AQD EXHIBIT
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

February 1, 2010

Mr. Ron Curry
Secretary
New Mexico Environment Department
1301 Siler Road, Building B
Santa Fe, N.M. 87507

Dear Ron,

We have been engaged in discussions with your staff concerning the submission of the New Mexico Regional Haze (RH) State Implementation Plan (SIP) under 40 CFR 51.309. I am writing you today to urge you to submit this SIP as soon as possible, but no later than July, 2010. If we do not receive this SIP soon, we will be locked into a course in which we will be forced to promulgate a Federal Implementation Plan (FIP).

EPA made a finding on January 15, 2009 that 37 States, including New Mexico, had failed to make all or part of the required SIP submissions to address regional haze.[1] This action started a clock by which EPA is required to promulgate a FIP within two years (i.e., January 15, 2011). In addition, we are under a consent decree with Wild Earth Guardians.[2] This consent decree further affects the processing of the New Mexico RH SIP, by requiring that EPA propose a FIP, a SIP, or a combination of the two by November 10, 2010, with a final decision by May 10, 2011.

There are certain technical issues concerning the SO_2 trading program in New Mexico's regional haze SIP that remain to be resolved. Because of our narrow timeframe and the proposed complexity of these issues, we feel that our best path forward would be for New Mexico to submit the RH SIP as soon as possible before these issues are resolved. Our strategy is to propose a limited approval, if necessary, of the RH SIP, with a limited disapproval. The approval is limited because of the issues concerning the SO_2 trading program. In order to cure this defect in the SIP, we would propose to approve a BART FIP for the stationary sources that participate in the trading program. Because this option would preserve much of the work your staff has already done in the development of New Mexico's 309 SIP, our resource commitment would be significantly less than other available options, which would have required us to withhold considerable grant funding to pay for contractor support. Please note that in a similar situation, EPA withheld $187,000 of Montana's grant to partially fund that RH FIP development.

Clearly, our preferred approach depends on the Department's cooperation. Considering our November 10, 2010 proposal deadline, we must soon establish our path forward. In order to proceed, it is therefore essential that New Mexico commit to submitting a complete RH SIP by

[1] See 74 FR 2393, January 15, 2009.
[2] Filed on November 10, 2009, U.S. District Court, Northern District of California, Oakland Division.

July, 2010. Any delay in receiving the New Mexico RH SIP after July, 2010, would put us in a position where it would be unlikely that we will be able to meet our deadlines. Therefore, please let me know as soon as possible if you agree with this approach, and with the Department's assistance, we can begin our work.

These issues are discussed in more detail in the letter from Tom Diggs of my staff to Mary Uhl, dated January 26, 2010, which is attached. I invite you to call me at 214-665-8124 to discuss this in more detail, or have your staff call Joe Kordzi of my staff at 214-665-7186.

Sincerely yours,

Carl E. Edlund, P.E.
Director
Multimedia Planning and
Permitting Division

Enclosure

Jim Norton, Director
Environmental Protection Division
NMED

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

January 26, 2010

Ms. Mary Uhl
Chief, Air Programs Branch
New Mexico Environment Department
Air Quality Bureau
1301 Siler Road
Building B
Santa Fe, N.M. 87507

Dear Mary,

Recently, Joe Kordzi of my staff discussed with you and Rita Bates of your staff several issues related to the approval and processing of the New Mexico Regional Haze (RH) State Implementation Plan (SIP). I would like to reinforce the points Joe made and explain them in more detail. Most importantly, I hope you will see the advantage of moving as quickly as possible to adopt the needed Regional Haze SIP for New Mexico to limit the need for adoption of a Federal Implementation Plan.

As you know, Regions 6, 8, and 9 (the "Regions") have been reviewing the document entitled "Demonstration that the SO2 Milestones Provide Greater Reasonable Progress than BART," dated July 23, 2009. This document describes why the States participating in the RH option under 40 CFR 51.309 (the 309 SIPs) believe a 2018 SO_2 milestone of 234,624 tons SO_2 satisfies 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).

As Joe explained, although EPA has not yet made a formal determination on this issue, the Regions believe based on their review to date the 2018 milestone does not satisfy Section 51.309(d)(4). With that in mind, I would like to communicate the options we feel are available for processing the New Mexico RH SIP.

You are aware that EPA and the Wild Earth Guardians[1] have entered into a consent decree (hereinafter "Consent Decree").[2] This Consent Decree affects the processing of the New Mexico RH SIP, by requiring that EPA propose a FIP, a SIP, or a combination of the two by November 10, 2010, with a final decision by May 10, 2011. The other State 309 SIPs are not

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1 WildEarth Guardians v. Lisa Jackson, Case No. 4:09-CV-02453-CW (alleging that EPA has failed to perform non-discretionary duty to either approve a State Implementation Plan or promulgate a Federal Implementation Plan for California, Colorado, Idaho, New Mexico, North Dakota, Oklahoma, and Oregon to satisfy the requirements of Clean Air Act section 110(a)(2)(D)(i) with regard to the 1997 National Ambient Air Quality Standards for 8-hour ozone and fine particulate matter).

2 Filed on November 10, 2009, U.S. District Court, Northern District of California, Oakland Division.

covered under this timeline. Because of this tight schedule, our options for processing the New Mexico RH SIP are limited to the following:

Option 1: Approve a SIP that includes revised milestones that EPA has determined meet the requirements of Section 51.309(d)(4), and upon which the States and Regions have all agreed.

Option 2: Promulgate a Federal Implementation Plan (FIP) under 40 CFR 51.308 (a 308 FIP).

Option 3: Issue a limited approval/disapproval of a complete 309 SIP with the current milestones, in conjunction with a BART FIP to address stationary sources, given the defect in the 2018 milestone.

Although a more detailed discussion of these options follows, please note that all but Option 2 depends on us receiving New Mexico's SIP as soon as possible.

Discussion of Options

Option 1 assumes the States revise the milestone and submit SIPs in the very near future. Although Regions 6, 8, and 9 are actively working with the States to modify the milestones, we note that all States must agree to do so, and Utah and Wyoming must revise the SIPs they have already submitted. However, due to EPA's obligations under the Consent Decree, we must begin the process of planning on a SIP processing option as soon as possible. Because of the inherent uncertainty of when and whether the Regions and States will all agree on a revised milestone, we cannot plan on satisfying the Consent Decree using Option 1. We can, however, modify this position, should the 309 States submit SIPs with substantially revised milestones before November 10, 2010, by which time we are compelled to propose our decision.

Under Option 2, we would promulgate a 308 FIP. The development of a 308 FIP would entail a considerable resource commitment for us, and would require that we hold back a significant amount of grant funding for contractor support. Although we do not have a firm figure, by way of comparison, EPA Region 8 withheld $187,000 of Montana's grant to partially fund that FIP development. This approach would also negate much of the work you and your staff have done in developing New Mexico's 309 SIP.

Under Option 3, we would propose a limited approval of New Mexico's 309 SIP, combined with a limited disapproval. This option assumes we receive a SIP that satisfies the requirements of section 51.309, except the SO_2 milestones would not provide for greater reasonable progress than BART. In order to cure this defect in the SIP, we would promulgate a BART FIP for the stationary sources. Option 3 offers a number of advantages. It would preserve much of the work done in the development of New Mexico's 309 SIP. Our resource commitment under Option 3 would be significantly less than Option 2. It would require considerably less contractor support, and depending on the level of BART analysis required, may not require any contractor support at all. For these reasons, it is our preferred option, and I hope yours as well.

Obviously, in order that we may move forward with Option 3 as expeditiously as possible, your assistance is very important. I would like to build on the historically close ties our organizations have enjoyed, and approach this challenge as a partnership. To that end, I request the following as soon as possible:

- In order to comply with the Consent Decree, it is absolutely essential we receive a complete 309 SIP. Although negotiations concerning the milestones are ongoing with the other 309 States, this SIP would include the existing milestones. Please let us know the date by when we can expect the SIP revision.

- We need your identification of all sources that are BART eligible, and those sources that are subject to BART under Section 51.308(e). Knowing our BART FIP obligations is a crucial part of our planning needs.

I invite you to call me to discuss this in more detail, or have your staff call Joe Kordzi of my staff at 214-665-7186.

Sincerely,

Thomas H. Diggs

Thomas H. Diggs
Associate Director for Air