for which the EPA has reason to believe are likely attainment and are not contributing to nearby

¹ More information on the SIP process is available at <http://epa.gov/airquality/urbanair/sipstatus/>.

² 78 Fed. Reg. 3,086 (Jan. 15, 2013).

³ 78 Fed. Reg. 3,086 (Jan.15, 2013).

⁴ 78 Fed. Reg. 3,086, 3,088 (Jan.15, 2013).

⁵ 78 Fed. Reg. 3,086, 3,087-3,089 (Jan.15, 2013). EPA retained other existing primary and secondary standards for PM_{2.5} and PM₁₀. EPA did, however, alter the form of the secondary (welfare based) annual PM_{2.5} standard, removing the option for spatial averaging in a manner consistent with this change in the form of the primary annual PM_{2.5} standard.

⁶ 80 Fed. Reg. 2,206 (Jan. 15, 2015).

violations [of a NAAQS in other air quality control regions].”⁷ Albuquerque - Bernalillo County will continue to provide ambient air quality monitoring data to EPA as required under the Clean Air Act and its implementing regulations.⁸

Albuquerque-Bernalillo County has not yet incorporated the 2012 PM_{2.5} NAAQS into the regulations implementing the CAA.⁹ It plans to do so in a future rule-making. Until that time, the NAAQS as codified in the Code of Federal Regulations is fully enforceable locally.¹⁰

The matrix in the main body of this document, below, outlines the requirements of Sections 110(a)(2)(A) through (M) of the CAA [codified at U.S.C. 42 § 7410, *State Implementation Plans For National Primary And Secondary Ambient Air Quality Standards*] and addresses how Albuquerque-Bernalillo County, New Mexico will implement, maintain and enforce the 2012 PM_{2.5} NAAQS.

Legislative authority for Albuquerque-Bernalillo County’s air quality program is codified in the New Mexico Air Quality Control Act (Air Act), Chapter 74, *Environmental Improvement*, Article 2, *Air Pollution*, of the New Mexico Statutes Annotated 1978 (NMSA 1978). Section 4 of this statute authorizes the creation of a “local authority” by a New Mexico county or municipality meeting certain criteria if the county or municipality adopts an ordinance providing for the local administration and enforcement of the Air Act. Albuquerque and Bernalillo County meet these statutory criteria in the Air Act. The City of Albuquerque and Bernalillo County each adopted parallel ordinances by which they accepted the authority delegated by the Air Act, established the Joint Air Quality Control Board (Air Board), and specified that the Air Board shall adopt regulations consistent with the Air Act and shall adopt a plan for the regulation, control, prevention or abatement of air pollution throughout Bernalillo County. These parallel ordinances provide that the Albuquerque Environmental Health Department is the administrative agency of the Air Board. The EHD is part of the Environmental Health Department. The Albuquerque and Bernalillo County ordinances are codified at Revised Ordinances of the City of Albuquerque (ROA) §§ 9-5-1 to -99 and Bernalillo County Ordinance 94-5 §§ 1 to -20 [codified at Art. II, Ch. 30, §§ 30-31 to 47].¹¹

Albuquerque-Bernalillo County has already submitted the following legal authorities with earlier SIP submissions now awaiting EPA approval. The full text of these authorities is not included in this iSIP

⁷ Letter from Ron Curry, Administrator of EPA Region 6, to Susan Martinez, Governor of New Mexico, August 19, 1994 (designating Albuquerque - Bernalillo County as “unclassifiable/attainment” for purposes of 2012 PM_{2.5} NAAQS). *See also* 80 Fed. Reg. 2,206, 2,256 (Jan. 15, 2015).

⁸ For more details on EPA’s air quality designation process, see the Federal Register publication of EPA’s initial round of designations under the 2012 PM_{2.5} NAAQS, 80 Fed. Reg. 2,206 (Jan. 15, 2015).

⁹ 20.11.8 NMAC, *Ambient Air Quality Standards*.

¹⁰ The codification of the New Mexico State Implementation Plan in the Code of Federal Regulations cites the following: “[a] letter dated May 25, 1988, from the NMEID General Counsel to EPA’s Region 6 Air Programs Chief indicating that the State of New Mexico has sufficient authority to enforce the NAAQS without adopting the Federal NAAQS as State standards.” 40 CFR § 52.1640(c)(41)(ii)(A).

¹¹ This infrastructure SIP uses the terms “Air Quality Program” and “EHD” as a shorthand reference for the longer term “City of Albuquerque, Environmental Health Department, Air Quality Program.” In all instances of such usage, the terms “Air Quality Program” and “EHD” refer to the organizational unit within the Environmental Health Department (i.e. the “air agency,” “Department,” or “EHD”, 20.11.1.7 NMAC, *General Provisions*; or the “local agency”, NMSA 1978 § 74-2-5.1) that carries out air quality regulation duties and powers of the Department under the legal authorities discussed in the above paragraph

submission but they are described in the main body of this document, addressing the required elements of CAA § 110(a)(2).

- Certain Albuquerque and Bernalillo County ordinances have been amended and re-codified since original EPA approval as part of the New Mexico SIP. To account for these changes in the ordinances since the most recent EPA approval,¹² and demonstrate that local law conforms to federal standards, the Air Board has approved a proposed revision to the State Boards SIP element that would incorporate into the SIP all currently effective applicable ordinances, policies, and programs.¹³ This PM_{2.5} iSIP document will refer throughout to the existing, most current local ordinances.
- The Air Board has approved proposed revisions to the following regulations in response to EPA rulemaking related to PM_{2.5}: 20.11.41 NMAC, Construction Permits; 20.11.42 NMAC, *Operating Permits*; 20.11.60 NMAC, *Permitting in Nonattainment Areas*; 20.11.61 NMAC, *Prevention of Significant Deterioration*.¹⁴ EPA has published a proposed rule approving the Air Board's adopted revisions to 20.11.61 NMAC.¹⁵

The main body of this document, below, explains how Albuquerque - Bernalillo County is responding to the EPA SIP call of May 22, 2015,¹⁶ regarding SIP provisions for Startup, Shutdown, and Maintenance (SSM). Additionally, the main body of this document, along with the attached technical demonstration document, also describes how Albuquerque - Bernalillo County is responding to EPA's request that infrastructure SIPs address requirements of the CAA's Good Neighbor Provision, Section 110(a)(2)(D)(i)(I).

¹² 64 Fed. Reg. 29,235 (June 1, 1999).

¹³ Letter from Ryan Flynn, New Mexico Environment Secretary, to Ron Curry, EPA Region 6 Administrator (July 26, 2013).

¹⁴ *Id.*

¹⁵ 80 Fed. Reg. 28,906 (May 20, 2015). The proposed approval also covers three small, additional amendments to 20.11.61 NMAC submitted to EPA on March 4, 2015, with a request for parallel processing of these amendments. *Id.*

¹⁶ 80 Fed. Reg. 33,840 (June 12, 2015).

Albuquerque-Bernalillo County
110(a)(2) Required SIP Elements for Particulate Matter less than or equal to 2.5 micrometers in diameter

§ 110(a)(2)(A)¹⁷	Include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions or emissions rights), as well as schedules and timetables for compliance., as may be necessary or appropriate to meet the applicable requirements of this Act.
<p><u>Control measures generally.</u> Albuquerque-Bernalillo County’s enforceable emission limitations and other control measures are authorized by the Air Act, NMSA 1978, §§ 74-2-1 to -17, together with the Albuquerque Joint Air Quality Control Board Ordinance, ROA §§ 9-5-1-1 to -99 and the parallel Bernalillo County Joint Air Quality Control Board Ordinance, 94-5 §§ 1 to -20 [collectively referred to as the “Air Act and Ordinances”]. The Air Act and Ordinances authorized creation of the Albuquerque-Bernalillo County Joint Air Quality Control Board and the Air Quality Program of the City of Albuquerque Environmental Health Department.¹⁸ The Air Act and Ordinances empower the Air Board to adopt, promulgate, publish, amend and repeal regulations consistent with the Air Act to attain and maintain NAAQS and prevent or abate air pollution.¹⁹ The Air Act and Ordinances also serve as the legal basis for establishment of the City of Albuquerque Environmental Health Department as the air pollution control agency for Albuquerque-Bernalillo County and administrative agency of the Air Board, with authority to enforce the air quality regulations of the Board.²⁰</p> <p>The City of Albuquerque and Bernalillo County adopted parallel ordinances by which they accepted the authority delegated by the Air Act, established the Air Board, and specified that the board shall adopt regulations consistent with the Air Act and adopt a plan for the regulation, control, prevention or abatement of air pollution.²¹ For additional discussion of these ordinances and their role in satisfying EPA requirements for the New Mexico SIP, see Element E(ii) of this iSIP.</p> <p>The regulations authorized by the Air Act and Ordinances and duly adopted by the Air Board are codified at 20.11 NMAC. The Air Board has promulgated rules that control emissions of particulate matter less than or equal to 2.5 micrometers in diameter and other criteria pollutants, including rules providing for emission limits, control measures, permits, fees, market-based control techniques, and compliance schedules. These rules include the following provisions applicable to control of any NAAQS pollutant, including PM_{2.5}, as well as PM_{2.5} precursors (such as NO_x, SO₂, and VOCs):</p> <ul style="list-style-type: none"> 20.11.1 NMAC, <i>General Provisions</i> 20.11.2 NMAC, <i>Fees</i> 20.11.3 NMAC, <i>Transportation Conformity</i> 	

¹⁷ This iSIP report is divided into “elements,” each addressing requirements under a specific provision of the CAA. This element addresses the requirements of CAA § 110(a)(2)(A), and thus may be referred to as “Element A” of the iSIP. Other portions of this iSIP use the same naming convention for individual iSIP elements.

¹⁸ NMSA 1978 § 74-2-4; ROA §§ 9-5-1-3 to -4; Bernalillo County Ord. 94-5 §§ 3 and 4.

¹⁹ NMSA 1978 § 74-2-5; ROA § 9-5-1-4; Bernalillo County Ord. 94-5 § 4.

²⁰ NMSA 1978, § 74-2-5.1; ROA § 9-5-1-5; Bernalillo County Ord. 94-5 § 54.

²¹ ROA §§ 9-5-1-1 to -99 and Bernalillo County Ord. 94-5 § 4.

20.11.4 NMAC, *General Conformity*
20.11.5 NMAC, *Visible Air Contaminants*
20.11.6 NMAC, *Emergency Action Plan*
20.11.7 NMAC, *Variance Procedure*
20.11.8 NMAC, *Ambient Air Quality Standards*
20.11.20 NMAC, *Fugitive Dust Control*
20.11.21 NMAC, *Open Burning*
20.11.22 NMAC, *Wood Burning*
20.11.40 NMAC, *Source Registration*
20.11.41 NMAC, *Construction Permits*
20.11.43 NMAC, *Stack Height Requirements*
20.11.46 NMAC, *Sulfur Dioxide Emissions Inventory Requirements*
20.11.47 NMAC, *Emissions Inventory Requirements*
20.11.49 NMAC, *Excess Emissions*
20.11.60 NMAC, *Permitting in Nonattainment Areas*
20.11.61 NMAC, *Prevention of Significant Deterioration*
20.11.63 NMAC, *New Source Performance Standards for Stationary Sources*
20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants for Stationary Sources*
20.11.65 NMAC, *Volatile Organic Compounds*
20.11.66 NMAC, *Process Equipment*
20.11.67 NMAC, *Equipment, Emissions, Limitations*
20.11.68 NMAC, *Incinerators and Crematories*
20.11.69 NMAC, *Pathological Waste*
20.11.71 NMAC, *Municipal Solid Waste Landfills*
20.11.90 NMAC, *Administration, Enforcement, Inspection*
20.11.100 NMAC, *Motor Vehicle Inspection - Decentralized*
20.11.101 NMAC, *Motor Vehicle Inspection - Centralized*
20.11.102 NMAC, *Oxygenated Fuels*
20.11.103 NMAC, *Motor Vehicle Visible Emissions*

The record of EPA's approval of specific New Mexico statutes, local ordinances, local regulations, and other enforceable documents into the New Mexico SIP is available at 40 CFR Part 52, Subpart GG, Sections 1620-1640.

Albuquerque-Bernalillo County has submitted certain proposed revisions to its permitting regulations to EPA and is awaiting EPA approval of these revisions.²² If such approval should be granted, the Albuquerque-Bernalillo County portion of the New Mexico SIP would be updated accordingly. Aside from these proposed revisions EHD has an EPA-approved air permitting program with related control strategies for both major and minor sources, thus ensuring that all applicable requirements are included in the source's permit.²³

Startup, shutdown and malfunction (SSM); affirmative defenses and director's discretion. On May 22,

²² Albuquerque-Bernalillo County has submitted SIP revisions applying to the following regulations and is awaiting EPA approval: 20.11 NMAC, Parts, 41, 60, and 61. In addition, EPA recently approved SIP revisions affecting 20.11.1 and 20.11.47 NMAC. 80 Fed. Reg. 26,189 (May 7, 2015).

²³ 40 CFR Part 52, Subpart GG, Section 1620(c).

2015, EPA published notice of a SIP call finding the SSM provisions of SIPs for 45 statewide and local jurisdictions substantially inadequate to meet Clean Air Act requirements.²⁴ Albuquerque - Bernalillo County was one of those jurisdictions.²⁵ The SIP call found the affirmative defense provisions of 20.11.49 NMAC, *Excess Emissions*, substantially inadequate to meet Clean Air Act requirements. The due date for submitting a proposed SIP revision to EPA addressing the finding of substantial inadequacy is November 22, 2016.

Albuquerque-Bernalillo County will comply with the deadline for responding to the SSM SIP call. It will do so after submission of this iSIP, which is due December 14, 2015. In the meantime, this iSIP will describe local SSM provisions as they currently exist, prior to submission of a proposed SIP revision responding to the SIP call.

Albuquerque-Bernalillo County’s current SSM regulation is 20.11.49 NMAC, *Excess Emissions*, which EPA approved in 2010. 75 Fed. Reg. 5698-5701 (Feb. 4, 2010). Under this regulation, EHD does not exempt from enforcement excess emissions that occur during start-up, shutdown, maintenance, or malfunction. Emissions in excess of permit or regulatory limits are presumptive violations, but are subject to affirmative defenses with the burden of proof on the respondent. The affirmative defense provisions appear in 20.11.49(A), 20.11.49(B), and 20.11.49(C) NMAC. It is these provisions that are the subject of EPA’s May 22, 2015 SIP call on SSM provisions.²⁶

The current statutes, ordinances, and regulations governing EHD’s enforcement and maintenance of the 2012 PM_{2.5} NAAQS do not contain “director’s discretion” provisions that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA.

§ 110(a)(2)(B)	Provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality; and (ii) upon request, make such data available to the Administrator.
-----------------------	--

EHD is authorized to conduct monitoring of ambient air quality: “[T]he local agency . . . shall develop facts and make investigations consistent with the [state] Air Quality Control Act.”²⁷ Monitoring develops facts and investigates Bernalillo County air quality. Thus, the Air Act and Ordinances authorize EHD to conduct its monitoring program.

Monitoring is also mandated by EPA regulations. Therefore, under both state statute and federal regulations, EHD has the obligation and authority to monitor air quality for PM_{2.5} at appropriate locations in accordance with EPA’s ambient air quality monitoring network requirements, 40 CFR parts 53 (“Ambient Air Monitoring Reference and Equivalent Methods”) and 58 (“Ambient Air Quality Surveillance”). EHD’s monitoring program implements the following specific federal regulatory requirements:

²⁴ 80 Fed. Reg. 33,840 (June 12, 2015).

²⁵ 80 Fed. Reg. 33,840, 33,968 (June 12, 2015) (finding affirmative defense provisions of 20.11.49 NMAC, *Excess Emissions*, substantially inadequate to meet CAA requirements).

²⁶ The SIP call also finds that the inadequacy of the above cited provisions affects other portions of the regulation. These are: 20.11.49.15(B), 20.11.49.16(D), 20.11.49.16(E), 20.11.49.18 and a portion of 20.11.49 NMAC.6. 80 Fed. Reg. 33,840, 33,968 (June 12, 2015).

²⁷ NMSA 1978, 74-2-5.1(B); ROA § 9-5-1-5(B) (similar); Bernalillo County Ord. 94-5 § 5(B).

- providing for submission of data to EPA’s Air Quality System in a timely manner, 40 CFR part 58;
- providing EPA with annual monitoring network plans, 40 CFR part 58.10 (“Annual monitoring network plan and periodic network assessment”);
- obtaining EPA’s approval of any planned changes to monitoring sites or to the network plan, 40 CFR 58.14 (“System Modification”).

Pursuant to the above authority, EHD maintains a monitoring network throughout Bernalillo County to assess ambient concentrations for all of the NAAQS, including PM_{2.5}. All monitors are subjected to the quality assurance requirements of 40 CFR Part 58, Appendix A. Monitors are located at sites that have met the minimum siting requirements of Part 58, Appendix E. All data is submitted to EPA’s Air Quality System (AQS) in accordance with the schedule prescribed by 40 CFR Part 58.

As part of its responsibility for maintaining the monitoring network, EHD submits for EPA review an *Annual Air Monitoring Network Plan* (AAMNP).²⁸ This document describes how EHD has complied with monitoring requirements and explains any proposed changes. EHD submitted its 2014 AAMNP on July 10, 2014 and received notification of EPA approval on February 3, 2015.²⁹ While EPA has not made an official designation for Bernalillo County of attainment or nonattainment, ambient air quality data reported in the 2014 AAMNP showed PM_{2.5} levels at the following levels at two different monitoring sites.³⁰

Site name	2011-2013 Design Value (% of primary & secondary 24-hour standard)	2011-2013 Design Value (% of primary annual standard)
Del Norte 0023	49.4%	54.4%
SE Heights 0024	49.3%	55.0%

The 2015 AAMNP has been submitted to EPA but not yet approved by EPA. The 2015 AAMNP shows the following PM_{2.5} levels at the above two monitoring facilities.

²⁸ 40 CFR § 58.10.

²⁹ Letter from Mark Hansen, Associate Director for Air Programs, Acting, EPA Region 6, to Danny Nevarez, Deputy Director, Albuquerque Environmental Health Department (February 3, 2015).

³⁰ Albuquerque Environmental Health Department, Air Quality Program, Ambient Air Monitoring Section, 2014 Annual Network Review for Air Monitoring, p. 6.

	Site name	2012-2014 Design Value (% of primary & secondary 24-hour standard)	2012-2014 Design Value (% of primary annual standard)
	Del Norte 0023	44.9%	54.2%
	SE Heights 0024	45.7%	52.8%

The EPA-approved 2014 AAMNP, and the AAMNP submitted in 2015, described ongoing activities for monitoring PM_{2.5}. These activities comply with EPA requirements for the State and Local Air Monitoring Stations (SLAMS) network and the National Core Multi-Pollutant Monitoring Stations (NCore) network. EHD complies with all monitoring requirements specified in the final rule promulgating the 2012 PM_{2.5} standard.³¹

Air dispersion modeling performed in combination with the above described monitoring of ambient air pollutant concentrations is discussed later in this iSIP submission, in the section addressing requirements of CAA § 110(a)(2)(K).

§ 110(a)(2)(C)	Include a program to provide for enforcement of the measures in subparagraph (A) [section 110(a)(2)(A)], and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program as required in Parts C and D [of Title I of the CAA, i.e. the Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR) permit programs].
-----------------------	---

Enforcement: The Air Act and Ordinances authorize EHD to enforce emission limits and control measures satisfying Element A of this infrastructure SIP, above. The statutes, regulations, and ordinances establishing the emissions limits and control measures described in Element A, coupled with air quality permits issued by EHD, set forth the boundaries beyond which regulated entities in Albuquerque-Bernalillo County can expect enforcement action. The Air Act and Ordinances authorize EHD to pursue enforcement through administrative compliance orders or commencement of civil actions.³² EHD carries out such enforcement as the local air pollution control agency established for Albuquerque and Bernalillo County.³³ These ordinances were authorized under the Air Quality Control Act, NMSA 1978, § 74-2-4.

Preconstruction PSD Permitting of Major Sources: Under the general statutory authority discussed in Element A of this iSIP, above, the Air Board and EHD have the authority to implement a comprehensive Prevention of Significant Deterioration (PSD) permit program not only for PM_{2.5} but for all regulated New Source Review (NSR) pollutants. This authority is implemented in regulations codified at 20.11.61

³¹ 78 Fed. Reg. 3,086, 3,233-3,248 (Jan.15, 2013).

³² NMSA 1978, § 74-2-12 and 12.1; ROA § 9-5-1-99 and Bernalillo County Ord. 94-5 §§ 13 and 14.

³³ ROA § 9-5-1-5; Bernalillo County Ord. 94-5 § 5.

NMAC, *Prevention of Significant Deterioration*, setting forth PSD requirements for all sources in areas designated in attainment or unclassifiable for a NAAQS.³⁴

Albuquerque-Bernalillo County's comprehensive PSD program for all NSR pollutants has been previously approved into the New Mexico SIP by EPA (see below for a discussion of pending EPA approvals of recent proposed revisions to the PSD program).³⁵

Albuquerque Bernalillo County has the authority to issue permits under its PSD program to sources of Greenhouse Gasses (GHGs).³⁶ Pursuant to EPA's Greenhouse Gas Tailoring Rule, EPA has approved Albuquerque Bernalillo County's PSD provisions for greenhouse gasses into the New Mexico SIP.³⁷

In addition to the above PSD approvals, EPA requires that an iSIP submission address whether an air agency has submitted any PSD program SIP revisions, regarding any NSR pollutant, for which the submission deadline has passed as of the date for EPA's proposed approval of an iSIP submission. This iSIP addresses the foregoing requirement as follows.

Albuquerque Bernalillo County has submitted PSD-related proposed SIP revisions to EPA in response to EPA's rulemaking amending the PSD requirements for PM_{2.5} found at 75 Fed. Reg. 64,863 (Oct. 20, 2010). Albuquerque-Bernalillo County's proposed SIP revisions were transmitted to EPA via a letter from New Mexico Environment Secretary Ryan Flynn to EPA Region 6 Administrator Ron Curry on July 26, 2013. These revisions amended 20.11.42 NMAC, *Operating Permits*; 20.11.60 NMAC, *Permitting in Non-Attainment Areas*; and 20.11.61 NMAC, *Prevention of Significant Deterioration*. The revisions addressed specific requirements of 40 CFR §§ 51.165, 51.166, and 52.21. Since submittal of the above proposed revisions, EPA has published a proposed rule approving the amended 20.11.61 NMAC.³⁸

Note that certain of the above New Mexico regulatory revisions relating to EPA's PM_{2.5} rulemaking were vacated by the U.S. Court of Appeals for the D.C. Circuit on January 22, 2013.³⁹ This court decision applies to two regulatory provisions that Albuquerque-Bernalillo County would otherwise have adopted. One such provision, not yet part of the NMAC, would have been inserted by amendment at 20.11.61.15(B)(2) NMAC (regarding Significant Impact Levels). Another vacated provision has been submitted by the Air Board to EPA and appears at 20.11.61.28 NMAC (regarding Significant Monitoring Concentration). EHD will respond promptly to any future EPA initiatives regarding these vacated

³⁴ For other regulations governing issuance of permits that may apply to a facility subject to PSD requirements, see 20.11.41 NMAC, *Construction Permits*; 20.11.42 NMAC, *Operating Permits*. For the regulation governing permitting for sources located in nonattainment areas, see 20.11.60, *Permitting in Nonattainment Areas*.

³⁵ 58 Fed. Reg. 67,330 (Dec. 21, 1993) (initial approval); 72 Fed. Reg. 20,728 (Apr. 26, 2007) (approving SIP revisions for EPA's 2002 reforms to the NSR rules); 77 Fed. Reg. 58,032 (Sept. 19, 2012) (concerning the 1997 and 2008 Ozone and the 1997 and 2006 PM_{2.5} NAAQS).

³⁶ 20.11.61.7(CCC) NMAC.

³⁷ 76 Fed. Reg. 81,836 (Dec. 29, 2011).

³⁸ 80 Fed. Reg. 28,906 (May 20, 2015). The proposed approval also covers three small, additional amendments to 20.11.61 NMAC submitted to EPA on March 4, 2015, with a request for parallel processing of these amendments. *Id.*

³⁹ *Sierra Club v. EPA*, 705 F.3d 458 (D.C. Cir. 2013).

provisions.

Regulation of minor sources and minor modifications: Per 40 CFR sections 51.160 through 51.164, the Air Board has approved preconstruction regulations applicable to modification and construction of stationary minor sources emitting a NAAQS pollutant.⁴⁰ This preconstruction regulation also applies to minor modification of major sources emitting a NAAQS pollutant.⁴¹ EPA has previously approved these provisions into the New Mexico SIP⁴² and is currently reviewing certain revisions that Albuquerque-Bernalillo County has adopted to 20.11.41 NMAC.

§ 110(a)(2)(D)

Contain adequate provisions -
 (i) prohibiting any source or other type of emissions activity from emitting any air pollutant in amounts which will:
 (I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or
 (II) interfere with measures required to be included in the applicable implementation plan for any other State under Part C [of Title I of the CAA] to prevent significant deterioration of air quality or to protect visibility,
 (ii) insuring compliance with the applicable requirements of sections § 126 and 115 (relating to interstate and international pollution abatement).

Contributions to nonattainment; interference with maintenance, per § 110(a)(2)(D)(i)(I) (the “Good Neighbor provision”): Albuquerque-Bernalillo County has sufficient control measures in place to ensure that pollutants emitted from the city and county do not interfere with another state’s maintenance of the 2012 PM_{2.5} NAAQS or contribute to a state’s nonattainment of that NAAQS. See the other portions of this iSIP for descriptions of Albuquerque-Bernalillo’s control measures along with related legal authority and programs. EHD has determined that this infrastructure will be sufficient to avoid negatively impacting NAAQS attainment and maintenance in other states.

This determination is based on analysis in a document attached to this infrastructure SIP, “Technical Demonstration to Satisfy CAA Section 110(a)(2)(D)(i)(I) for the 2012 PM_{2.5} iSIP.” This document describes in detail how Albuquerque-Bernalillo County meets the requirements of this CAA provision in regard to the 2012 NAAQS for PM_{2.5}.⁴³

Interference with prevention of significant deterioration, per § 110(a)(2)(D)(i)(II): As noted above in Element C of this iSIP, Albuquerque-Bernalillo County has a comprehensive EPA-approved PSD program and has submitted necessary proposed revisions to EPA, which EPA has now proposed to

⁴⁰ 20.11.41 NMAC, *Construction Permits*.

⁴¹ *Id.*

⁴² 69 Fed. Reg. 78,312 (Dec. 30, 2004),

⁴³ This technical demonstration document for 2012 PM_{2.5} transport responds to a requirement from EPA that infrastructure SIPs for the 2012 PM_{2.5} NAAQS address the Good Neighbor provision of the Clean Air Act. This EPA requirement follows a court order directing EPA to issue findings of failure to submit infrastructure SIPs addressing Good Neighbor requirements under the 2008 ozone NAAQS. *Sierra Club v. McCarthy*, Case No. 14-CV-05091 YGR, Case No. 14-cv-3198-YGR (N.D. Cal., May 7, 2015). In the wake of that order regarding the 2008 ozone standard, EPA is requiring that states address Good Neighbor provisions for other standards as well.

approve (EPA's proposed approval is discussed in Element C, above). Thus, the PSD program includes measures to prevent interference with PSD measures in other states.

Interference with protection of visibility, per § 110(a)(2)(D)(i)(II): With respect to the visibility element of § 110 (a)(2)(D)(i)(II), Albuquerque-Bernalillo County has a regional haze program in place that fully meets the requirements of 40 CFR § 51.309 and has been approved by EPA into the New Mexico SIP.⁴⁴ In its approval action, EPA found that the regional haze SIP element and its associated rules “meet the requirements of the [CAA] and comply with the provisions of 40 CFR § 51.309, thereby meeting requirements for reasonable progress for the 16 Class I areas covered by the Grand Canyon Visibility Transport Commission Report for approval of the plan through 2018.”⁴⁵ EPA's approval of Albuquerque-Bernalillo County's regional haze SIP element (as well as regional haze SIP provisions for the states of New Mexico, Wyoming and Utah), has been upheld by the Tenth Circuit.⁴⁶ By having this EPA-approved regional haze SIP element in place, Albuquerque-Bernalillo County meets the requirements of § 110 (a)(2)(D)(i)(II), prohibiting interference with protection of visibility in other states. Albuquerque Bernalillo County regulations implementing the Regional Haze SIP are codified at 20.11.5 NMAC, *Visible Air Contaminants*; 20.11.20 NMAC, *Fugitive Dust Control*; 20.11.21 NMAC, *Open Burning*; 20.11.22 NMAC, *Wood Burning*; 20.11.46 NMAC, *Sulfur Dioxide Emissions Inventory Requirements: Western Backstop Sulfur Dioxide Trading Program*; 20.11.65 NMAC, *Volatile Organic Compounds*; 20.11.66 NMAC, *Process Equipment*; 20.11.67 NMAC, *Equipment, Emissions, Limitations*; 20.11.71 NMAC, *Municipal Solid Waste Landfills*; 20.11.100 NMAC, *Motor Vehicle Inspection - Decentralized*; 20.11.102 NMAC, *Oxygenated Fuels*; 20.11.103 NMAC, *Motor Vehicle Visible Emissions*; and 20.11.104 NMAC, *Emission Standards for New Motor Vehicles*. EPA approval of the Regional Haze SIP followed previous regional haze SIP submissions by Albuquerque-Bernalillo County on December 26, 2003 and September 10, 2008.⁴⁷

Compliance regarding interstate pollution abatement: As described above in this Element of the iSIP and in Element C, Albuquerque Bernalillo County has submitted proposed PSD revisions for EPA review, which EPA now proposes to approve. If EPA should issue final approval of these revisions, the result would be, when combined with earlier EPA approvals of PSD provisions, a fully EPA approved PSD permitting program. Thus, the PSD program would include provisions that satisfy the interstate pollution abatements of the CAA, § 126(a), and are consistent with 40 CFR § 51.166(q)(2)(iv), requiring notification of other air agencies whose jurisdictions may be affected by emissions from an outside source. The regulation requiring such notice is codified at 21.11.61.21(C)(4) NMAC.

Regarding CAA, § 126(b) and (c), no sources within Albuquerque-Bernalillo County are subject to an active finding under these provisions with respect to PM_{2.5}. If such findings should occur in the future, EHD will consult with EPA Region VI.

Compliance regarding international air pollution: Regarding CAA, § 115, no sources within Albuquerque-Bernalillo County are subject to an active finding under Section 115 with respect to PM_{2.5}.

⁴⁴ 77 Fed. Reg. 71,119 (Nov. 29, 2012).

⁴⁵ *Id.*

⁴⁶ *Wild Earth Guardians v. EPA*, 770 F.3d 919 (10th Cir. 2014).

⁴⁷ See 77 Fed. Reg. 24,768 (Apr. 25, 2012) (proposing approval of Albuquerque Bernalillo County regional haze SIP and describing history of regional haze rule and related earlier SIP submissions by Albuquerque-Bernalillo County).

§ 110(a)(2)(E)(i)	Provide: (i) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof).
--------------------------	---

Organization responsible for the SIP: The Air Act and Ordinances serve as the legal basis for establishing the Air Board and the Environmental Health Department (EHD) as the responsible authorities for implementing federal air quality standards in Albuquerque Bernalillo County.⁴⁸ The Air Act and Ordinances serve as the legal basis for establishing EHD as the air pollution control agency for Albuquerque-Bernalillo County, for this purpose empowering EHD to carry out a variety of functions including monitoring, compliance, enforcement, and developing and presenting proposed plans and rules to the Air Board for adoption and promulgation.⁴⁹ For purposes of these provisions, the Air Board and EHD are the sole organizations that participate in developing, implementing, and enforcing the EPA-approved SIP provisions related to the 2012 PM_{2.5} NAAQS.⁵⁰

Resources (i.e. personnel & funding) available to carry out the SIP: As of the date of this iSIP submission, the Air Board and EHD have adequate funding and personnel to carry out the functions described in this document addressing the 2012 PM_{2.5} NAAQS. Funding and personnel for activities related to the 2012 PM_{2.5} NAAQS will be provided through permit fees, general funds from the City of Albuquerque, and funds provided under the CAA §§ 103 and 105 grant process. EHD expects these sources to provide adequate funding for the five years following this iSIP submission. EHD does not anticipate the need for additional resources to implement the plan for the 2012 PM_{2.5} NAAQS, beyond those which have been utilized for the preparation of the plan, for SIP revisions submitted to EPA, and for other current programmatic demands. Should EPA determine that EHD lacks adequate personnel to carry out the SIP, EPA may issue a finding with respect to that deficiency, which EHD would have a legal obligation to correct.

Authority to carry out the SIP: The Air Board and EHD have adequate authority under statutes, ordinances, and regulations to carry out SIP obligations with respect to the 2012 PM_{2.5} NAAQS. The Air Act and Ordinances authorize the Air Board to adopt plans, emission standards and rules and to modify, reverse or sustain permits issued by EHD.⁵¹ In addition, EHD has authority under the Air Act and Ordinances to issue permits under the Air Board's regulations and to enforce applicable laws, regulations, standards, and compliance schedules, and seek injunctive relief.⁵² This legal framework empowers EHD

⁴⁸ NMSA 1978 § 74-2-5 and 5.1; ROA §§ 9-5-1-4 and -5; Bernalillo County Ord. 94-5 §§ 4 and 5.

⁴⁹ NMSA 1978 § 74-2-5.1; ROA § 9-5-1-5; Bernalillo County Ord. 94-5 § 5.

⁵⁰ Under the Air Act, state authorities retain jurisdiction and control for administration of the Act with respect to any failure to act by a local authority .See Element E(iii) of this infrastructure SIP.

⁵¹ NMSA § 74-2-5 and -7.

⁵² NMSA 1978 §§ 74-2-5.1 -7, -12, -12.1; ROA §§ 9-5-1-5, -7, and 98 and 99; Bernalillo County Ord. 94-5 §§ 5, 7 and 13 and 14.

to carry out administrative assessments, inspections, issuance of penalties for permit violations, and appropriate litigation.⁵³ To act under the foregoing legal provisions, EHD has full authority under state law, and city and county ordinances to carry out all SIP obligations relating to the 2012 PM_{2.5} NAAQS.⁵⁴

§ 110(a)(2)(E)(ii)

(ii) requirements that the State comply with the requirements respecting State boards under section 128, and

To comply with the provisions of CAA Section 128 regarding state and local board composition and conflicts of interests, the City of Albuquerque and Bernalillo County have implemented a number of ordinances and policies. EPA has previously approved these measures into the New Mexico SIP.⁵⁵ In the years following EPA’s approval, the ordinances and policies have been revised. Accordingly, Albuquerque-Bernalillo County has submitted to EPA proposed revisions to the New Mexico SIP to account for changes in the local ordinances and policies. These proposed SIP revisions are intended to comply with the state and local board requirements of CAA Section 128.⁵⁶

These proposed SIP revisions will, if approved by EPA, incorporate the following ordinances, other laws, and policies into the New Mexico SIP:

- ROA §§ 2-6-1-1 to 2-6-1-5 (“Public Boards, Commissions, and Committees”); 3-3-1 to 3-3-13 (“Conflict of Interest”); 9-5-1-1 to 9-5-1-99 (“Joint Air Quality Control Board Ordinance”) 9-5-6-1 to 9-5-6-3 (“Metropolitan Environmental Health Advisory Board”);
- City of Albuquerque, NM, Charter, Article XII, Section 4 (“Conflict of Interest”);
- City of Albuquerque, City Code of Conduct, 300 (“Conditions of Employment”); 301 (“Code of Conduct”) (from City of Albuquerque Personnel Rules and Policies);
- Bernalillo County, NM Ordinances §§ 2-126 to 2-136 (“Code of Conduct”); 30-31 to 30-47 (“Joint Air Quality Control Board”); 42-36 to 42-39 (“Metropolitan Environmental Health Advisory Board”)

NMSA 1978 § 74-2-4(B) provides that the Air Board be comprised of at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to or who appear before the Board on issues related to the CAA or Air Act.

Additionally, Air Board members are required to recuse themselves from rulemakings where their impartiality may reasonably be questioned or if the Air Board member: (1) has a personal bias or prejudice concerning a party; (2) is related to a party within a third degree of relationship, (3) is an

⁵³ *Id.*

⁵⁴ ROA §§ 9-5-1-1 to -99; and Bernalillo County Ord. 94-5 §§ 1 to -20.

⁵⁵ 64 Fed. Reg. 29,235 (July 1, 1999).

⁵⁶ Letter from Ryan Flynn, New Mexico Environment Secretary, to Ron Curry, EPA Region 6 Administrator (July 26, 2013).

<p>officer, director or trustee of a party or interested participant in the proceeding; or (4) has a financial interest in the proceeding or has any other conflict.⁵⁷</p> <p>Air Board members are also required to recuse themselves from adjudicatory proceedings, such as permit reviews where the Air Board member: (1) has a personal bias or prejudice concerning a party or the outcome of the proceeding; (2) has personal knowledge of disputed facts concerning the proceeding; (3) is related to a party within the third degree of relationship; (4) is an officer, director or trustee of a party or interested participant in the proceeding; (5) has a financial interest in the proceeding or facility that is the subject of the proceeding or has any other conflict of interest; (6) or has performed prosecutorial or investigatory functions in connection with a permitting action at issue in the proceeding.⁵⁸</p>	
<p>§ 110(a)(2)(E)(iii)</p>	<p>(iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision.</p>
<p>Pursuant to NMSA 1978, § 74-2-4, local authority to implement the New Mexico Air Quality Control Act has been established for Albuquerque-Bernalillo County, through the adoption of these jurisdictions’ respective Joint Air Quality Control Board Ordinances which created the Air Board and authorize local administration by the City of Albuquerque Department of Environmental Health.⁵⁹ The New Mexico Environment Department and the state Environmental Improvement Board retain jurisdiction and control for administration of the Air Quality Control Act with respect to any failure to act by a local authority.⁶⁰</p>	
<p>§ 110(a)(2)(F)</p>	<p>Require, as may be prescribed by the Administrator:</p> <ul style="list-style-type: none"> (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection;
<p><u>Source monitoring</u>: The state Air Act provides that regulations adopted by the Air Board may “require any person emitting any air contaminant” to conduct monitoring of such emissions, install equipment appropriate for such monitoring, use monitoring methods prescribed by the Air Board, maintain related records, and submit reports regarding the emissions.⁶¹ Consistent with 40 CFR § 51.212, Albuquerque-</p>	

⁵⁷ 20.11.82.14 NMAC.

⁵⁸ 20.11.81.12(B)(3)(a) NMAC.

⁵⁹ ROA §§ 9-5-1-1 to -99; and Bernalillo County Ord. 94-5, §§ 1 to -20.

⁶⁰ NMSA 1978 § 74-2-4(D).

⁶¹ NMSA § 74-2-5(C)(6).

Bernalillo County regulations provide that stationary sources may be subject to periodic inspection and emissions testing.⁶² These source monitoring requirements authorize EHD to identify allowable test methods which a source must use. The requirements do not contain any provision that would prevent the use of any credible evidence.

Source reporting: Consistent with 40 CFR §§ 51.211, 51.321 to 51.323, and 40 CFR part 51, subpart A, Albuquerque-Bernalillo County provides that stationary sources may be required to periodically report emissions and emissions-related data. These provisions are contained in the NMAC regulations cited in the paragraph above. In addition, stationary sources may be required to maintain and report emissions inventories according to a prescribed schedule, in a format established by EHD.⁶³ To facilitate gathering and reporting of emissions data by sources, Albuquerque-Bernalillo County establishes specific requirements for maintaining records and reporting emissions, including provisions relating to content of records and EHD inspections.⁶⁴ EHD is current with its submittals to the National Emissions Inventory (NEI) database; the 2013 data for larger sources was submitted to EPA on December 30, 2014.

Correlation of source reports with emissions limitations and standards: Pursuant to the NMAC provisions cited above and consistent with 40 CFR § 51.116, EHD is able to use emissions data gathered and reported by sources to analyze “the relationship between measured or estimated amounts of emissions and the amounts of such emissions allowable under the applicable emission limitations or sources.”⁶⁵ By means of such correlation, EHD is able to track progress toward maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with state and EPA requirements.

Availability of emission reports by sources: Emission data obtained under the above-cited provisions are made available to the public during normal business hours.⁶⁶

§ 110(a)(2)(G)	Provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority.
-----------------------	---

Authority to respond to emergency episode: The Air Act and Ordinances provide EHD with authority to address air quality emergencies. Upon a finding that any owner/operator of a source or combination of air emission sources presents an imminent and substantial endangerment to the public health or welfare or the environment, the Director of the Environmental Health Department may bring a civil suit seeking to restrain the source of the air contaminants.⁶⁷ If such a civil suit is not a practicable means of promptly

⁶² 20.11.41.22 NMAC (inspection and testing related to construction permits); 20.11.42.12 NMAC (inspection and testing related to operating permits); 20.11.49.15 NMAC (inspection and testing related to excess emissions); 20.11.60.27 NMAC (testing and inspection related to permitting in nonattainment areas); 20.11.61.12 to 20.11.61.20 NMAC (testing and prevention related to permitting for prevention of significant deterioration); and 20.11.90 NMAC, *Source Surveillance: Administration and Enforcement*.

⁶³ 20.11.47 NMAC, *Emission Inventory Requirements*.

⁶⁴ 20.11.90 NMAC, *Source Surveillance: Administration and Enforcement*.

⁶⁵ 40 CFR § 51.116(c). *See also* 20.11.90.13(C) NMAC (“Emission data obtained by the director shall be correlated with applicable emission limitations and other control measures . . .”).

⁶⁶ 20.11.90.13(C) NMAC.

⁶⁷ NMSA 1978 § 74-2-10(A); ROA § 9-5-1-10(A); Bernalillo County Ord. 94-5 § 10(A).

protecting public health or welfare or the environment, the Director may issue orders necessary for such protection on a temporary basis, pending litigation and court-ordered action.⁶⁸

Contingency plan to implement emergency episode authority: The Director of the Environmental Health Department formulates and administers an emergency action plan approved by the Air Board to address source emissions that cause pollutant concentrations to reach levels constituting an imminent and substantial endangerment to the health of persons.⁶⁹ Consistent with 40 CFR § 51, Subpart H, *Prevention of Air Pollution Emergency Episodes*, the Air Board has adopted the *Air Pollution Episode Contingency Plan for Bernalillo County* that covers air pollution episodes and the occurrence of an emergency due to the effects of the pollutants on the health of persons.⁷⁰

§ 110(a)(2)(H)	Provide for revision of such plan: (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the NAAQS which it implements, or to otherwise comply with any additional requirements established under this Act.
-----------------------	--

SIP revision to account for NAAQS revisions: the Air Board has the authority to adopt new regulations and to amend or repeal regulations in order to attain and maintain the NAAQS and prevent or abate air pollution throughout Albuquerque and Bernalillo County.⁷¹ To assist the Board with all NAAQS revisions, EHD has authority to develop and present to the Board a plan for the regulation, control, prevention or abatement of air pollution.⁷² Because these provisions allow for changes as necessary to local air quality regulations and programs, they provide the legal basis for the Air Board and EHD to submit proposed SIP revisions for EPA review in order to accommodate EPA revisions of a NAAQS. Nothing in New Mexico’s statutory or regulatory authority prohibits Albuquerque-Bernalillo County from revising regulations and programs for submission as proposed SIP revisions in the event of a revision to the NAAQS.

SIP revision to account for EPA finding of inadequacy: the above cited provisions also provide the legal basis for the Air Board and EHD to submit proposed revisions of the SIP for EPA review in the event the EPA Administrator finds the SIP to be substantially inadequate to attain the NAAQS or otherwise meet all applicable CAA requirements.

§ 110(a)(2)(I)	In the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D (relating to nonattainment areas);
-----------------------	--

⁶⁸ NMSA 1978 § 74-2-10(B); ROA § 9-5-1-10(B); Bernalillo County Ord. 94-5 § 10(B).

⁶⁹ 20.11.6 NMAC, *Emergency Action Plan*.

⁷⁰ 56 Fed. Reg. 38,074 (Aug. 21, 1991); 40 CFR § 52.1639.

⁷¹ NMSA 1978 § 74-2-5; ROA § 9-5-1-4; Bernalillo County Ord. 94-5 § 4.

⁷² NMSA 1978 § 74-2-5.1(H); ROA § 9-5-1-5(I); Bernalillo County Ord. 94-5 § 5(I).

CAA §110 (a)(2)(I) is not being addressed in this infrastructure SIP submittal. According to EPA’s interpretation of the CAA, this element does not need to be addressed in the context of an infrastructure SIP submission. U.S. Environmental Protection Agency, “Guidance on Infrastructure State Implementation Plan Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),” September 2013, p.51, available at <http://www.epa.gov/air/urbanair/sipstatus/infrastructure.html>.

§ 110(a)(2)(J)	Meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection);
-----------------------	---

Consultation with identified officials on certain actions: Section 121 of the CAA requires a SIP to provide for consultation with local political subdivisions and with federal land managers regarding adoption of certain SIP elements affecting those entities. Albuquerque-Bernalillo County meets this requirement because all SIP revisions undergo public notice and hearing, which provides for comment by the interested members of the public, including local political subdivisions and federal land managers affected by a SIP revision. In particular, the Air Act provides that, “no regulations or emission control requirement shall be adopted until after a public hearing by . . . the local board” and that, “at the hearing . . . the local board shall allow all interested persons reasonable opportunity to submit data, views, or arguments orally or in writing and to examine witnesses testifying at the hearing.”⁷³

To implement these consultation requirements, the Air Board has adopted several regulations establishing a process for consultation with local political subdivisions and federal land managers. One such regulation, governing the rule making process, provides notice of SIP revisions to affected persons and organizations and affords them an opportunity to participate in the revision process.⁷⁴ Other such regulations are those programs implementing permitting in nonattainment areas and for Prevention of Significant Deterioration, which provide for public participation and notification of affected persons.⁷⁵ Additionally, public participation and notification provisions are incorporated in regulations governing adjudicatory decisions by the Air Board.⁷⁶ Collectively, the foregoing provisions ensure that there will be an established process for consultation with local political subdivisions and federal land managers, as well as persons affected by the actions specified in CAA § 121.

In addition to the above consultation requirements, Albuquerque Bernalillo County’s SIP-approved Transportation Conformity and General Conformity rules require that interagency consultation and

⁷³ NMSA 1978, § 74-2-6(B) and (D); *see also* ROA § 9-5-1-6(B) and (D); Bernalillo County Ord. 94-5 § 6(B) and (D).

⁷⁴ 20.11.82 NMAC, *Rulemaking Procedures -- Air Quality Control Board*.

⁷⁵ 20.11.60.23 NMAC, (requiring consultation with federal land manager on major source permits in nonattainment areas that affect visibility in federal Class I areas); 20.11.60.26 NMAC (providing for public participation and notification on major source permits in nonattainment areas, including consultation with federal land managers); 20.11.61.21 and 20.11.61.24 NMAC (providing for public participation and notification on major source permits subject to prevention of significant deterioration requirements, including federal land managers).

⁷⁶ 20.11.81.14(G) and 20.11.81.14(I) NMAC (providing specific procedural requirements for public notification and hearing). Further public participation and notification provisions apply regarding issuance of construction permits, 20.11.41.14, 20.11.41.15, and 20.11.41.16 NMAC (providing for public participation and notification at various stages of the construction permitting process).

opportunity for public involvement be provided before making transportation conformity determinations and before proposing for EPA review applicable SIP revisions on transportation related SIP elements.⁷⁷

Consistent with 40 CFR § 51, subpart M, the Air Act, Ordinances and regulations identify the Air Board and EHD as the organizations responsible for developing, implementing, and enforcing the SIP.⁷⁸ These legal authorities also describe particular responsibilities of the Air Board and EHD in carrying out these functions, including enacting regulations, issuing and modifying permits, modeling air dispersion patterns, monitoring ambient air quality, conducting inspections and compliance testing, undertaking enforcement actions, and providing for participation in the regulatory process. In addition, regulations identify local and federal government entities that are consulted in SIP revisions related to transportation conformity and general conformity determinations in federally mandated transportation planning.⁷⁹

Public notification: Consistent with CAA, Section 127, and 40 CFR § 51.285, EHD makes available to the public information on instances or areas in which the measured value of regulated pollutants exceeds the values set forth in the NAAQS. EHD makes air quality data from Albuquerque-Bernalillo County's monitoring network available via EPA's Air Quality System Data Mart website at <http://www.epa.gov/airdata>. Additionally, as required by grants under CAA Section 105, Albuquerque-Bernalillo County must submit monitoring data to EPA's Air Quality System (AQS) within 90 days after the end of a quarter. EHD's website provides information to the public on current air quality conditions in EHD's jurisdiction, using the EPA's color-coded Air Quality Index (AQI) to show current concentrations of criteria pollutants. This AQI information appears at <http://www.cabq.gov/airquality/todays-status/air-quality-index>. The AQI information covers health effects potentially associated with varying levels of specific pollutants. By this means, EHD advises the public of potential health hazards associated with measured values for particulate matter less than or equal to 2.5 micrometers in diameter and other NAAQS pollutants that may at times exceed the concentrations specified in the NAAQS.

EHD's website also provides links to additional EPA web-based information tools on criteria pollutant emission sources, past air quality data trends, and forecasts of future air quality conditions. These EPA resources, including, for example, AIRNow, AirData, and AirCompare, are linked at <http://www.cabq.gov/airquality/download-air-data>. By linking to these EPA resources, EHD further advises the public about criteria pollutants, local air quality conditions and the potential health hazards that may arise from such conditions.

In addition to the above measures, EHD and the Air Board promote public awareness of measures that can prevent instances in which measured values of criteria pollutants exceed values specified in the NAAQS. Promotion of such awareness occurs by offering specific information on how the public can participate in regulatory and other efforts to improve air quality. In particular, EHD and the Air Board follow specific procedures, mandated by regulations, to inform the public of: (1) procedures for members of the public to petition the Air Board for a rulemaking proceeding;⁸⁰ (2) time and place of upcoming

⁷⁷ 20.11.3.105, 20.11.3.112, and 20.11.4 NMAC.

⁷⁸ NMSA §§ 74-2-5 to 74-2-14; ROA §§ 9-5-1-4 and -5; Bernalillo County Ord. 94-5 §§ 4 and 5; 20.11.1 through 20.11.104 NMAC.

⁷⁹ 20.11.3 and 20.11.4 NMAC.

⁸⁰ 20.11.82.18 NMAC, *Rulemaking Procedures -- Air Quality Control Board* (providing that "any person" may petition the Air Board for rulemaking).

rulemaking proceedings;⁸¹ (3) procedures for members of the public to participate in rulemakings;⁸² (4) procedures for members of the public to participate in the permitting process.⁸³ The foregoing regulations require that notices of proceedings be published by particular methods (e.g. in a newspaper of general circulation), thus providing interested members of the public an opportunity to be heard during rulemaking and permitting.

EHD and the Air Board further promote the above forms of public participation by providing links on the EHD website to important information about such participation. This web-based information includes: the content of relevant regulations; notices of proceedings; Air Board and EHD contact information; description of the process for filing air quality complaints; descriptions of permitting and compliance programs; information on environmental justice issues; and access to full text documents on completed, ongoing or upcoming regulatory proceedings, such as petitions, notices of intent, public comments, and public review drafts of proposed regulations. The foregoing information is available through the EHD website at <http://www.cabq.gov/airquality> (see especially <http://www.cabq.gov/airquality/public-involvement-in-environmental-programs> and <http://www.cabq.gov/airquality/air-quality-control-board>).

Prevention of significant deterioration: EPA has stated that the requirements for this sub-element of an iSIP are the same as the requirements to satisfy Element C of an iSIP, which must comply with CAA § 110(a)(2)(C). U.S. Environmental Protection Agency, “Guidance on Infrastructure State Implementation Plan Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2) (Sept. 2013), available at <http://www.epa.gov/air/urbanair/sipstatus/infrastructure.html>. Accordingly, please refer to the discussion of Albuquerque-Bernalillo County’s PSD program in Elements C of this iSIP for a description of how the Albuquerque Bernalillo County PSD program satisfies iSIP requirements. Additional discussion of PSD programs appears in Element D.

Visibility protection: EPA has stated that state and local air agencies do not need to address this sub-element in an iSIP submittal, because a NAAQS revision does not change visibility requirements or impose new visibility protection requirements. Therefore, this iSIP submittal does not address the visibility sub-element. U.S. Environmental Protection Agency, “Guidance on Infrastructure State Implementation Plan Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),” (Sept. 2013), available at <http://www.epa.gov/air/urbanair/sipstatus/infrastructure.html>.

§110(a)(2)(K)	Provide for: (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator;
----------------------	---

⁸¹ 20.11.82.19 NMAC.

⁸² 20.11.82.19 NMAC.

⁸³ 20.11.41.14 to 20.11.41.16 NMAC (public participation in construction permits); 20.11.42.13 NMAC (public participation in operating permits); 20.11.60.26 NMAC (public participation in permitting in nonattainment areas); 20.11.61.21 NMAC (public participation in permitting for prevention of significant deterioration); and 20.11.81 NMAC, *Adjudicatory Procedures -- Air Quality Control Board*.

Authority to conduct air quality modeling: The Air Act and Ordinances authorize EHD to “develop facts and make investigations and studies” consistent with the Act.⁸⁴ These legal provisions provide EHD with necessary authority to develop air quality assessments and conduct modeling to predict the effect on ambient air quality of any emissions of any air pollutant for which a NAAQS has been promulgated. EHD follows EPA guidelines for air dispersion modeling.⁸⁵ EHD utilizes air quality modeling or requires sources to conduct such modeling under several local regulations.⁸⁶

Authority to provide modeling data to EPA: EHD has authority to provide modeling data to EPA upon request and will do so when EHD receives such a request. This authority derives from provisions in the Air Act and Ordinances that require EHD to present “a plan for the regulation, control, prevention or abatement of air pollution” to the Air Board.⁸⁷ The Air Board, in turn, approves regulations implementing the air pollution control plan, consistent with standards in the CAA and the New Mexico Air Act.⁸⁸ These legal provisions require and authorize development and adoption of plans to attain and maintain the NAAQS -- including generation of modeling data to be provided to EPA. EHD shares modeling data upon request with EPA to assure that Albuquerque Bernalillo County’s EPA-approved portion of the New Mexico SIP functions as the above referenced laws intend.

§ 110(a)(2)(L)	Require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover— (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under Title V ;
-----------------------	---

The Air Board has approved regulations providing for fees to cover reasonable costs of reviewing and acting upon permit applications, as well as implementing the terms and conditions of a permit under the CAA and the New Mexico Air Quality Control Act.⁸⁹

⁸⁴ NMSA 1978, § 74– 2–5.1(A); ROA § 9-5-1-5(B); and Bernalillo County Ord. 94-5 § 5(B).

⁸⁵ 40 CFR, Part 51, Appendix W.

⁸⁶ 20.11.3.105 NMAC (for consultation in the local transportation conformity process); 20.11.4.159 NMAC (for consultation in determining transportation conformity of federal actions); 20.11.41.13 NMAC (for inclusion in construction permit applications); 20.11.42.12 NMAC (for inclusion in operating permit applications); 20.11.60.25 NMAC (for permitting in nonattainment areas); 20.11.61.17 NMAC (to prevent significant deterioration of air quality in attainment areas).

⁸⁷ NMSA 1978 § 74-2-5.1(H); ROA § 9-5-1-5(I); Bernalillo County Ord. 94-5 § 5(I).

⁸⁸ NMSA § 74-2-5; ROA § 9-5-1-4; Bernalillo County Ord. 94-5 § 4.

⁸⁹ See 20.11.2 NMAC (on air quality related fees in general); 20.11.7.12 NMAC (fees for petitions for variances); collectively 20.11.13 NMAC; 20.11.14 NMAC; 20.11.17 NMAC and 20.11.22 NMAC (fees related to fugitive dust control); 20.11.40.13 NMAC and 20.11.40.14 NMAC (fees for source registrations); 20.11.41.12 NMAC; 20.11.41.13 NMAC; 20.11.41.16 NMAC; 20.11.41.23 NMAC; 20.11.41.32 NMAC (construction permit

§ 110(a)(2)(M)	Provide for consultation and participation by local political subdivisions affected by the plan.
<p>The Air Quality Control Act and implementing regulations provide for consultation with local political subdivisions affected by the Albuquerque-Bernalillo County elements of the New Mexico SIP. For a detailed description of these provisions, please see the information in element J, above, of this iSIP.</p>	

fees); 20.11.42.12 NMAC and 20.11.42.13 NMAC (operating permit fees); 20.11.81.8 NMAC and 20.11.81.14 NMAC (fees for adjudicatory proceedings); 20.11.100.20 NMAC; 20.11.100.23 NMAC; 20.11.100.24 NMAC; 20.11.100.29 NMAC; 20.11.100.33 NMAC; 20.11.100.35 NMAC; 20.11.100.35 NMAC; 20.11.101.18 NMAC; 20.11.101.28 NMAC; 20.11.104.111 NMAC (fees for motor vehicle standards and inspections).