ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

IN THE MATTER OF THE PETITION TO INCORPORATE AN AMENDED INFRASTRUCTURE STATE IMPLEMENTATION PLAN (SIP) FOR $PM_{2.5}$ AND OZONE; AND TO AMEND 20.11.60 NMAC, *PERMITTING IN NONATTAINMENT AREAS*, AND *20.11.61 NMAC, PREVENTION OF SIGNIFICANT DETERIORATION*, AND SUBMIT SAID AMENDMENTS TO EPA AS REVISIONS TO THE SIP

AQCB Petition No. 2010-1

Air Quality Division,
Environmental Health Department,
City of Albuquerque, Petitioner

Petition to Incorporate an Amended Infrastructure SIP for $PM_{2.5}$ and Ozone; and to Amend 20.11.60 NMAC, *Permitting in Nonattainment Areas,* and *20.11.61 NMAC, Prevention of Significant Deterioration,* and Submit Said Amendments to EPA as Revisions to the SIP

The Environmental Health Department of the City of Albuquerque, by and through the Air Quality Division (AQD), asks the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) for a hearing at which the Air Board will hear AQD's request to adopt amendments to 20.11.60 NMAC, *Permitting in Nonattainment Areas*, and 20.11.61 NMAC, *Prevention Of Significant Deterioration*, and submit these amendments along with and amended *Infrastructure SIP for $PM_{2.5}$ and Ozone*, to EPA as revisions to the SIP. This Petition includes a request for a hearing on these matters and permission to provide a court reporter and hearing officer for the hearing. As grounds, Petitioner states the following:

1. The New Mexico Air Quality Control Act (Air Act), NMSA 1978, Sections 74-2-4 and 74-2-5.B(1) [1967 as amended through 2007] authorizes and requires the Air

Board to adopt, amend, or replace air quality regulations and to adopt air quality plans (SIPs) under NMSA 1978, Section 74-2-5.B(2).

2. Sections 110(a)(1) and (2) of the federal Clean Air Act (CAA), 42 U.S.C. § 7410(a)(1) and (2) hereafter referred to as the "Infrastructure SIP" requirements, requires states to submit an implementation plan to the United States Environmental Protection Agency (EPA) Administrator that demonstrates their ability and authority to implement, maintain, and enforce each National Ambient Air Quality Standard (NAAQS). 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.

These elements include: enforceable emission limitations and other control measures; air quality monitoring, compilation, data analysis, and reporting; enforcement and stationary source permitting; interstate transport; resources, conflict of interest, and emergency backstop; stationary source emissions monitoring and reporting; emergency powers and contingency plans; SIP revision for revised air quality standards or new attainment methods; SIP revisions for new nonattainment areas; consultation and public notification; air quality modeling and reporting; major stationary source permitting fees; and consultation with local entities.

On August 15, 2006, the EPA issued guidance on what states should submit in order to comply with Section 110(a)(2)(D)(i) of the CAA. Subsequently, on October 2, 2007, the EPA issued guidance on what states should submit in order to comply with the remaining non-transport-related requirements of Section 110(a)(2) for both the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS.

The Air Quality Division acting as agent for the Air Board utilized both of these guidance documents to comply with the Infrastructure SIP requirements for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS in the following three ways:

> (1). On September 12, 2007, the Air Board adopted an Interstate Transport SIP to comply with the requirements of §110(a)(2)(D)(i). The Air Quality Division submitted this SIP to EPA on October 24, 2007.
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> (2). On December 11, 2007, the Director of the Environmental Health Department submitted a "certification letter" to the Regional Administrator for EPA Region VI, certifying that Bernalillo County's infrastructure is adequate to enforce the "new" 1997 8-hour ozone NAAQS. However, on March 27, 2008, EPA published the "Completeness Findings for Section 110(a) State Implementation Plans for the 8-hour Ozone NAAQS" [FR Vol.

73, No. 60, 16205-16211]. Their finding for New Mexico, including Bernalillo County, was that:

> "New Mexico: As required by Section 110(a)(2)(C) and (J), the State of New Mexico has failed to submit a SIP addressing changes to the Part C PSD permit program required by the November 29, 2005 [70 FR 71612, page 71699] final rule that made NO_X a precursor for ozone in the Part C regulations at 40 CFR 51.166 and in 40 CFR 52.21."

Therefore, the Air Board's *Prevention of Significant Deterioration* rule, 20.11.61 NMAC must be amended to correct this deficiency.

(3). As of 2004, states (including New Mexico and Bernalillo County) still had not submitted complete SIPs to satisfy all of the Section 110(a)(2) requirements for the 1997 $PM_{2.5}$ NAAQS (as well as for the aforementioned 8-hour ozone NAAQS). On March 4, 2004, Earth Justice submitted a notice of intent to sue, related to EPA's failure to issue 'findings of failure to submit' related to these requirements. Consequently, EPA entered into a Consent Decree with Earth Justice which required EPA, among other things, to sign a notice for publication in the Federal Register no later than October 5, 2008, announcing EPA's determinations pursuant to Section 110(k)(1)(B) as to whether each state has made complete submissions to meet the requirements of Section 110(a)(2) for the 1997 $PM_{2.5}$ NAAQS.

On April 7, 2008, the Governor of New Mexico, on behalf of the Air Board, submitted an Infrastructure SIP to EPA, which addressed all the non-transport-related elements of Section 110(a)(2) with respect to the $PM_{2.5}$ NAAQS.

Through these efforts, the Air Quality Division determined that it had the authority to implement the Infrastructure SIP requirements outlined in the EPA's guidance documents with respect to both the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS. Furthermore, these actions by the Air Quality Division, acting as agent for the Air Board, satisfied the timing requirement under the Consent Decree for the Section 110(a)(2) elements for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS.

Then on October 22, 2008, the EPA published its "Completeness Findings for Section 110(a) State Implementation Plans Pertaining to the Fine Particulate Matter ($PM_{2.5}$) NAAQS", [Vol. 73, No. 205, 62902-62906]. Their finding was as follows:

> "The following states have been determined by EPA to have made complete SIP submissions that address all of the Section 110(a)(2) requirements as of the signature date of this notice: Region VI: Arkansas, Louisiana, New Mexico, Texas."

Thus, EPA is satisfied with Air Quality Division's basic infrastructure for enforcement of the $PM_{2.5}$ NAAQS. However, in reviewing the Code of Federal Regulations, the Air Quality Division discovered that there were updates to the federal rule language that had not yet been incorporated into the Air Board rules entitled *Permitting in Nonattainment Areas*, 20.11.60 NMAC, and *Prevention of Significant Deterioration, 20.11.61 NMAC*. The amendments that are proposed to bring these rules into alignment with the CFR, are shown in the attached Public Review Drafts of these rules.

3. The proposed amendments will also correct style and formatting.

4. It is anticipated that the hearing will take approximately 1 hour or less.

5. The proposed Public Review Drafts for the "A*lbuquerque-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 to Implement the 1997 and 2006 $PM_{2.5}$ NAAQS and the 1997 and 2008 Ozone NAAQS*"; *Permitting in Nonattainment Areas;* 20.11.60 NMAC, and *Prevention of Significant Deterioration, 20.11.61 NMAC* are attached as AQD Exhibits #1a #1b and #1c respectively.

Respectfully submitted,

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CERTIFICATION

I hereby certify that a copy of this Petition to Incorporate an Amended Infrastructure SIP for $PM_{2.5}$ and Ozone; and to Amend 20.11.60 NMAC, *Permitting In Nonattainment Areas*, And 20.11.61 NMAC, *Prevention Of Significant Deterioration*, and Submit Said Amendments to EPA as Revisions to the SIP, and requesting a hearing was delivered to the following person on April 27, 2010.

Janice Amend
Air Quality Control Board Liaison
Air Quality Division
Environmental Health Department
City of Albuquerque
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Mary Lou Leonard