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ENVIRONMENTAL HEALTH
**ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD**

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**IN THE MATTER OF THE PETITION TO ADOPT A STATE
IMPLEMENTATION PLAN (SIP) FOR SULFUR DIOXIDE (SO₂) TO ADDRESS
SECTIONS 110(a)(1) AND (2) OF THE FEDERAL CLEAN AIR ACT (CAA), 42
U.S.C. § 7410(a)(1) AND (2) HEREAFTER REFERRED TO AS THE "SO₂
INFRASTRUCTURE SIP"**

AQCB Petition No. 2015-1

**Air Quality Program,
Environmental Health Department,
City of Albuquerque, Petitioner**

**Petition to adopt a State Implementation Plan (SIP) for SO₂ to address Sections
110(a)(1) and (2) of the Federal Clean Air Act (CAA), 42 U.S.C. § 7410(a)(1) and (2)
hereafter referred to as the "SO₂ Infrastructure SIP".**

1. The City of Albuquerque, by and through the Air Quality Program (AQP) of the Environmental Health Department, asks the Albuquerque - Bernalillo County Air Quality Control Board (Air Board) to adopt a State Implementation Plan (SIP) to address Sections 110(a)(1) and (2) of the federal Clean Air Act (CAA), 42 U.S.C. § 7410(a)(1) and (2) hereafter referred to as the "SO₂ Infrastructure SIP". If adopted, this new SIP will be submitted to the U.S. Environmental Protection Agency (EPA) as a proposed revision to the current SIP. This Petition includes a request for a hearing on these matters and permission to provide a court reporter and hearing officer for the hearing. As grounds, Petitioner states the following:

2. The New Mexico Air Quality Control Act (Air Act), NMSA 1978, Sections 74-2-4 and 74-2-5.B(1) [1967 as amended through 2007] authorizes and requires the Air Board to adopt, amend, or replace air quality regulations and to adopt air quality plans (SIPs) under NMSA 1978, Section 74-2-5.B(2).

3. On June 22, 2010, EPA Administrator, Lisa Jackson, promulgated a new national ambient air quality standard (NAAQS) for SO₂, effective August 23, 2010 [75 Fed. Reg. 35,520 (June 22, 2010)]. Based on its review of the air quality criteria for oxides of sulfur and the primary NAAQS for oxides of sulfur as measured by sulfur dioxide (SO₂), EPA made revisions to the primary SO₂ NAAQS in order to provide requisite protection of public health. Specifically, EPA has established a new 1-hour standard at a level of 75 parts per billion (ppb), based on the 3-year average of the 99th percentile of the yearly distribution of 1-hour daily maximum concentrations, to replace the existing 24 hour and annual primary SO₂ standards. EPA also established SO₂ ambient air monitoring and reporting requirements to support implementation of and compliance with the new NAAQS.

4. Pursuant to Sections 110(a)(1) and 110(a)(2) of the CAA, each State is required to submit a plan, known as an “infrastructure SIP,” to provide for the implementation, maintenance, and enforcement of a newly promulgated or revised NAAQS within 3 years of promulgation of a new or revised standard. Section 110(a)(1) of the CAA addresses the timing requirement for the submissions of any “Infrastructure SIP” revisions, while Section 110(a)(2) of the CAA lists the required elements that comprise the “Infrastructure SIP”. Therefore, this plan or “Infrastructure SIP” addressing the requirements of Sections 110(a)(2)(A)--(M) of the CAA was due June 3, 2013. This “Infrastructure SIP” is a compilation of elements that demonstrates how Albuquerque-Bernalillo County will implement, maintain and enforce the revised SO₂ NAAQS, including: enforceable emission limitations and control measures, air quality monitoring and modeling, a permitting program, adequate funding and personnel, authority under state law to

carry out the plan, emissions reporting, emergency powers, public participation, and fee collection.

5. It is anticipated that the hearing will take approximately 1 hour or less.

6. The Public Review Draft for the proposed "SO₂ Infrastructure SIP" is attached as AQP Exhibit #1.

Respectfully submitted,



Danny Nevarez
Deputy Director
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CERTIFICATION

I hereby certify that a copy of this **Petition to adopt a State Implementation Plan (SIP) to address Sections 110(a)(1) and (2) of the Federal Clean Air Act (CAA), 42 U.S.C. § 7410(a)(1) and (2) hereafter referred to as the "SO₂ Infrastructure SIP"** was delivered to the following person on February 20, 2015.

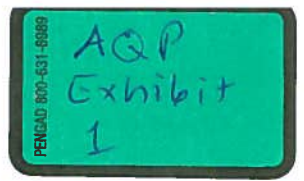
Andrew Daffern
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and that a copy was provided by email to:

Felicia Orth, Attorney to the Air Quality Control Board .



Danny Nevarez
Deputy Director
Environmental Health Department
City of Albuquerque



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 2010 Sulfur Dioxide (SO₂) National Ambient Air Quality Standard (NAAQS)

Adopted
[MONTH & DATE, 2015]

XXXXXXXX XXXXXXXX, Chair
Albuquerque-Bernalillo County Air Quality Control Board

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ACKNOWLEDGEMENTS IN THE PREPARATION OF THIS DOCUMENT

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Peer Review

LIST OF ABBREVIATIONS AND ACRONYMS

1		
2		
3	AAMNP	Annual Air Monitoring Network Plan
4	AQCA	New Mexico Air Quality Control Act (also referred to as “Air Act”)
5	AQCB	Air Quality Control Board (also referred to as “Air Board”)
6	AQP	Air Quality Program
7	AQS	Air Quality System
8	CAA	Clean Air Act
9	CFR	Code of Federal Regulations
10	EPA	Environmental Protection Agency
11	Fed. Reg.	Federal Register
12	GHG	Greenhouse gasses
13	iSIP	Infrastructure State Implementation Plan
14	NAAQS	National Ambient Air Quality Standards
15	NEI	National Emissions Inventory
16	NM	New Mexico
17	NMAC	New Mexico Administrative Code
18	NMSA	New Mexico Statutes Annotated
19	PM _{2.5}	Particulate Matter 2.5
20	PSD	Prevention of Significant Deterioration
21	ROA	Revised Ordinances of the City of Albuquerque
22	SIP	State Implementation Plan
23	SLEIS	State and Local Emissions Inventory System
24	SO ₂	Sulfur Dioxide
25		
26		

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 June 22, 2010, the Administrator of the U.S. Environmental Protection Agency, Lisa Jackson, promulgated a new NAAQS for sulfur dioxide (“SO₂”) [referred to below as the “2010 SO₂ NAAQS”], effective August 23, 2010. 75 Fed. Reg. 35,520-35,603 (June 22, 2010). Based on its review of the air quality criteria for oxides of sulfur and the primary NAAQS for oxides of sulfur as measured by SO₂, EPA made revisions to the primary SO₂ NAAQS in order to provide the requisite protection of public health. *Id.* Specifically, EPA replaced the former 24-hour and annual standards with a new short-term standard based on the 3-year average of the 99th percentile of the yearly distribution of 1-hour daily maximum SO₂ concentrations. *Id.* EPA set the level of this new standard at 75 ppb. *Id.*

The City of Albuquerque’s Environmental Health Department, Air Quality Program (AQP)², has recommended that Bernalillo County be designated with an attainment status of “unclassifiable” in regard to the revised SO₂ NAAQS, pending the availability of air quality monitoring data necessary for an “in attainment” designation.³ See CAA Section 107(d). On July 25, 2013, EPA designated certain areas of the United States as nonattainment for the new 1-hour SO₂ NAAQS. 78 Fed. Reg. 47,191-47,205 (EPA-Aug. 5, 2013). Albuquerque-Bernalillo County was not designated as one of these nonattainment areas. *Id.* EPA has stated that it will address designations for all other areas in future actions. *Id.*

Albuquerque-Bernalillo County has not yet incorporated the 2010 SO₂ NAAQS into the regulations implementing the CAA. 20.11.8 NMAC, *Ambient Air Quality Standards*. It plans to do so in a future rule-making.

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

² “Air Quality Program” is now the correct term referring to the air pollution control agency for Albuquerque and Bernalillo County. This term replaces the term “Air Quality Division,” which was used in documents previously submitted to EPA.

³ Letter from Al Armendariz, EPA Region 6 Administrator, to Susana Martinez, Governor of New Mexico (June 2, 2011). Letters cited in this iSIP submission are available upon request from the City of Albuquerque, Environmental Health Department, Air Quality Program.

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 2010 SO₂ 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 AQP 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].

~~With certain exceptions, discussed below, the state statutes, regulations, policies and programs cited in this iSIP submission are part of the approved Albuquerque Bernalillo County elements of the New Mexico SIP and thus are cited in 40 CFR Part 52, Subpart GG, subsections 52.1620 to 1620.~~

~~The following legal authorities do not currently appear in the CFR codification of the SIP. Thus, Albuquerque Bernalillo County is requesting, as part of this iSIP submission, that EPA approve them into the CFR. The full text of these legal authorities is attached as an exhibit to this iSIP submission.~~

- ~~• Certain provisions of the state Air Act related to control of SO₂ are not cited in the CFR codification of the New Mexico SIP. Albuquerque Bernalillo County is including these NMSA provisions with this iSIP submission. They are: NMSA 1978 §§ 74-2-5.1 and 74-2-12.1.~~
- ~~• The regulations to implement CAA programs in Bernalillo County are codified in the New Mexico Administrative Code (NMAC), specifically Title 20, *Environmental Protection*, Chapter 11, *Albuquerque Bernalillo County Air Quality Control Board*. Certain NMAC provisions related to control of SO₂ are not currently cited in the CFR codification of the New Mexico SIP. Albuquerque Bernalillo County is including the full text of these NMAC provisions with this iSIP submission. They are: 20.11.47 NMAC, *Emissions Inventory Requirements*; 20.11.62 NMAC, *Acid Rain*; 20.11.69 NMAC, *Pathological Waste Destructors*; 20.11.71 NMAC, *Municipal Solid Waste Landfills*; 20.11.80 NMAC, *Adjudicatory Procedures—Administrative Enforcement Hearings by the Director*; 20.11.81 NMAC, *Adjudicatory Procedures—Air Quality Control Board*; and 20.11.82 NMAC, *Rulemaking Procedures—Air Quality Control Board*.~~

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

- ~~The CFR codification of the New Mexico SIP cites to outdated versions of~~ 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 ~~these~~ ordinances since

1 the most recent EPA approval ~~of the State Boards SIP~~, 64 Fed. Reg. 29,235-29,240 (June 1,
2 1999), and demonstrate that local law conforms to federal standards, the Air Board has approved
3 a proposed revision to the State Boards SIP element that would incorporate into the ~~CFR SIP~~ all
4 currently effective applicable ordinances, policies, and programs.⁴ This SO₂ iSIP document will
5 refer throughout to the existing, most current local ordinances.
6

- 7 • The Air Board has approved proposed revisions to the following regulations in response to EPA
8 rulemaking related to PM_{2.5}: 20.11.41 NMAC, Construction Permits; 20.11.42 NMAC,
9 *Operating Permits*; 20.11.60 NMAC, *Permitting in Nonattainment Areas*; 20.11.61 NMAC,
10 *Prevention of Significant Deterioration*.⁵
11
12
13

⁴ Letter from Ryan Flynn, New Mexico Environment Secretary, to Ron Curry, EPA Region 6 Administrator (July 26, 2013).

⁵ *Id.*

Albuquerque-Bernalillo County
110(a)(2) Required SIP Elements for Sulfur Dioxide

§ 110(a)(2)(A)⁶	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 Chapter.
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Control measures generally. 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. NMSA 1978 § 74-2-4; ROA §§ 9-5-1-3 to -4; Bernalillo County Ord. 94-5 §§ 3 and 4. 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. NMSA 1978 § 74-2-5; ROA § 9-5-1-4; Bernalillo County Ord. 94-5 § 4. The Air Act and Ordinances also designate the City of Albuquerque Environmental Health Department as the air pollution control agency for Albuquerque-Bernalillo County, with authority to enforce the air quality regulations of the Board. NMSA 1978, § 74-2-5.1; ROA § 9-5-1-5; Bernalillo County Ord. 94-5 § 54.

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

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 sulfur dioxide and other criteria pollutants, including rules providing for emission limits, control measures, permits, fees, market-based control techniques, and compliance schedules. 20.11 NMAC, parts 1 to 2, 5 to 8, 40, 41, 43, 46, 47, 49, 60 to 61, 63 to 68, ~~71, 80 to 82~~, and 90.

~~Except as indicated in the Introduction of this document, the above paragraphs describing emission limits and control provisions as they relate to CAA Section 110 requirements have been submitted to and approved by EPA into the New Mexico SIP, codified. 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 1620-1640.⁷~~

⁶ 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.

~~⁷ Albuquerque-Bernalillo County has submitted SIP revisions applying to the following regulations and is awaiting EPA approval: 20.11 NMAC, Parts 1, 41, 47, 60, and 61. EPA recently, by direct final rule, approved SIP revisions affecting 20.11.1 and 20.11.47 NMAC. 80 Fed. Reg. 5471-5475 (Feb. 2, 2015).~~

Albuquerque-Bernalillo County has submitted certain proposed revisions to its permitting regulations to EPA and is awaiting EPA approval of these revisions.⁸ 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, AQP 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. 40 CFR Part 52, Subpart GG, Section 1620(c).

Startup, shutdown and malfunction; director's discretion. Albuquerque-Bernalillo County's regulation on this subject is 20.11.49 NMAC, *Excess Emissions*, which EPA approved in 2010. 75 Fed. Reg. 5698-5701 (Feb. 4, 2010). Under this regulation, AQP 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, subject to affirmative defenses with the burden of proof on the respondent. 20.11.49 NMAC, *Excess Emissions*. The statutes, ordinances, and regulations governing AQP's enforcement and maintenance of the 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. 20.11.49 NMAC, while previously approved by EPA as meeting CAA requirements, is now subject to a new proposed EPA rule that, when finalized, may require revision of the regulation. 79 Fed. Reg. 55,920-55,956 (Sept. 17, 2014). AQP will work with EPA in this regulatory process to take whatever action may be required to comply with federal law.

§ 110(a)(2)(B)

Provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile, and analyze data on ambient air quality; and upon request, make such data available to the Administrator.

AQP 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." NMSA 1978, 74-2-5.1(B); ROA § 9-5-1-5(B) (similar); Bernalillo County Ord. 94-5 § 5(B). Monitoring develops facts and investigates Bernalillo County air quality. Thus, the Air Act and Ordinances authorize AQP to conduct its monitoring program.

Monitoring is also mandated by EPA regulations. Therefore, under both state statute and federal regulations, AQP has the obligation and authority to monitor air quality for SO₂ 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"). AQP's monitoring program implements the following specific federal regulatory requirements:

- 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").

⁸ 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, by direct final rule, approved SIP revisions affecting 20.11.1 and 20.11.47 NMAC. 80 Fed. Reg. 5471-5475 (Feb. 2, 2015).

Pursuant to the above authority, AQP maintains a monitoring network throughout Bernalillo County to assess ambient concentrations for all of the NAAQS, including SO₂. 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, AQP submits for EPA review an *Annual Air Monitoring Network Plan* (AAMNP). 40 CFR § 58.10. This document describes how AQP has complied with monitoring requirements and explains any proposed changes. AQP submitted its 2014 AAMNP on July 10, 2014 and received notification of EPA approval on February 3, 2015. ~~is awaiting EPA approval of the plan.~~⁹ 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 SO₂ levels less than 10% of the 2010 SO₂ NAAQS.

~~EPA's most recent approval of AQP's AAMNP was in 2013.~~¹⁰ ~~The~~ EPA-approved 2014¹¹ AAMNP described ongoing activities for monitoring SO₂; ~~the 2014 AAMNP also describes such activities. Per the AAMNPs, t~~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.

AQP determined in 2011 that it was not required to install new monitors under the revised 1-hour 2010 SO₂ NAAQS.¹¹ However, in an effort unrelated to the revised SO₂ NAAQS, AQP began SO₂ monitoring under the NCore program in 2010. Because this monitoring had only recently begun at the time EPA finalized the 2010 SO₂ NAAQS, AQP recommended in 2011 that Albuquerque-Bernalillo County receive an attainment/nonattainment designation of "unclassifiable." Once AQP's monitoring has gathered sufficient data, AQP will be able to make a new designation recommendation to EPA ~~regarding reclassification of Albuquerque-Bernalillo County. to "attainment."~~

EPA has stated that it will defer action on Albuquerque-Bernalillo County's 2011 designation recommendation until a future date.¹²

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 § 110(a)(2)(A), and regulation of the modification and construction of any stationary source within
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⁹ Letter from Danny Nevarez, Deputy Director, Albuquerque Environmental Health Department, to Mark Hansen, Associate Director for Air Programs, Acting, EPA Region 6 (July 10, 2014) 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).

¹⁰ Letter from Thomas Diggs, Associate Director for Air, EPA Region 6, to Danny Nevarez, Deputy Director, Albuquerque Environmental Health Department (March 12, 2014).

¹¹ Letter from Susana Martinez, Governor of New Mexico, to Al Armendariz, Regional Administrator, EPA Region 6 (May 24, 2011). All of the information in this paragraph is based on this letter.

¹² Letter from Ron Curry, Regional Administrator, EPA Region 6, to Susana Martinez, Governor of New Mexico (Feb. 7, 2013).

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 this Subchapter.

Enforcement: The Air Act and Ordinances authorize AQP 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 AQP, set forth the boundaries beyond which regulated entities in Albuquerque-Bernalillo County can expect enforcement action. The Air Act and Ordinances authorize AQP to pursue enforcement through administrative compliance orders or commencement of civil actions. NMSA 1978, § 74-2-12 and 12.1; ROA § 9-5-1-99 and Bernalillo County Ord. 94-5 §§ 13 and 14. AQP carries out such enforcement as the local air pollution control agency established for Albuquerque and Bernalillo County. ROA § 9-5-1-5; Bernalillo County Ord. 94-5 § 5. These ordinances were authorized under the Air Quality Control Act, NMSA 1978, § 74-2-4.

~~As discussed in the Introduction to this document, some of the above cited legal authorities are missing from the Code of Federal Regulations or have been revised since they were originally approved into the New Mexico SIP at 40 CFR Part 52, Subpart GG, subsections 52.1620 to 1620. This iSIP submission, along with earlier submissions to EPA, will incorporate revised or missing legal authorities into the CFR, thus helping to clarify enforcement authority for the NAAQS. Please refer to the Introduction for additional details.~~

Preconstruction PSD Permitting of Major Sources: Under the general statutory authority discussed in Element A of this iSIP, above, the Air Board and AQP have the authority to implement a comprehensive Prevention of Significant Deterioration (PSD) permit program not only for SO₂ but for all regulated New Source Review (NSR) pollutants. This authority is implemented in regulations codified at 20.11.61 NMAC, *Prevention of Significant Deterioration*, setting forth PSD requirements for all sources in areas designated in attainment or unclassifiable for a NAAQS.¹³

Albuquerque-Bernalillo County's comprehensive PSD program for all NSR pollutants has been previously approved into the New Mexico SIP by EPA. 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).

Albuquerque Bernalillo County has the authority to issue permits under its PSD program to sources of Greenhouse Gasses (GHGs). 20.11.61.7(CCC) NMAC. 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. 76 Fed. Reg. 81,836 (Dec. 29, 2011).

In addition to the above PSD approvals, EPA requires that an iSIP submission address whether an air agency has submitted any PSD program 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.

¹³ 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*.

Albuquerque Bernalillo County has submitted PSD-related regulatory revisions to EPA in response to EPA's rulemaking amending the PSD requirements for particulate matter 2.5 (PM_{2.5}) found at 75 Fed. Reg. 64,863 (Oct. 20, 2010). Albuquerque-Bernalillo County's PSD 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.

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. *Sierra Club v. EPA*, 705 F.3d 458 (D.C. Cir. 2013). 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). AQP will respond promptly to any future EPA initiatives regarding these vacated 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 pollutants. 20.11.41 NMAC, *Construction Permits*. Thiese preconstruction regulations also applies to minor modification of major sources emitting a NAAQS pollutants. *Id.* EPA has previously approved these provisions into the New Mexico SIP, 69 Fed. Reg. 78,312-78,3153 (Dec. 30, 2004), 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 this Subchapter to prevent significant deterioration of air quality or to protect visibility,

(ii) insuring compliance with the applicable requirements of CAA Sections § 126 and 115 [Sections 7426 & 7415 of this Title] (relating to interstate and international pollution abatement).

Contributions to nonattainment; interference with maintenance, per § 110(a)(2)(D)(i)(I): Albuquerque-Bernalillo County has sufficient control measures in place to ensure that sources emitting sulfur dioxide do not interfere with another state's maintenance of the 2010 SO₂ 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. AQP has determined that this infrastructure will be sufficient to avoid negatively impacting NAAQS attainment and maintenance in other states in view of the following factors.

- 1) *The relative scarcity of major SO₂ sources in Albuquerque-Bernalillo County.* Albuquerque-Bernalillo County has only two major SO₂ sources. One is the Albuquerque Southside Water Reclamation Plant (Water Reclamation Plant), operated by the Albuquerque Bernalillo County Water

Utility Authority. The other is the Tijeras Plant, a cement production facility operated by the GCC Rio Grande Portland Cement Corp, Inc. (Tijeras Plant).

2) *The minimal amount of emissions from those sources.* The Tijeras Plant is permitted to emit 1,417.8 tons per year of oxides of sulfur. According to data available to AQP, this facility's reported actual emissions averaged only 20.66 tons of SO₂ per year from 2011 to 2013. Reported emissions were approximately 16.52 tons per year (tpy) in 2011, 20.84 tpy for 2012, and 24.63 tpy for 2013.¹⁴ The Water Reclamation Plant is permitted to emit ~~123.41, 103.41~~ tons per year of SO₂. According to data ~~available to AQP from the State and Local Emissions Inventory (SLEIS) system~~, this facility's reported actual emissions averaged only ~~58.6684, 342975~~ tons of SO₂ per year from 201~~12~~ to 2013. Reported emissions were approximately 7.3 tpy in 2011, 75.23 tpy in 2012, and 93.46 tpy in 2013.¹⁵ ~~The Tijeras Plant is permitted to emit 123 tons per year of oxides of sulfur. According to data from the SLEIS system, this facility's reported actual emissions averaged only 22.739425 tons of SO₂ per year from 20112012 to 2013.~~ In Bernalillo County as a whole, monitoring of ambient air quality indicates that the design value for SO₂ in parts per billion was 4.6 parts per billion (ppb) for the period 2011 to 2013 -- i.e. less than 10% of the 75 ppb 2010 SO₂ NAAQS. Albuquerque Environmental Health Department, Air Quality Program, Ambient Air Monitoring Section, 2014 Annual Network Review for Ambient Air Monitoring (submitted to EPA July 10, 2014; EPA approval received February 3, 2015).

3) *The relatively large geographic distance between those sources and other states.* Given the small overall level of SO₂ emissions from Bernalillo County, AQP has determined that these emissions will be widely dispersed over the large geographic distance between their sources and the borders of neighboring states. The approximate distance from Bernalillo County's border to the border of neighboring states, in a straight line, is as follows: 125 miles to Arizona; 120 miles to Colorado; 190 miles to Texas.

Interference with prevention of significant deterioration: 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. Thus, the PSD program includes measures to prevent interference with PSD measures in other states.

Interference with protection of visibility: 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. 77 Fed. Reg. 71,119 (Nov. 29, 2012). 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." *Id.* 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), was recently upheld by the Tenth Circuit.⁵ *Wild Earth*

¹⁴ 2012 and 2013 emissions data for the Tijeras Plant are from the State and Local Emissions Inventory System (SLEIS). 2011 emissions data from this source is preliminary. The 2011 emissions amount, 16.52 tpy, is a preliminary calculation that has been reported by the source but not yet entered into SLEIS. This situation arose because the source originally over-reported its 2011 emissions. AQP has been working with the source to correct the error and enter a final, verified amount for actual emissions into SLEIS.

¹⁵ Emissions data are from SLEIS.

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

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. If EPA should approve these revisions, the result would be, when combined with earlier EPA approvals of PSD provisions, a fully EPA approved PSD permitting program that will, along with earlier EPA approvals of the PSD program, satisfy EPA requirements for PSD permitting.** Thus, the PSD program **will 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 SO₂. If such findings should occur in the future, AQP 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 SO₂.

§ 110(a)(2)(E)(i)	<p>Provide:</p> <p>(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).</p>
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Organization responsible for the SIP: The Air Act and Ordinances designate the Air Board and the Environmental Health Department as the responsible authorities for implementing federal air quality standards in Albuquerque Bernalillo County. NMSA 1978 § 74-2-5 and 5.1; ROA §§ 9-5-1-4 and -5; Bernalillo County Ord. 94-5 §§ 4 and 5. The Air Act and Ordinances designate AQP as the air pollution control agency for Albuquerque-Bernalillo County, for this purpose empowering AQP 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. NMSA 1978 § 74-2-5.1; ROA § 9-5-1-5; Bernalillo County Ord. 94-5 § 5. For purposes of these provisions, the Air Board and AQP are the sole organizations that participate in developing, implementing, and enforcing the EPA-approved SIP

provisions related to the 2010 SO₂ NAAQS.

Resources (i.e. personnel & funding) available to carry out the SIP: As of the date of this iSIP submission, the Air Board and AQP have adequate funding and personnel to carry out the functions described in this document addressing the 2010 SO₂ NAAQS. Funding and personnel for activities related to the 2010 SO₂ 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. AQP expects these sources to provide adequate funding for the five years following this iSIP ~~provisions~~ submission. AQP does not anticipate the need for additional resources to implement the plan for the 2010 SO₂ 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 AQP lacks adequate personnel to carry out the SIP, EPA may issue a finding with respect to that deficiency, which AQP would have a legal obligation to correct.

Authority to carry out the SIP: The Air Board and AQP have adequate authority under statutes, rules, and regulations to carry out SIP obligations with respect to the 2010 SO₂ 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 AQP. NMSA § 74-2-5 and -7. In addition, the AQP 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. 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. This legal framework empowers AQP to carry out administrative assessments, inspections, issuance of penalties for permit violations, and appropriate litigation. *Id.* To act under the foregoing legal provisions, AQP has full authority under state law, and city and county ordinances to carry out all SIP obligations relating to the 2010 SO₂ NAAQS. ROA §§ 9-5-1-1 to -99; and Bernalillo County Ord. 94-5 §§ 1 to -20.

§ 110(a)(2)(E)(ii)	(ii) requirements that the State comply with the requirements respecting State boards under CAA Section 128 [Section 7428 of this Title], and
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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. 64 Fed. Reg. 29,235 (July 1, 1999). 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 128.¹⁶

These proposed SIP revisions will 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");

¹⁶ Letter from Ryan Flynn, New Mexico Environment Secretary, to Ron Curry, EPA Region 6 Administrator (July 26, 2013).

- 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 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 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. 20.11.82.14 NMAC.

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. 20.11.81.12(B)(3)(a).

§ 110(a)(2)(E)(iii)	(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.
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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. ROA §§ 9-5-1-1 to -99; and Bernalillo County Ord. 94-5, §§ 1 to -20. 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. NMSA 1978 § 74-2-4(D).

§ 110(a)(2)(F)	Require, as may be prescribed by the Administrator: <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 [Chapter], which reports shall be available at reasonable times for public inspection;
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Source monitoring: 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. NMSA § 74-2-5(C)(6). Consistent with 40 CFR § 51.212, Albuquerque-Bernalillo County regulations provide that stationary sources may be subject to periodic inspection and emissions testing. 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*. These source monitoring requirements authorize AQP 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 AQP. 20.11.47 NMAC, *Emission Inventory Requirements*. 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 AQP inspections. 20.11.90 NMAC, *Source Surveillance: Administration and Enforcement*. AQP is current with its submittals to the National Emissions Inventory (NEI) database; the 2013³² data for larger sources was submitted to EPA on December 30⁹, 2014³.

Correlation of source reports with emissions limitations and standards: Pursuant to the NMAC provisions cited above and consistent with 40 CFR § 51.116, AQP 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.” 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 . . .”). By means of such correlation, AQP 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. 20.11.90.13(C) NMAC.

§ 110(a)(2)(G)

Provide for authority comparable to that in CAA Section 303 [Section 7603 of this Title] and adequate contingency plans to implement such authority.

Authority to respond to emergency episode: The Air Act and Ordinances provide AQP 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. NMSA 1978 § 74-2-10(A); ROA § 9-5-1-10(A); Bernalillo County Ord. 94-5 § 10(A). If such a civil suit is not a practicable means of promptly 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. NMSA 1978 § 74-2-10(B); ROA § 9-5-1-10(B); Bernalillo County Ord. 94-5 § 10(B).

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. 20.11.6 NMAC, *Emergency Action Plan*. 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. 56 Fed. Reg. 38,074 (Aug. 21, 1991); 40 CFR § 52.1639.

§ 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.
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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 Bernalillo County. NMSA 1978 § 74-2-5; ROA § 9-5-1-4; Bernalillo County Ord. 94-5 § 4. To assist the Board with all NAAQS revisions, AQP has authority to develop and present to the Board a plan for the regulation, control, prevention or abatement of air pollution. NMSA 1978 § 74-2-5.1(H); ROA § 9-5-1-5(I); Bernalillo County Ord. 94-5 § 5(I). Because these provisions allow for changes as necessary to ~~the SIP local air quality regulations and programs~~, they provide the legal basis for the Air Board and AQP to ~~revise the 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 the 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 AQP 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);
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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 CAA § 121 [Section 7421 of this Title] (relating to consultation), CAA Section 127 [Section 7427 of this Title] (relating to public notification), and Part C of this Subchapter (relating to prevention of significant deterioration of air quality and visibility protection);
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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.” 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).

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. 20.11.82 NMAC, *Rulemaking Procedures -- Air Quality Control Board*. 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. 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). Additionally, public participation and notification provisions are incorporated in regulations governing adjudicatory decisions by the Air Board: 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). 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 opportunity for public involvement be provided before making transportation conformity determinations and before adopting/proposing for EPA review applicable SIP revisions on transportation related SIP elements. 20.11.3.105, 20.11.3.112, and 20.11.4 NMAC.

Consistent with 40 CFR § 51, subpart M, the Air Act, Ordinances and regulations identify the Air Board and AQP as the organizations responsible for developing, implementing, and enforcing the SIP. 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. These legal authorities also describe particular responsibilities of the Air Board and AQP 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. 20.11.3 and 20.11.4 NMAC.

Public notification: Consistent with CAA, Section 127, and 40 CFR § 51.285, AQP 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. AQP 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. AQP's website provides information to the public on current air quality conditions in AQP'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, AQP advises the public of potential health hazards associated with measured values for sulfur dioxide and other NAAQS pollutants that may at times exceed the concentrations specified in the NAAQS.

AQP'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, AQP 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, AQP 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, AQP 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, 20.11.82.18 NMAC, *Rulemaking Procedures -- Air Quality Control Board* (providing that "any person" may petition the Air Board for rulemaking); (2) time and place of upcoming rulemaking proceedings, 20.11.82.19 NMAC; (3) procedures for members of the public to participate in rulemakings, 20.11.82.19 NMAC; (4) procedures for members of the public to participate in the permitting process, 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*. 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.

AQP and the Air Board further promote the above forms of public participation by providing links on the AQP website to important information about such participation. This web-based information includes: the content of relevant regulations; notices of proceedings; Air Board and AQP 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 AQP 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 NAAQS, and
- (ii) the submission, upon request, of data related to such air quality modeling to the Administrator;

Authority to conduct air quality modeling: The Air Act and Ordinances authorize AQP to “develop facts and make investigations and studies” consistent with the Act. NMSA 1978, § 74-2-5.1(A); ROA § 9-5-1-5(B); and Bernalillo County Ord. 94-5 § 5(B). These legal provisions provide AQP 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. AQP follows EPA guidelines for air dispersion modeling. 40 CFR, Part 51, Appendix W. AQP utilizes air quality modeling or requires sources to conduct such modeling under the following regulations: 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).

Authority to provide modeling data to EPA: AQP has authority to provide modeling data to EPA upon request and will do so when AQP receives such a request. This authority derives from provisions in the Air Act and Ordinances that require AQP to present “a plan for the regulation, control, prevention or abatement of air pollution” to the Air Board. NMSA 1978 § 74-2-5.1(H); ROA § 9-5-1-5(I); Bernalillo County Ord. 94-5 § 5(I). 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. NMSA § 74-2-5; ROA § 9-5-1-4; Bernalillo County Ord. 94-5 § 4. 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. AQP ~~agrees to~~ 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 [Chapter], 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 [Subchapter V of this

	Chapter];
	<p>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. <i>See</i> 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 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).</p>
<p>§ 110(a)(2)(M)</p>	<p>Provide for consultation and participation by local political subdivisions affected by the plan.</p>
	<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>