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ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

State Implementation Plan for Air Quality (SIP)

To Address Infrastructure Requirements of Section 110(a)(2)(A)-(M) of the Clean Air Act (CAA) to Implement the 2010 Nitrogen Dioxide (NO_2) National Ambient Air Quality Standard (NAAQS)

"Infrastructure SIP"

Public Review Draft
February 26, 2013

Adopted
Month, Day, Year

_____
Mx. XXXX XXXXX, Chair
Albuquerque-Bernalillo County Air Quality Control Board

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Neal Butt, Environmental Health Scientist
Control Strategies Section, Air Quality Division (AQD)
Principal Author, Editor, SIP Submittal

Margaret Nieto, Control Strategies Supervisor, AQD
Project Oversight

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

Regulatory Development Committee, AQD
Peer Review

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Executive Summary

"NO_2 is a reddish-brown, highly reactive gas that is formed in the ambient air through the oxidation of nitric oxide (NO). Nitrogen oxides (NO_X) is the term used to describe the sum of NO, NO_2, and other oxides of nitrogen. A variety of NO_X compounds and their transformation products occur both naturally and as a result of human activities. Anthropogenic (i.e. manmade) emissions of NO_X account for a large majority of all nitrogen inputs to the environment. The major sources of anthropogenic NO_X emissions are high temperature combustion processes, such as those occurring in automobiles and power plants. Most NO_X from combustion sources (about 95 percent) are emitted as NO, which is readily converted to NO_2 in the environment; the remainder is emitted largely as NO_2. Natural sources of NO_X are lightning, biological and abiological processes in soil, and stratospheric intrusion." [p. 9533 Federal Register, Vol. 77, No. 33, 2/17/12] (http://www.gpo.gov/fdsys/pkg/FR-2012-02-17/pdf/2012-3150.pdf#page=1)

On January 22, 2010, the Administrator of the U.S. Environmental Protection Agency (EPA), Lisa Jackson, promulgated a new NAAQS for NO_2, effective April 12, 2010 [FR Vol. 75, No. 26, 6474-6537, February 9, 2010]. Based on its review of the air quality criteria for oxides of nitrogen and the primary NAAQS for oxides of nitrogen as measured by NO_2, EPA has made revisions to the primary NO_2 NAAQS in order to provide requisite protection of public health. Specifically, EPA has established a new 1-hour standard at a level of 100 parts per billion (ppb), based on the 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations, to supplement the existing annual standard of 0.053 parts per million (ppm) / 53 parts per billion (ppb). "All areas presently meet the current (1971) NO_2 NAAQS, with annual NO_2 concentrations measured at area-wide monitors well below the level of the standard (53 ppb). Annual average ambient NO_2 concentrations, as measured at area-wide monitors, have decreased by more than 40% since 1980. Currently, the annual average NO_2 concentrations range from approximately 10-20 ppb."(EPA, 2012. *Nitrogen Dioxide: Basic Information*. Accessed November 2012: http://www.epa.gov/airquality/nitrogenoxides/basic.html). On February 17, 2012, the EPA designated all areas in the United States as "unclassifiable/attainment" for the new 1-hour NO_2 NAAQS [FR Vol. 77, No. 33, 9532-88, effective 2/29/12].

Pursuant to Sections 110(a)(1) and 110(a)(2) of the CAA, each State is required to submit a plan 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 is due February 9, 2013.

A 'SIP' identifies how the state will attain and maintain the primary and secondary NAAQS. The SIP contains regulations, source-specific requirements, non-regulatory items such as plans and inventories, and in some cases additional requirements promulgated by the EPA. The initial SIPs for states were approved by EPA on May 31, 1972 [FR Vol. 37, No. 105, pp. 10842-10906]. 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 CFR Part 52.1620-1640, Subpart GG.

The attached matrix outlines the requirements of Sections 110(a)(2)(A) through (M) of the CAA [codified at U.S. Code: Title 42, Chapter 85, Subchapter I, Part A, §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 NO_2 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, which gives the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) and the Albuquerque Environmental Health Department's Air Quality Division (AQD) the authority to implement the CAA in New Mexico. 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.

The regulatory authority to implement CAA programs is codified in the New Mexico Administrative Code (NMAC), specifically Title 20, *Environmental Protection*, Chapter 11, *Albuquerque-Bernalillo County Air Quality Control Board*. The regulations codified at 20.11.XX NMAC are part of the approved Albuquerque-Bernalillo County, New Mexico SIP and are cited in 40 CFR § 52.1620(c) unless otherwise stated.

Those requirements of CAA § 110(a)(2) that are in the approved SIP or recently submitted SIP revisions relate to enforceable emission limits and schedules for compliance; monitoring, source testing and emissions reporting; recordkeeping and reporting requirements; and permit fees. Some requirements, such as intergovernmental consultation, air quality modeling, and compliance with Part D of Title I of the CAA, are fulfilled during the development and submission to EPA as a SIP revision of attainment plans.

Albuquerque-Bernalillo County, New Mexico
§110(a)(2) SIP Requirements for the 2010 NO_2 NAAQS

§ 110(a) Element	Summary of Element Requirements	Provisions in the Current SIP
§ 110(a)(2)	*Each implementation plan submitted by a State under this Chapter shall be adopted by the State after reasonable notice and public hearing. Each such plan shall—*	
§ 110(a)(2)(A) Emission Limits & Other Control Measures	*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.*	Albuquerque-Bernalillo County's 'enforceable emission limitations and other control measures' are authorized by the Air Act and those provisions of Title 20, *Environment Protection*, Chapter 11, *Albuquerque-Bernalillo County Air Quality Control Board*, NMAC. Enacted in 1967, the Air Act [NM STAT ANN §§ 74-2-1 through 74-2-17] allowed for the establishment of the Air Board as a local board and gave it authority to administer and enforce its air quality regulations within the Bernalillo County boundaries. 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. The regulations authorized by the Air Act of the New Mexico Statutes Annotated [NMSA 1978] are duly adopted by the Air Board. Where these provisions relate to CAA Section 110 requirements, SIP revisions have been submitted to and approved by EPA [codified at 40 CFR Part 52, Subpart GG, Sections 1620-1640]. The AQD has an EPA-approved air permitting program for both major and minor sources, which ensures that all applicable requirements are included in the source's permit. AQD has determined that no reductions in NO_2 emissions are required for maintenance of the 2010 NO_2 NAAQS. AQD 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 presumptively violations, subject to affirmative defenses with the burden of proof on the respondent. See 20.11.49 NMAC, *Excess Emissions*.
§ 110(a)(2)(B)	*provide for establishment and operation of appropriate devices, methods, systems,*	AQD maintains a monitoring network to assess ambient concentrations for all of the NAAQS and submits an *Annual Monitoring Network Plan* to EPA which describes how it has complied with monitoring requirements and explains any proposed changes. Specifically, AQD currently operates a regulatory NO_2 monitor in Bernalillo County (Del Norte Site, AIRS #35-001-0023 N-Core)

	and procedures necessary to- *(i) monitor, compile, and analyze data on ambient air quality; and* *(ii) upon request, make such data available to the Administrator.*	which shows a 1-hour Design Value (2008-2010) of 55 ppb, and an Annual Design Value (2008-2010) of 12 ppb. [Table 2-1: *EPA Region 6 NO_2 Monitor Sites in 2010*, TCEQ NO_2 i-SIP (http://www.tceq.texas.gov/assets/public/implementation/air/sip/no2/NO2infra_ado.pdf)] The area within the jurisdiction of the Air Board is currently in attainment for the existing annual NO_2 standard. "Based on its review of the air quality criteria for oxides of nitrogen and the primary NAAQS for oxides of nitrogen as measured by NO_2, EPA has made revisions to the primary NO_2 NAAQS in order to provide requisite protection of public health as appropriate under Section 109 of the CAA. Specifically, EPA is supplementing the existing annual standard for NO_2 of 53 ppb by establishing a new short-term standard based on the 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. EPA is setting the level of this new standard at 100 ppb. EPA is also establishing requirements for an NO_2 monitoring network. . .at locations where maximum NO_2 concentrations are expected to occur" [FR Vol. 75, No. 26, 6474-6537, 2/9/10]. Since EPA changed the form of the standard (i.e. "The form is the air quality statistic used to determine if an area meets the standard." *Fact Sheet Final Revisions To The National Ambient Air Quality Standards For Nitrogen Dioxide* http://www.epa.gov/apti/video/pdfs/NO2%20NAAQS%20Fact%20Sheet.pdf) and the method of data collection (i.e. near-road monitoring), no near-road 1-hour NO_2 data were collected in the past. Consequently, the EPA utilized emissions data from 2006-2008 to extrapolate design values for the new standard in order to make preliminary area designations [FR Vol. 77, No. 33, 9532-9588, 2/17/2012]. EPA calculations showed that the monitored levels of NO_2 within the jurisdiction of the Air Board had a theoretical design value of 58 ppb, which indicated 'attainment' status (see http://www.epa.gov/air/nitrogenoxides/pdfs/NO2_final_designvalues_0608_Jan22.pdf). However, actual 1-hour data, to support these calculations will be necessary before EPA officially designates this area as being in 'attainment'. Hence, this area is neither in 'attainment' nor in 'nonattainment', but rather, it is 'unclassifiable'. As a consequence of this lack of data EPA designated all areas in the United States as "unclassifiable / attainment" for the 2010 NO_2 NAAQS, effective 2/29/2012. [FR Vol. 77, No. 33, 9532-9588, 2/17/2012] "As part of the NAAQS rulemaking, the EPA promulgated revisions to requirements for minimum numbers of ambient NO_2 monitors that included new monitoring near major roads in larger urban areas. In addition, these monitoring requirements included requirements to characterize NO_2 concentrations representative of wider spatial scales in larger urban areas (area-wide monitors), and monitors intended to characterize NO_2 exposures of susceptible and vulnerable populations." [NPR FR Vol. 77, No. 203, 64244-49, 10/19/12] "Specifically, the requirements for these minimum monitoring requirements are as follows: The first tier of the ambient NO_2 monitoring network requires near-road monitoring [See 40 CFR Part 58, Appendix D, Section 4.3.2]. There must be one microscale near-road NO_2 monitoring station in each Core Based Statistical Area (CBSA) with a population of 500,000 or more persons to monitor a location of expected maximum hourly concentrations sited near a major road." [NPR FR Vol. 77, No. 203, 64244-49, 10/19/12] "NO_2 monitors must be placed in proximity to road segments with the highest-ranked AADT levels, and no more than 50 meters (164.042 feet) away from the edge of the nearest traffic lane."(*Fact Sheet Final Revisions To The National*

		Ambient Air Quality Standards For Nitrogen Dioxide http://www.epa.gov/apti/video/pdfs/NO2%20NAAQS%20Fact%20Sheet.pdf The population within Albuquerque's CBSA reached 845,913 in 2008, therefore the AQD is required to install such a new near-road monitor. "An additional near-road NO_2 monitoring station is required at a second location of expected maximum hourly concentrations for any CBSA with a population of 2,500,000 or more persons, or in any CBSA with a population of 500,000 or more persons that has one or more roadway segments with 250,000 or greater Annual Average Daily Traffic (AADT)." [NPR FR Vol. 77, No. 203, 64244-49, 10/19/12] The highest AADT count within the jurisdiction of the Air Board is [~~182,700~~] 193,900, recorded on I-25 near Montgomery Boulevard (see ~~http://www.mrcog-nm.gov/images/stories/pdf/maps_and_data/traffic_flow/tfm08urban.pdf~~ http://www.mrcog-nm.gov/transportation-mainmenu-67/traffic-counts-mainmenu-263 and http://www.mrcog-nm.gov/images/stories/pdf/maps_and_data/traffic_flow/tfm11urban.pdf) therefore, a second monitor will not be required in Bernalillo County. "The second tier of the NO_2 minimum monitoring requirements is for area-wide NO_2 monitoring [See 40 CFR Part 58, Appendix D, Section 4.3.3]. There must be one monitoring station in each CBSA with a population of 1,000,000 or more persons to monitor a location of expected highest NO_2 concentrations representing the neighborhood or larger spatial scales. These NO_2 monitors are referred to as area-wide monitors." [NPR FR Vol. 77, No. 203, 64244-49, 10/19/12] A second tier monitor will not be required in Bernalillo County. "The third tier of the NO_2 minimum monitoring requirements is for the characterization of NO_2 exposure for susceptible and vulnerable populations [See 40 CFR Part 58, Appendix D, Section 4.3.4]. The EPA Regional Administrators, in collaboration with states, must require a minimum of 40 additional NO_2 monitoring stations nationwide in any area, inside or outside of CBSAs, above the minimum monitoring requirements for near-road and area-wide monitors, with a primary focus on siting these monitors in locations to protect susceptible and vulnerable populations." [NPR FR Vol. 77, No. 203, 64244-49, 10/19/12] A third tier monitor will not be required in Bernalillo County. "All three tiers of the NO_2 minimum monitoring requirements are to be submitted to the EPA for approval. Currently, 40 CFR 58.10 and 58.13 require states to submit a **plan** (i.e. *Annual Monitoring Network Plan*) for establishing all required NO_2 monitoring sites to the EPA Administrator by July 1, 2012." [NPR FR Vol. 77, No. 203, 64244-49, 10/19/12] {However, EPA has proposed to delay this deadline until **July 1, 2016** [NPR FR Vol. 77, No. 203, 64244-49, 10/19/12]} "Further, these plans shall provide for all required monitoring stations to be **operational** by January 1, 2013." [NPR FR Vol. 77, No. 203, 64244-49, 10/19/12] {However, EPA has proposed to delay this deadline until **January 1, 2017** for CBSAs with a population of more than 500,00 but fewer than 1 million [FR Vol. 77, No. 203, 64244-49, 10/19/12]} The population within Albuquerque's CBSA reached 845,913 in 2008, therefore the AQD is required to install such a new near-road monitor.

		"State and local air agencies are required to consider traffic volumes, fleet mix, roadway design, traffic congestion patterns, local terrain or topography, and meteorology in determining where a required near-road NO_2 monitor should be placed. In addition, there are other factors that affect the selection and implementation of a near-road monitoring station, including satisfying siting criteria, favorable site logistics (e.g., gaining access to property and safety), and consideration of population exposure." (*Near-Road NO_2 Monitoring Technical Assistance Document* http://www.epa.gov/ttnamti1/files/nearroad/NearRoadTAD.pdf), To address these requirements, the AQD participated in the 2011 NO_2 Roadside Pilot Project and submitted data from several candidate NO_2 monitoring sites to EPA, and ~~The AQD~~ is coordinating with EPA to determine the best monitoring site location ~~, taking into consideration: property rights, accessibility, safety, infrastructure requirements, traffic, and costs~~. ~~NO_2 monitors must be placed in proximity to road segments with the highest-ranked AADT levels, and no more than 50 meters (164.042 feet) away from the edge of the nearest traffic lane. Additional consideration must be given to fleet mix, congestion patterns, terrain, geographic location, and meteorology."(*Fact Sheet Final Revisions To The National Ambient Air Quality Standards For Nitrogen Dioxide* http://www.epa.gov/apti/video/pdfs/NO2%20NAAQS%20Fact%20Sheet.pdf)~~ EPA anticipates that it will take three years to install a new monitoring network, plus an additional three years of monitoring thereafter in order to determine compliance with the revised standard. When EPA funding is designated for 3rd Tier sites the AQD will procure equipment and construct the near-road monitor site. Once three years of data have been collected at the site, AQD will request that EPA redesignate Bernalillo County from 'unclassifiable / attainment' to 'attainment'.
§ 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 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.*	AQD has established regulations governing the enforcement of control measures, including attainment plans and permitting programs that regulate construction and modification of stationary sources. See 20.11.41 NMAC, *Operating Permits*, 20.11.60 NMAC, *Permitting in Nonattainment Areas*, and 20.11.61 NMAC, *Prevention of Significant Deterioration.* AQD's Prevention of Significant Deterioration (PSD) program applies to sources that emit greenhouse gases in accordance with EPA's tailoring rule. See 20.11.61.7.CCC NMAC. EPA requires that any i-SIP submittal should address any new or revised PSD program requirements. On October 20, 2010, the EPA promulgated "PSD for $PM_{2.5}$ - Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)", effective 12/20/10 [Federal Register Vol. 75, No. 202, 64864-907]. To address this federal rulemaking, the AQD is proposing to amend the PSD regulation for Albuquerque - Bernalillo County to incorporate the $PM_{2.5}$ PSD increment requirements. 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). EPA's 10/20/10 rule specifically affects 40 CFR 51.165, and has been incorporated into AQD's proposed draft of 20.11.60 NMAC. The 10/20/10 rule amendments also affect 40 CFR 51.166 and 52.21 and have been incorporated into AQD's

		proposed draft of 20.11.61 NMAC. One exception is for an amendment that would have been inserted at 20.11.61.15.B.(2) NMAC, regarding "SILs" [see 40 CFR 51.166.(k)(2) & 52.21(k)(2)], but which EPA has conceded to be vacated and remanded to EPA, in response to *Sierra Club v. EPA*. Another exception is the proposed SMC for $PM_{2.5}$ at 20.11.61.28 NMAC which was also vacated by the US Court of Appeals [Case No . 10-1413, decided January 22, 2013]. 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 incorporation of Ordinance 88-45 into the Albuquerque - Bernalillo County SIP in a June 1, 1999 rulemaking [64 FR 29235]. Bernalillo County has since amended this ordinance and recodified it as Bernalillo County Ordinance 94-5. AQD has proposed a revision to the State Boards SIP to incorporate all of the currently effective applicable ordinances in order to update their authority to enforce said provisions.
§ 110(a)(2)(D) Interstate Transport	*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*	"New Mexico does not currently have any NO_2 nonattainment areas nor is the state in close proximity to any other NO_2 nonattainment areas. . .New Mexico has twelve (12) major sources of NO_2 in the state. Total point source emissions for NO_2 in New Mexico equals 59,553 tons per year (tpy) and 84,181 tpy for mobile source emissions (based on the 2008 National Emission Inventory). Of these emissions, 17,702 tpy were emitted by the San Juan Generating Station, which will be subject to Best Available Retrofit Technology (BART) requirements under a state or federal implementation plan. Bernalillo County ~~currently~~ is located within New Mexico, and consequently, does not have any NO_2 nonattainment areas either, nor is the county in close proximity to any other NO_2 nonattainment areas. Bernalillo County has 26 major and synthetic minor sources of NO_X. Total point source emissions for NO_X in Bernalillo County equals 1,101 tons per year (tpy) and 12,765 tpy for onroad mobile source emissions (based on the 2008 National Emissions Inventory). Total emissions of NO_X for all sectors combined is 17,975.76. Albuquerque - Bernalillo County has a SIP-approved PSD and nonattainment new source review (NNSR) permitting program that contains requirements for sources of air pollutants to obtain an approved permit before beginning construction of a facility and before modifying an existing facility (see § 110(a)(2)(C) above). Consistent with 40 CFR 51.166(q)(2)(iv), Albuquerque-Bernalillo County's PSD program requires that: "**C.** Within one year after receipt of a complete application, the department shall: (4) Send a copy of the notice of public comment to: (a) the applicant; (b) the administrator; and (c) officials and agencies having jurisdiction over the location where the proposed construction would occur as follows: any other state or local air pollution control agencies; the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands may be affected by emissions from the source or modification." [20.11.61.21.C.(4) NMAC]

	interstate and international pollution abatement).	EPA requires that any i-SIP submittal should address any new or revised PSD program requirements. On October 20, 2010, the EPA promulgated "PSD for $PM_{2.5}$ - Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)", effective 12/20/10 [Federal Register Vol. 75, No. 202, 64864-907]. To address this federal rulemaking, the AQD is proposing to amend the PSD regulation for Albuquerque - Bernalillo County to incorporate the $PM_{2.5}$ PSD increment requirements. 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). EPA's 10/20/10 rule specifically affects 40 CFR 51.165, and has been incorporated into AQD's proposed draft of 20.11.60 NMAC. The 10/20/10 rule amendments also affect 40 CFR 51.166 and 52.21 and have been incorporated into AQD's proposed draft of 20.11.61 NMAC. One exception is for an amendment that would have been inserted at 20.11.61.15.B.(2) NMAC, regarding "SILs" [see 40 CFR 51.166.(k)(2) & 52.21(k)(2)], but which EPA has conceded to be vacated and remanded to EPA, in response to *Sierra Club v. EPA*. Another exception is the proposed SMC for $PM_{2.5}$ at 20.11.61.28 NMAC which was also vacated by the US Court of Appeals [Case No. 10-1413, decided January 22, 2013]. Albuquerque - Bernalillo also has a SIP-approved Regional Haze program [Federal Register Vol. 77, No. 230, 71119-29, 11/29/12] Therefore, based on monitored NO_2 concentrations indicating design values below the level of the standard, the lack of NO_2 nonattainment areas in New Mexico, (including Bernalillo County) or within close proximity, and SIP-approved PSD, NNSR, and Regional Haze Programs, AQD has concluded that NO_2 emissions from Bernalillo County: ~~1) Do not significantly contribute to nonattainment in 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 [§ 110(a)(2)(D)(i)(II)]; and ~~3)~~ Do not preclude the state from insuring compliance with CAA §§ 126 and 115. [§ 110(a)(2)(D)(ii)] However, 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. This element will be submitted separately and 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)] ~~Consistent with 40 CFR 51.166(q)(2)(iv), Albuquerque Bernalillo County's PSD program requires that:~~

		~~"C. Within one year after receipt of a complete application, the department shall:~~ ~~(4) Send a copy of the notice of public comment to:~~ ~~(a) the applicant;~~ ~~(b) the administrator; and~~ ~~(c) officials and agencies having jurisdiction over the location where the proposed construction would occur as follows: any other state or local air pollution control agencies; the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands may be affected by emissions from the source or modification." [20.11.61.21.C.(4) NMAC]~~
§ 110(a)(2)(E)(i)	*Provide: (i) necessary assurances that the State (or, except where the administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof),*	New Mexico Statute § 74-2-5 *Duties and powers; environmental improvement board; local board*, gives the Air Board authority to develop, implement and enforce the SIP. § 74-2-5 also provides the Air Board adequate legal authority to adopt emission standards and compliance schedules applicable to regulated entities, and to adopt emission standards and limitations and any other measures necessary for attainment and maintenance of national standards. In addition, § 74-2-5 provides the Air Board adequate legal authority to enforce applicable laws, regulations, standards, and compliance schedules, and seek injunctive relief. Specifically, § 74-2-5.1 provides the department legal authority to enforce applicable laws, regulations, standards, and compliance schedules. The funding necessary to carry out the ambient air monitoring required by this implementation plan (e.g. purchase of new equipment, installation of new site, additional staff and increased operating and maintenance costs) will be provided through the CAA § 103 grant process, thereby removing "the state burden of providing matching funds." [NPR FR Vol. 77, No. 203, 64244-49, 10/19/12] No organizations outside of AQD will participate in implementing or enforcing this SIP. AQD has adequate personnel to implement the SIP with respect to NO_2 requirements. Should EPA determine that AQD lacks adequate personnel to carry out the SIP, EPA may issue a finding with respect to that deficiency, which AQD would have a legal obligation to correct. 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 incorporation of Ordinance 88-45 into the Albuquerque - Bernalillo County SIP in a June 1, 1999 rulemaking [64 FR 29235]. Bernalillo County has since amended this ordinance and recodified it as Bernalillo County Ordinance 94-5. AQD has proposed a revision to the State Boards SIP to incorporate all of the currently effective applicable ordinances in order to update their authority to enforce said provisions.
§ 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],*	NMSA 1978 § 74-1-4 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. Board members are required to recuse themselves from rule-makings in which their impartiality may reasonably be questioned [20.11.82.14 NMAC].

	and	
§ 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.*	Albuquerque-Bernalillo County is authorized to carry out all portions of New Mexico's SIP within Bernalillo County [See § 74-2-4]. NMED and the state Environmental Improvement Board retain oversight authority in the event the local authority fails to act [See § 74-2-4 (D)].
§110(a)(2)(F) Stationary Source Monitoring System	*require, as may be prescribed by the Administrator:* *(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;*	Regulatory requirements have been codified at 20.11.41 NMAC, *Authority to Construct*, 20.11.42 NMAC *Operating Permits*, 20.11.60 NMAC, *Permitting in Nonattainment Areas* (pertaining to sampling and testing) and 20.11.49 NMAC, *Excess Emissions*. Requirements in 20.11.47 NMAC, *Emission Inventory Requirements* provide for the reporting of emissions inventories in a format established by AQD on a schedule prescribed by the regulation. Albuquerque-Bernalillo County's enforceable emission limitations and other control measures are addressed in the Air Act and those provisions of Chapter 11 of New Mexico's Administrative Code Title 20. 20.11.90 NMAC, *Source Surveillance; Administration and Enforcement*, establishes the general requirements for maintaining records and reporting emissions, including record keeping, data submissions, and public access to emissions data. [See also: NMSA 74-2-7(D)(1)(a) & (2) -"The department or the local agency may specify conditions to any permit granted under this section, including: (1) for a construction permit: (a) a requirement that such source install and operate control technology, determined on a case-by-case basis, sufficient to meet the standards, rules and requirements of the Air Quality Control Act and the federal act.. . .(2) for an operating permit, terms and conditions sufficient to ensure compliance with the applicable standards, rules and requirements pursuant to the Air Quality Control Act and the federal act."; NMSA 74-2-11, *Confidential Information*; NMSA 74-2-13, *Inspection*; and *The Inspection Of Public Records Act*, NMSA 1978, Chapter 14, Article 2.]
§110(a)(2)(G) Emergency Power	*provide for authority comparable to that in CAA Section 303 [Section 7603 of*	Pursuant to 40 CFR 51, Subpart H, *Prevention of Air Pollution Emergency Episodes*, On January 26, 1989, the Air Board adopted the *Air Pollution Episode Contingency Plan for Bernalillo County* [8/21/91, 56 FR 38074; 40 CFR 52.1639, *Prevention of Air Pollution Emergency Episodes*], that covers air pollution episodes and the occurrence of an emergency due to the effects of the

	this Title] and adequate contingency plans to implement such authority.	pollutants on the health of persons.
§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 [Chapter].*	Albuquerque-Bernalillo County's SIP is a compilation of regulations, plans, and submittals that act to improve and maintain air quality in accordance with national standards. The authority to develop or revise the SIP is based on the authority to adopt new regulations, revise existing regulations, to meet the NAAQS. NMSA 1978 § 74-7-5 gives the Air Board authority to perform these functions. § 74-7-5 also provides the Air Board the authority to adopt regulations to abate, control, and prohibit air pollution throughout Bernalillo County in accordance with the provisions of State Rules Act [Chapter 14, Article 4, NMSA 1978]. Nothing in New Mexico's statutory or regulatory authority prohibits Albuquerque-Bernalillo County from revising the SIP in the event of a revision to the NAAQS.
§110(a)(2)(I) Nonattainment Area Plan Requirements	*in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of Part D of this Subchapter (relating to nonattainment areas);*	Compliance with the NO_2 standard will be evaluated with submitted SIP revisions for any future nonattainment areas. SIP revisions related to nonattainment areas will comply with Subpart D requirements, as applicable. The currently approved nonattainment area SIP provisions listed in 40 CFR § 52.1620-1640, Subpart GG also meet Subpart D requirements.
§110(a)(2)(J) PSD	*meet the applicable requirements of CAA § 121 [Section 7421 of this Title] (relating to consultation), CAA*	All SIP revisions undergo public notice and hearing, which provides for comment by the public, including local political subdivisions. 20.11.82 NMAC, *Rulemaking Procedures - Air Quality Control Board*, stipulates notice requirements for rule making, and is used a guide for notice requirements when adopting SIPs.

	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);	Air quality data from AQD's monitoring network is available to the public via EPA's Air Quality System Data Mart website at: http://www.epa.gov/airdata/ Additionally, as part of the 105 grant process AQD is required to submit monitoring data to the Air Quality System (AQS) 90 days after the end of a quarter. Data can also be retrieved via a link through the AQD website: http://www.cabq.gov/airquality/airqualitymonitoringdata.html which also contains information on the air quality index, and on ways the public can participate in regulatory and planning efforts. The Air Board has adopted 20.11.61 NMAC- *Prevention of Significant Deterioration*, following the requirements outlined at 40 CFR 52.21, *Prevention of Significant Deterioration*, under CAA Section 161 [42 U.S.C.A. § 7471, *Plan Requirements*] for prevention of significant deterioration. These provisions were first approved by EPA as part of the SIP [40 CFR 52.1634.(c)] on 12/21/1993, effective 1/20/1994 [FR Vol. 58, No. 243, 67330-34] and most recently on 9/19/12, effective 10/19/12 [FR Vol. 77, No. 182, 58032-5]. EPA requires that any i-SIP submittal should address any new or revised PSD program requirements. On October 20, 2010, the EPA promulgated "PSD for $PM_{2.5}$ - Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)", effective 12/20/10 [Federal Register Vol. 75, No. 202, 64864-907]. To address this federal rulemaking, the AQD is proposing to amend the PSD regulation for Albuquerque - Bernalillo County to incorporate the $PM_{2.5}$ PSD increment requirements. 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). EPA's 10/20/10 rule specifically affects 40 CFR 51.165, and has been incorporated into AQD's proposed draft of 20.11.60 NMAC. The 10/20/10 rule amendments also affect 40 CFR 51.166 and 52.21 and have been incorporated into AQD's proposed draft of 20.11.61 NMAC. One exception is for an amendment that would have been inserted at 20.11.61.15.B.(2) NMAC, regarding "SILs" [see 40 CFR 51.166.(k)(2) & 52.21(k)(2)], but which EPA has conceded to be vacated and remanded to EPA, in response to *Sierra Club v. EPA*. Another exception is the proposed SMC for $PM_{2.5}$ at 20.11.61.28 NMAC which was also vacated by the US Court of Appeals [Case No . 10-1413, decided January 22, 2013]. 20.11.61 NMAC, *Prevention of Significant Deterioration*, includes procedures for protection of visibility in Class I areas. In addition, AQD submitted Albuquerque-Bernalillo County's Second Amended Regional Haze SIP to EPA in August, 2011. EPA proposed approval of the SIP in their Notice of Proposed Rulemaking on 4/15/12 [FR Vol. 77, No. 80, 24768-92]. Regional Administrator Ron Curry signed the Federal Register approving this SIP on 11/13/12, effective 12/31/12 [FR Vol. 77, No. 230, 71119-29, 11/29/12]. This submittal will provide further visibility protection and improvements to federal Class I areas.
§110(a)(2)(K) Air Quality Modeling / Data	*provide for:* *(i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of*	AQD has the authority and technical capability to conduct air quality modeling in order to assess the effect on ambient air quality of relevant pollutant emissions; and can provide relevant data as part of the permitting and NAAQS implementation processes. AQD follows EPA guidelines for air dispersion modeling. (e.g. Appendix W) Upon request, AQD will submit current and future data relating to such air

	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;	quality modeling to EPA.
§110(a)(2)(L) Permitting Fees	*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];*	The fee requirements of 20.11.2 NMAC, *Fees* were approved by EPA as meeting the CAA requirements and were incorporated into the New Mexico SIP [Bernalillo County: 5/24/12, FR Vol. 77. No. 101, 30900-2, effective 6/25/12]. Albuquerque-Bernalillo County's Title V operating permit program codified at 20.11.42 NMAC, *Operating Permits*, was approved by EPA on 9/8/04 [FR Vol. 69, No. 173, pp. 54244-47, effective 11/8/04]
§ 110(a)(2)(M)	*provide for*	New Mexico State Statute § 74-2-5.2 *State Air Pollution Control Agency;*

	consultation and participation by local political subdivisions affected by the plan.	*Specific Duties And Powers Of The Department*, states that: "The department is the state air pollution control agency for all purposes under federal legislation relating to pollution. The department shall: A. take all action necessary to secure for the state and its political subdivisions the benefits of federal legislation; B. advise, consult, contract with and cooperate with local authorities, other states, the federal government and other interested persons or groups in regard to matters of common interest in the field of air quality control and initiate cooperative action between a local authority and the department, between one local authority and another or among any combination of local authorities and the department for control of air pollution in areas having related air pollution problems that overlap the boundaries of political subdivisions; and **C.** enter into agreements and compacts with adjoining states and Indian tribes, where appropriate." Albuquerque-Bernalillo County's public participation requirements and procedures fulfill the requirements for consultation with local political subdivisions affected by the SIP.

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