

1 **ALBUQUERQUE - BERNALILLO COUNTY AIR QUALITY CONTROL BOARD**

2 **RESOLUTION #2011-5**

3 **ADOPTING AN AMENDED SECTION 309 REGIONAL HAZE STATE IMPLEMENTATION**
4 **PLAN ELEMENT: ALBUQUERQUE - BERNALILLO COUNTY, NEW MEXICO; AND**
5 **INCORPORATING SAID AMENDMENTS INTO TO THE NEW MEXICO STATE**
6 **IMPLEMENTATION PLAN (SIP) FOR AIR QUALITY.**
7
8
9
10

11 **Whereas**, the federal Clean Air Act established a goal of addressing visibility impairment,
12 which includes regional haze in Class I national parks and wilderness areas; and

13 **Whereas**, the Albuquerque - Bernalillo County air quality program must comply with the
14 federal Clean Air Act and the associated regional haze requirements of 40 CFR Part 51, and allow the
15 Albuquerque - Bernalillo County Air Quality Control Board (Air Board) to adopt the Section 309
16 provisions of 40 CFR Part 51 to meet federal Regional Haze requirements; and

17 **Whereas** *The Section 309 Regional Haze State Implementation Plan Element: Albuquerque -*
18 *Bernalillo County, New Mexico*, was first submitted pursuant to the U.S. Environmental Protection Agency
19 (EPA) requirements published in the Federal Register [Vol. 64, No. 126] on Thursday, July 1, 1999; and
20 this Regional Haze State Implementation Plan (SIP) addressed requirements found in 40 CFR Part 51,
21 Appendix V relating to completeness of SIP submissions; and this SIP was first presented before the Air
22 Board at a public hearing held on October 8, 2003 and continued on November 12, 2003; and appropriate
23 public notices and opportunities for public comment were provided; and the Air Board adopted the initial
24 Regional Haze SIP on November 12, 2003; and

25 **Whereas** the regulation to address the type of visibility impairment known as ‘Regional Haze’,
26 first promulgated by EPA in 1999, has been judicially challenged twice, once on May 24, 2002, when the
27 U.S. Court of Appeals for the District of Columbia Circuit issued a ruling vacating the Regional Haze Rule

1 in part and sustaining it in part, based on a finding that EPA's prescribed methods for determining best
2 available retrofit technology (BART) were inconsistent with the Clean Air Act (CAA) [American Corn
3 Growers Association v. EPA, {291 F.3d 1 (DC Cir. 2002)}]; which EPA responded to by finalizing a rule
4 on July 6, 2005 addressing the court's ruling in this case [FR Vol. 70 No. 128 39104-39172]; and
5 challenged a second time on February 18, 2005, when the U.S. Court of Appeals for the District of
6 Columbia Circuit issued another ruling, in Center for Energy and Economic Development (CEED) v. EPA,
7 [398 F.3d 653(DC Cir. 2005)], granting a petition challenging provisions of the Regional Haze Rule
8 governing an optional emissions trading program for certain western States and Tribes [the Western
9 Regional Air Partnership (WRAP) Annex Rule]; and in response EPA published proposed regulations to
10 revise the provisions of the Regional Haze Rule governing alternative trading programs, and to provide
11 additional guidance on such programs in August 2005; and EPA received several comments on this August
12 2005 proposal which EPA finalized on: October 13, 2006 [Federal Register Volume 71, Number 198],
13 including changes in response to the public comments, and this rule became effective December 12, 2006;
14 and because the local Regional Haze SIP was amended to address all these actions, as well as addressing
15 comments received from EPA on 11/3/04, and in 2007; and the Air Board adopted this revised Regional
16 Haze SIP on August 13, 2008; and

17 **Whereas**, the New Mexico Air Quality Control Act (“Air Act”), NMSA 74-2-5, requires the
18 Air Board to “adopt, promulgate, publish, amend and repeal regulations consistent with the Air Quality
19 Control Act to attain and maintain national ambient air quality standards and prevent or abate air
20 pollution, including regulations prescribing air standards” within Bernalillo County, and to meet
21 requirements of the United States Clean Air Act, the City of Albuquerque and Bernalillo County Joint
22 Air Quality Control Board Ordinances, and the Albuquerque - Bernalillo County Air Quality Control
23 Board (“Air Board”) Regulations; and

24 **Whereas**, on June 8, 2011, the Air Board held a public hearing in the Vincent E. Griego

1 Chambers, on the basement level of the Albuquerque - Bernalillo County Government Center, One
2 Civic Plaza NW, in Albuquerque, New Mexico, and the hearing was held consistent with the notice
3 requirements of the New Mexico Air Quality Control Act, and 20.11.82 NMAC, *Rulemaking*
4 *Procedures - AQCB*; and

5 **Whereas**, on June 8, 2011, the Air Board met and determined that the *Section 309 Regional*
6 *Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico* should be
7 amended, and that said amendments should be submitted to EPA as a revision to the New Mexico
8 State Implementation Plan (SIP) for Air Quality; and

9 **Whereas**, at the June 8, 2011, public hearing, testimony was presented to establish a present
10 need, or a reasonably anticipated future need, which exists to warrant taking the following actions to
11 help prevent or abate air pollution.

12 **NOW, THEREFORE BE IT RESOLVED BY THE BOARD THAT:**

13 1. The Board hereby adopts the amendments to the *Section 309 Regional Haze State*
14 *Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico* as proposed in AQD
15 Exhibit 1a, as amended by Staff Proposed Floor Amendments, shown as AQD Exhibit 7, which were
16 admitted at the June 8, 2011 hearing;

17 2. The Board hereby directs staff to take all actions necessary to submit the amended
18 regulation to EPA as a revision to the SIP;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[WITH THE FOLLOWING CHANGES:]

PASSED AND ADOPTED THIS 8th DAY OF JUNE, 2011

BY A VOTE OF ___FOR, AND ___ AGAINST.

Absent: ___

Margaret Menache Chair
Albuquerque-Bernalillo County
Air Quality Control Board

Attest:

Margaret Nieto, Secretary to the Air Quality Control Board