CITY OF ALBUQUERQUE

PENGAD 800-631-6989
AQD EXHIBIT
3b

February 26, 2013

Mr. Guy Donaldson
Chief, Air Planning Section (6PD-L)
U.S. Environmental Protection Agency, Region VI
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

SUBJECT: Response by Air Quality Division to EPA Comments on Proposed NO_2 i-SIP

Dear Guy,

Thank you for your comments on our proposed NO_2 Infrastructure SIP. Please find our responses below:

EPA Comment 1:

PO Box 1293

Albuquerque

NM 87103

www.cabq.gov

Sections 110(a)(2)(C) and (E) of the certification matrix in the Proposal do not include any discussion of where the Air Quality Division (AQD) is granted authority to enforce permitting provisions and implement the SIP. The Bernalillo County Ordinance 88-45 provides the AQD with authority to enforce permitting provisions, and provides for assessment of administrative enforcement actions and administrative penalties for violations of those permit terms and conditions. The EPA approved Ordinance 88-45 into the Albuquerque - Bernalillo County SIP in a June I, 1999 rulemaking (64 FR 29235). The Albuquerque - Bernalillo County has since amended the ordinance and re-codified it as Bernalillo County Ordinance 94-5. Since Ordinance 88-45 no longer exists, we encourage the submittal of the amended ordinance as a SIP revision. We will act on this amended ordinance in a future rulemaking. The Joint Air Quality Control Board Ordinance 94-5 is also cited as legal authority in 20.11.1.3 NMAC, which is SIP-approved. Please update the matrix to include a discussion of the above.

AQD Response To Comment 1:

AQD agrees with this comment and has proposed a revision to the State Boards SIP to incorporate all of the currently effective applicable ordinances in order to update AQD's authority to enforce said provisions (see EPA - Stakeholder Review Draft, January 25, 2013). AQD has amended its' proposed Public Review Draft NO_2 i-SIP to include a discussion of AQD's effort to update the authority cited in the SIP (see Public Review Draft, February 26, 2013).

EPA Comment 2:

The EPA finalized the $PM_{2.5}$ PSD Increment-SILs-SMC Rule (75 FR 64864, October 20, 2010) to provide additional regulatory requirements under the PSD SIP program regarding the implementation of the $PM_{2.5}$ NAAQS for NSR. As a result, the $PM_{2.5}$ PSD Increment- SILs-SMC Rule required states to submit SIP revisions to adopt the required PSD increments by July 20, 2012. This requirement applies to the Albuquerque/Bernalillo County. Specifically, the October 20, 2010 $PM_{2.5}$ Rule requires states to

adopt and submit for EPA approval a PSD SIP revision that implements the $PM_{2.5}$ increments pursuant to section 166(a) of the Clean Air Act (CAA) to prevent significant deterioration of air quality in areas meeting the NAAQS. The EPA will not be able propose a full approval of the Infrastructure SIP for the PSD related components of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J) until the Albuquerque/Bernalillo County submits a SIP revision addressing the $PM_{2.5}$ PSD increments requirements and the EPA approves the SIP revision.

We (EPA) recognize that on January 22, 2013 the U.S. Court of Appeals for the District of Columbia Circuit Court (Court) vacated and remanded to the EPA portions of the October 20, 2010 $PM_{2.5}$ Rule establishing PSD significant impact levels (SILs) and significant monitoring concentrations (SMCs) for $PM_{2.5}$. However, the $PM_{2.5}$ PSD increment requirements from our October 20, 2010 $PM_{2.5}$ Rule were not subject of the Court's decision and remain in place. Furthermore, we also recognize that the Albuquerque/Bernalillo County has proposed SIP revisions dated December 5, 2012 (for 20.11.60 NMAC *Prevention of Significant Deterioration* and 20.11.61 NMAC *Permitting in Nonattainment Areas*) addressing the $PM_{2.5}$ PSD increment requirements and we encourage finalizing and submitting to the EPA that rulemaking. Please address the $PM_{2.5}$ PSD increment requirements in the matrix outlining the requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J)(II), of the CAA.

AQD Response To Comment 2:

AQD agrees with this comment and on January 29, 2013 filed Air Quality Control Board Petition No. 2013-1, Petition to Amend 20.11.60 NMAC, *Permitting In Nonattainment Areas*; 20.11.61 NMAC, *Prevention Of Significant Deterioration*; and 20.11.42 NMAC, *Operating Permits*. The Amendments to 20.11.42 NMAC Are Proposed As a Revision to the Title V Operating Permit Program, and the Amendments to 20.11.60 NMAC and 20.11.61 NMAC Are Proposed As a Revision to the New Mexico State Implementation Plan for Air Quality (SIP). The $PM_{2.5}$ PSD increment requirements from EPA's October 20, 2010 $PM_{2.5}$ Rule are included among these proposed amendments. AQD has also incorporated language into the draft NO_2 i-SIP to address the $PM_{2.5}$ PSD increment requirements stipulated by the October 20, 2010 $PM_{2.5}$ Rule.

EPA Comment 3:

The discussion in section 110(a)(2)(D) for Interstate Transport states that based on monitored NO_2 concentrations, and the lack of NO_2 nonattainment areas in the Bernalillo County or within close proximity, the AQD has concluded that NO_2 emissions from the Bernalillo County:

1) Do not significantly contribute to nonattainment or interfere with maintenance for any other state with regards to the NO_2, NAAQS;

2) Do not interfere with the measures required to implement prevention of significant deterioration or for the protection of visibility in any other state; and

3) Do not preclude the state from insuring compliance with CAA Sections 126 and 115.

We appreciate that this proposal addresses CAA 110(a)(2)(D)(i)(I) requirements. However, at this time, we are not treating a SIP submission addressing these requirements as a "required" SIP submission until EPA has defined a state's obligations in accordance with the August 21, 2012 United States Court of Appeals for the District of Columbia Circuit decision vacating the Cross-State Air Pollution Rule. If Albuquerque/Bernalillo county still wishes to address the CAA 110(a)(2)(D)(i)(I) requirements, we recommend that this discussion be supplemented with information regarding the number of actual NO_2 monitors in Albuquerque/Bernalillo County (i.e., 1 NCOR site) and the maximum values monitored at that site during the past three years (e.g., 2010-2012). We also recommend that you supplement the

discussion with what monitors/receptors were considered outside of Albuquerque/Bernalillo County as potential nonattainment or maintenance receptors and include any technical analyses supporting the conclusions. EPA's guidance for PM $PM_{2.5}$ PSD increment requirements from our October 20, 2010 $PM_{2.5}$ Rule and Ozone for 110(a)(2)(D) and EPA's recent actions in review of these SIPs in other states provide examples of the types of technical analysis that can be utilized, While the conclusion may remain the same, the additional information provides support for that conclusion.

AQD Response To Comment 3:

Due to the instability of the regulatory landscape caused by litigation surrounding the Clean Air Interstate Rule (CAIR) and the Cross-State Air Pollution Rule (CASPR) (e.g. the August 21, 2012 US Court of Appeals for the District of Columbia Circuit decision vacating CASPR), and the delayed publication of EPA's guidance document for the NO_2 i-SIP, AQD is withdrawing the § 110(a)(2)(D)(i)(I) element of this i-SIP from consideration by EPA as a revision to the SIP. AQD will wait to submit the Interstate Transport section within the NO_2 i-SIP [110(a)(2)(D)(i)(I)] until such time as EPA has defined a state's obligations in accordance with the August 21, 2012 US Court of Appeals for the District of Columbia Circuit decision vacating the CASPR Rule. When AQD submits this element, it will include a technical analysis to support AQD's contention that Albuquerque - Bernalillo County is capable of implementing this element of the NO_2 i-SIP. [§ 110(a)(2)(D)(i)(I)]

Should you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

Neal Butt
Environmental Health Scientist
Air Quality Division
Environmental Health Department
City of Albuquerque
One Civic Plaza, NW, Suite 3023
Albuquerque, New Mexico 87103
(505) 768-2660

cc: John Walser, Air Planning Section, U.S. EPA, Region 6
Margaret Nieto, Control Strategies Supervisor, AQD
Bill Westmoreland, Deputy Director, Environmental Health Department