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BEFORE THE 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

CITY OF ALBUQUERQUE'S NOTICE OF INTENT TO PRESENT TECHNICAL TESTIMONY

Pursuant to 20.11.82 NMAC, *Rulemaking Procedures – Air Quality Control Board*, The City of Albuquerque Environmental Health Department, Air Quality Division ("the Division") hereby submits its Notice of Intent to present technical testimony in this proceeding.

1. **The person for whom the witness will testify.**

City of Albuquerque Environmental Health Department, Air Quality Division.

2. **The name and qualifications of each technical witness.**

Neal Butt. Environmental Health Scientist, Control Strategies Section, Air Quality Division. M.S. Biology (Wildlife Biology), University of North Dakota; B.S. Biology (Zoology), University of New Mexico; A.A.S. Criminal Justice, Central New Mexico Community College; A.A.S. Environmental Protection Technology, CNM; B.A. Environmental, Planning & Design, UNM (Senior), and; WERC Waste Management Certificate, UNM Chemical & Nuclear Engineering Department. Employed by the City of Albuquerque's Environmental Health Department for 14 + years; the last 10 of which

have been in the Air Quality Division. Chief responsibility is the promulgation of air quality regulations for implementation within the County of Bernalillo.

Anita Steed. Environmental Health Scientist, Emissions Inventory, Air Quality Division. B.S. Biology, University of Memphis; Memphis, TN. B.A. English & History, Christian Brothers University, Memphis, TN. Employed by the City of Albuquerque's Air Quality Division, Environmental Health Department, for 20 months; previously 20+ years experience in environmental and natural resource protection in Oklahoma and Arkansas. Chief responsibility is the Air Emissions Inventory within the County of Bernalillo.

3. <u>Summary and Estimated Duration of Testimony</u>

Mr. Butt's written testimony is attached as AQD Exhibit # 6. Mr. Butt will testify that this revision to the SIP should be approved for the following reasons.

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, shown as AQD Exhibit # 1a. 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.
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 trading program was designed to accommodate these 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.

Mr. Butt's testimony is anticipated to take approximately 1 hour or less.

4. <u>Text of Recommended Revisions to the New Mexico State Implementation Plan</u>

The Air Quality Division recommends adoption of the proposed amendments to *Section 309 Regional Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico*, as proposed in the Public Review Draft, shown as AQD Exhibit #1a, which is attached to the Petition to Amend, filed February 22, 2011, shown as AQD Exhibit # 1, as amended by Staff Proposed Floor Amendments, shown as AQD Exhibit # 7.

5. List and Description of Exhibits

The Division has attached the following exhibits to this Notice of Intent:

Exhibit Number	Title of Exhibit
AQD Exhibit # 1	Petition to Amend *Section 309 Regional Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico*
AQD Exhibit # 1a	Public Review Draft, *Section 309 Regional Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico* {attached to AQD Exhibit 1}
AQD Exhibits # 2a/b/c/d/e	Stakeholder Comment and AQD Response Thereto: {2a} USDA Forest Service to AQD, 12/16/10; {2b} AQD Response to USDAFS, 1/14/11; {2c} USDAFS to AQD, 2/4/11; {2d} US Environmental Protection Agency to AQD & AQD response, 12/20/10; and {2e} EPA to AQD & AQD response, 2/22/11.
AQD Exhibits # 3a/b/c/d	Notice of Proposed Rulemaking: {3a} Notice to Air Quality Announce Listserve, 3/11/11; {3b} Forwarded Listserve notice to Stakeholders, 3/11/11; {3c} Albuquerque Journal, 3/13/11; {3d} NM Register 3/31/11
AQD Exhibit # 4	"Appendix 2010-A", EPA Comments on New Mexico's Regional Haze SIP, 2/1/10
AQD Exhibit # 5	"Appendix 2010-B", Emissions Inventory for Bernalillo County, NOx & SOx, 2002/2005/2008
AQD Exhibit # 6	Direct Testimony
AQD Exhibit # 7	Staff Proposed Floor Amendments

6. Reservation of Rights

This Notice of Intent to Present Technical Testimony is based on the Division's Petition. The Division reserves the right to call any person to testify and to present any exhibit in response to another notice of intent or public comment filed in this matter or to any testimony or exhibit offered at the public hearing. The Division also reserves the right to call any person as a rebuttal witness and to present any exhibit in support thereof.

Respectfully submitted,

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

CERTIFICATION

I hereby certify that on May 24, 2011, an original and nine copies of this Notice of Intent to present technical testimony (NOI), with attached exhibits were delivered to the following person for filing.

Margaret Nieto, Control Strategies Supervisor, Air Quality Control Board Secretary
for
Air Quality Control Board Liaison / Hearing Clerk
Environmental Health Department
One Civic Plaza, NW, Room 3023
Albuquerque, New Mexico 87103

And that on May 24, a copy of this NOI with attached exhibits was sent to the Attorney for the Board, Bill Grantham, at the following e-mail address: Bill.grantham@state.nm.us

Neal Butt
Environmental Health Scientist
Air Quality Division
Environmental Health Department