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Butt, Neal T.

From: City of Albuquerque-Air Quality Division [nbutt@cabq.gov]
Sent: Friday, March 11, 2011 12:05 PM
To: Butt, Neal T.
Subject: Section 309 Regional Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico
Follow Up Flag: Follow up
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Section 309 Regional Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico, Legal Notice for Hearing

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
NOTICE OF HEARING

On June 8, 2011, at 5:30 PM, the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will hold a public hearing in the Vincent E. Griego Chambers located in the basement level of the Albuquerque-Bernalillo County Government Center, One Civic Plaza NW, Albuquerque, NM. The hearing will address:

Proposal to adopt amendments to the *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 New Mexico State Implementation Plan (SIP) for air quality.

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 in the Federal Register [FR Vol. 64, No. 126] on Thursday, July 1, 1999. This Regional Haze State Implementation Plan (SIP) addressed requirements found in 40 CFR Part 51, Appendix V relating to completeness of SIP submissions. This SIP was first presented before the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) at a public hearing held on October 8, 2003 and continued on November 12, 2003. Appropriate public notices and opportunities for public comment were provided. The Air Board adopted the initial Regional Haze SIP on November 12, 2003.

Since the regulation to address the type of visibility impairment known as 'Regional Haze' was first promulgated by EPA in 1999, 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 from EPA on 11/3/04, and in 2007. The Air Board 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. EPA 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 $S0_2$ milestone of 234,624 tons $S0_2$ 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). However, the Regions 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 the 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.

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 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 to 2,600 tons of SO_2 for new plants by 2018 to account for changing projections for new coal-fired power plants in the region.

- All power plants that are subject to BART are assumed to meet the presumptive BART emission rate of 0.15 lb/MMBtu.

- 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.

Following the hearing, the Air Board will hold its regular monthly meeting during which the Air Board is expected to consider adopting the aforementioned proposed amendments. Meetings of the Air Board are open to the public and all interested persons are encouraged to participate. All persons who wish to testify regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6, and 20.11.82 NMAC, *Rulemaking Procedures -- Air Quality Control Board*.

Anyone intending to present technical testimony at this hearing is required by 20.11.82.20 NMAC to submit a written Notice Of Intent to testify (NOI) before 5:00pm on May 24, 2011, to: "Attn: Neal Butt, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103", or to deliver the NOI to the Environmental Health Department, Suite 3023, 3rd Floor, One Civic Plaza (400 Marquette Avenue NW), Albuquerque, NM 87102. The NOI shall: 1. identify the person for whom the witness or witnesses will testify; 2. identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background; 3. summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness; 4. include the text of any recommended modifications to the proposed regulatory change; and 5. list and describe, or attach, all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

In addition, written comments to be incorporated into the public record for this hearing should be received at the above P.O. Box, or Environmental Health Department office, before 5:00 pm on June 1, 2011. Comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to nbutt@cabq.gov and shall include the required name and address information. Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department office, or by contacting Mr. Neal Butt electronically at nbutt@cagb.gov or by phone (505) 768-2660, or by downloading a copy from the City of Albuquerque Air Quality Division website.

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