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

IN THE MATTER OF THE PETITION TO AMEND THE SECTION 309 REGIONAL HAZE STATE IMPLEMENTATION PLAN ELEMENT: ALBUQUERQUE - BERNALILLO COUNTY, NEW MEXICO, AND INCORPORATE SAID AMENDMENTS INTO THE NEW MEXICO STATE IMPLEMENTATION PLAN (SIP) FOR AIR QUALITY

AQCB Petition No. 2011-2

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

Petition to Amend the Section 309 Regional Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico, and Incorporate an Amended 20.11.21 NMAC into the New Mexico State Implementation Plan for Air Quality (SIP)

The Environmental Health Department of the City of Albuquerque, by and through the Air Quality Division (AQD), asks the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) for a hearing at which the Air Board will hear the Air Quality Divisions' request to adopt amendments to *Section 309 Regional Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico*, and submit said amendments to U.S. Environmental Protection Agency (EPA) as a revision to the 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:

1. 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).

2. The Albuquerque Air Quality Division is proposing changes to the Regional Haze State Implementation Plan for Albuquerque and Bernalillo County. As reason it states:

History

The *Section 309 Regional Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico*, was first submitted pursuant to the U.S. Environmental Protection Agency (EPA) requirements published as a Federal Register notice (FR Vol. 64, No. 126) on Thursday, July 1, 1999. This Regional Haze State Implementation Plan (SIP) addressed requirements found in Part 51, Appendix V relating to completeness of SIP submissions. This SIP was first presented at a public hearing before the Albuquerque-Bernalillo County Air Quality Control Board (AQCB) held on October 8, 2003 and continued on November 12, 2003. Appropriate public notices and opportunities for public comment were provided. The AQCB adopted the initial Regional Haze SIP on November 12, 2003.

In 1999 the first regulation to address the type of visibility impairment known as Regional Haze was promulgated by EPA. Since that time it has been judicially challenged twice. On May 24, 2002, the U.S. Court of Appeals for the District of Columbia Circuit issued a ruling vacating the Regional Haze Rule in part and sustaining

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

In 2010 EPA Region 6 conveyed to New Mexico and Albuquerque-Bernalillo County that there were certain technical issues concerning the $S0_2$ trading program in New Mexico's Regional Haze SIP that remained to be resolved. Regions 6, 8, and 9 (the "Regions") had reviewed the document entitled *Demonstration that the $S0_2$ Milestones*

Provide Greater Reasonable Progress than BART dated July 23, 2009. This document illustrated the position held by the States participating in the Regional Haze option under 40 CFR 51.309 (the 309 SIPs), that a 2018 SO_2 milestone of 234,624 tons SO_2 satisfied the requirements under Section 51.309(d)(4), and specifically, that the 2018 milestone will achieve greater reasonable progress than would have been achieved from the installation and operation of Best Available Retrofit Technology (BART). EPA Regions 6, 8 and 9 determined that based on their review, the proposed 2018 milestone did not satisfy Section 51.309(d)(4). Therefore, in order to approve the Regional Haze SIP for the aforementioned states, EPA has asked that the proposed milestones be revised in order to meet the requirements of Section 51.309(d)(4). To this end, the States and Regions have negotiated a revised set of milestones. These revised milestones and their associated changes have been incorporated into this third iteration of the Regional Haze SIP, labeled Public Review Draft, 2/22/2011. In addition, since this SIP was last amended, the state of Arizona has changed from a "309" program to a "308" program, and so this change has been also noted in this SIP.

Overview

The Section 309 Regional Haze SIPs developed by New Mexico, Utah, Wyoming and the City of Albuquerque represent 20 years of work in the region to improve visibility at Class I Areas. The process began with the Grand Canyon Visibility Transport Commission and continued with the work of the Western Regional Air Partnership. States, tribes, local governments, industry, environmental groups, and federal land

managers negotiated a consensus agreement to improve visibility that all of the stakeholders could support.

The states submitted Regional Haze SIPs in 2003 and have been implementing the strategies for the last seven years. However, approval of the Section 309 SIPs was delayed due to challenges to the federal requirements for Best Available Retrofit Technology (BART). The States are considering changes to the stationary source provisions to address the new BART requirements and to update the SO_2 milestones to account for significant changes since the SIPs were adopted in 2003.

Summary of Changes from the 2003 SIP

- Arizona and Oregon are no longer participating in the trading program and are instead focusing resources on developing a single SIP under section 308 of the regional haze rule. The trading program was designed to accommodate changes and the milestone has been reduced to reflect the smaller number of sources in the program.

- The base year for the milestones was updated to the year 2006, and emission reductions between 2006 and 2010 have been included for individual plants, effectively locking in the substantial emission reductions that have occurred since the Annex was finalized in 2000.

- New source growth estimates for utilities have been reduced substantially to account for changing projections for new coal-fired power plants in the region. Coal will continue to be an important resource in the region, but new renewable energy resources and efforts to improve efficiency have reduced projections for new plants in the region. New plants will use state of the art emission reduction technologies with significantly lower SO_2 emissions than older facilities. The new source growth estimate has been reduced to 2,600 tons of SO_2 for new plants in the region by 2018.

- All power plants that are subject to BART are assumed to meet the presumptive BART emission rate of 0.15 lb/MMBtu. This assumption is appropriate because the trading program was designed to achieve reasonable progress from all stationary sources of SO_2, with BART as a secondary goal.

- After seven successful years of implementing the program, there is greater certainty about regional emissions. Therefore the headroom/uncertainty factor is no longer needed.

- A tribal set-aside of 2,500 allowances is included in the program. This set-aside is "below the line" and is available as a special allocation if the program is triggered.

- When the Annex to the Grand Canyon Visibility Transport Commission Recommendations was finalized in 2000, additional incentives were needed to encourage zero emission technologies. Since that time there has been tremendous growth in renewable portfolio standards. GHG regulations are further encouraging renewable energy. The renewable energy credit is no longer included in the program because these other incentives are achieving the goal.

The proposed 2018 milestone represents a 60% reduction in SO_2 emissions since 1990 in the 3-state region. Substantial improvement can be seen in the sulfate contribution to visibility in the Class I areas along the Colorado Plateau. The improvement is especially apparent on the cleanest days that are not impacted by emissions from wildfires.

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

4. The proposed Public Review Draft of the *Section 309 Regional Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico* is attached as Exhibit #1a.

Respectfully submitted,

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CERTIFICATION

I hereby certify that a copy of this Petition to Amend *Section 309 Regional Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico*, and Incorporate said amendments into the New Mexico State Implementation Plan for Air Quality (SIP), was delivered to the following person on February 22, 2011.

Margaret Nieto, Control Strategies Supervisor, Air Quality Control Board Secretary
For

Janice Wright
Air Quality Control Board Liaison
Environmental Health Department
One Civic Plaza, NW, Room 3023
Albuquerque, New Mexico 87103

Mary Lou Leonard
Director, Environmental Health Department