



State of New Mexico
ENVIRONMENT DEPARTMENT



Office of the Secretary

SUSANA MARTINEZ
Governor
JOHN A. SANCHEZ
Lieutenant Governor

Harold Runnels Building
1190 Saint Francis Drive, PO Box 5469
Santa Fe, NM 87502-5469
Telephone (505) 827-2855 Fax (505) 827-2836
www.nmenv.state.nm.us

RYAN FLYNN
Cabinet Secretary
BUTCH TONGATE
Deputy Secretary

March 12, 2014

Mr. Ron Curry
Regional Administrator (6-A)
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Dear Mr. Curry:

On behalf of the New Mexico Environment Department, I am pleased to submit to the Environmental Protection Agency the enclosed New Mexico State Implementation Plan (SIP) revision. This SIP revision consists of a demonstration that New Mexico's existing SIP satisfies the "Infrastructure SIP" requirements for the revised 2010 National Ambient Air Quality Standard (NAAQS) for nitrogen dioxide. The submittal for this SIP revision is attached, which includes the Nitrogen Dioxide Infrastructure Certification, public notices and affidavit of publication. The public notice was conducted in accordance with 40 CFR §51.102, and included a 30-day public comment period. No public comments or requests for hearing were received. Included with the attached hard copy of the SIP revision is an electronic copy of the submittal provided on disk which I certify to be an exact duplicate of the hard copy.

This SIP revision is being submitted to the Environmental Protection Agency to fulfill all of New Mexico's requirements under § 110(a)(2) of the Clean Air Act for the revised 2010 nitrogen dioxide NAAQS. The Clean Air Act requires all states to submit plans to provide for the implementation, maintenance and enforcement of a new or revised NAAQS within 3 years of promulgation.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan Flynn".

Ryan Flynn
Cabinet Secretary

Enclosures

Cc: Mr. Guy Donaldson, EPA Region 6
Mr. Michael Vonderheide, Director, Environmental Protection Division
Mr. Richard Goodyear, Chief, Air Quality Bureau

New Mexico's Proposed Infrastructure Certification for The 2010 Nitrogen Dioxide (NO₂) NAAQS Revision

Executive Summary

A State Implementation Plan (SIP) identifies how the state will attain and maintain the primary and secondary National Ambient Air Quality Standards (NAAQS). The SIP contains regulations, source-specific requirements, non-regulatory items such as plans and inventories, and in some cases additional requirements to satisfy regulations promulgated by the U.S. Environmental Protection Agency (EPA). The initial SIPs for states were approved by EPA on May 31, 1972. A state may revise its SIP with EPA approval as necessary. The federally enforceable SIP for New Mexico is compiled in 40 CFR Part 52 Subpart GG.

The enclosed SIP certification matrix outlines the requirements of section 110(a)(2)(A) through (M) of the federal Clean Air Act (CAA) and addresses how New Mexico will implement, maintain and enforce the revised Nitrogen Dioxide (NO₂) NAAQS which was promulgated January 22, 2010 (75 FR 6474, Feb. 9, 2010)).

Legislative authority for New Mexico's air quality program is codified in Chapter 74 (Environmental Improvement) of the New Mexico Statutes, which gives the State Environmental Improvement Board and the Environment Department the authority to implement the CAA in New Mexico.

The regulatory authority to implement CAA programs is contained in the New Mexico Administrative Code (NMAC), specifically Chapter 2 of Title 20 for Air Quality. These regulations are part of the approved New Mexico SIP and 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 of attainment SIP revisions, rather than infrastructure SIPs.

State of New Mexico
110(a)(2) SIP Requirements for Nitrogen Dioxide

§ 110(a)(2)(A)	Requirement Summary 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 timetable for compliance.
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New Mexico's Requirements

The New Mexico Environmental Improvement Act, found in Chapter 74, Article 1 of the New Mexico Statutes Annotated 1978 (NMSA), created the New Mexico Environment Department (NMED) and the New Mexico Environmental Improvement Board (EIB). The New Mexico Air Quality Control Act codified at NMSA 1978, § 74-2 et seq., delegates authority to the EIB to adopt, promulgate, publish, amend and repeal regulations consistent with the Air Quality Control Act to attain and maintain NAAQS and prevent or abate air pollution. The Air Quality Control Act also designates the NMED as the State's air pollution control agency and the Environmental Improvement Act provides NMED with enforcement authority. See NMSA 1978, §§ 74-2-2.C, 74-2-5.1, 74-2-5.2. Chapter 2 of Title 20 of the New Mexico Administrative Code (NMAC) establishes NMED as the State's air pollution control agency and its enforcement authority, referencing the NMSA 1978 (*See also* 44 FR 21019, April 9, 1979; revised 49 FR 44101, November 2, 1984; recodification approved in 62 FR 50516, September 26, 1997) (approving various statutory and regulatory provisions of New Mexico's SIP).

The EIB has promulgated rules to limit and control emissions of nitrogen oxides (NO_x). These rules include emission limits, control measures, permits, fees, and compliance schedules and are found in 20.2 NMAC parts 3, 5, 7-8, 10-22, 30-34, 40-41, 72-75, and 99.

§ 110(a)(2)(B)	Provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile, and analyze data on ambient air quality, and upon request, make such data available to the Administrator.
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New Mexico's Requirements

New Mexico maintains and operates a multi-station NO₂ network to measure ambient levels. All monitoring data is measured using EPA approved methods as either Reference or Equivalent monitors. All monitors are subjected to the quality assurance requirements of 40 CFR Part 58, Appendix A, and are located at sites that have met the minimum siting requirements of Part 58, Appendix E. All data is submitted to EPA's Air Quality System (AQS) in accordance with the schedule prescribed by 40 CFR Part 58.

New Mexico's Statewide Air Quality Surveillance Network was approved by EPA on August 6, 1981 (46 FR 40005), and consists of stations that measure ambient concentrations of the six criteria pollutants, including NO₂. The air quality surveillance network undergoes annual review by EPA. On July 3, 2012, NMED submitted its 2012 Annual Air Monitoring Network Plan (AAMNP) that included the plans for the NO₂ NAAQS. EPA approved New Mexico's 2012 AAMNP on December 19, 2012. The NMED Web site provides the NO₂ monitor locations, and current and historical data.

The Department is authorized to conduct monitoring by the Air Quality Control Act at NMSA 1978, §§ 74-2-5.1 (A) (authority to make investigations and studies) and 74-2-5.2 (A) (authority to take all actions necessary to secure the benefits of federal legislation).

§ 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 Title I of the CAA (i.e., the Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR) permit programs).

New Mexico's Requirements

The Air Quality Control Act authorizes NMED to enforce the provisions of the Air Quality Control Act, regulations, and permit conditions, through administrative compliance orders or commencement of civil actions. See NMSA 1978, § 74-2-12. In addition, the Air Quality Control Act designates NMED as the air pollution control agency for the state, see NMSA 1978, § 74-2-2, and the Environmental Improvement Act provides the NMED with authority to enforce the state's environmental quality rules. NMSA 1978, § 74-1-6.F. The EIB established rules governing emissions of the criteria pollutants and their precursors throughout the State and these rules are in the federally enforceable SIP. The rules in 20.2 NMAC parts 3, 5, 7-8, 10-22, 30-34, 40-41, 72-75, and 98-99 include allowable emission rates, compliance, control plan requirements, actual and allowable emissions, monitoring and testing requirements, recordkeeping and reporting requirements, and control schedules. These rules clarify the boundaries beyond which regulated entities in New Mexico can expect enforcement action.

Preconstruction PSD Permitting of Major Sources: New Mexico's PSD program was conditionally approved into the state's SIP on February 27, 1987 (52 FR 5964) and fully approved on August 15, 2011 (76 FR 41698). In addition, revisions to New Mexico's PSD program were approved into the SIP on August 21, 1990 (55 FR 34013), May 2, 1991 (56 FR 20137), October 15, 1996 (61 FR 53639), March 10, 2003 (68 FR 11316), December 24, 2003 (68 FR 74483), September 5, 2007 (72 FR 50879), June 11, 2009 (75 FR 72688), November 26, 2010 (75 FR 72688), July 20, 2011 (76 FR 43149), June 13, 2012 (77 FR 35273), January 22, 2013, (78 FR 4339), and March 11, 2013 (78 FR 15296). New Mexico's Major source PSD permitting requirements are found at 20.2.74 NMAC.

Green House Gases (GHG) PSD Permitting: New Mexico has the authority to issue permits under the SIP-approved PSD program to sources of GHG emissions (75 FR 82536, December 30, 2010). On November 10, 2010, New Mexico adopted revisions to the State's PSD rules to implement the GHG thresholds established in EPA's GHG Tailoring Rule and submitted the corresponding SIP revision to EPA on December 1, 2010. On April 14, 2011, EPA proposed approval of New Mexico's GHG rules submitted on December 1, 2010 (76 FR 20907). On August 19, 2011, EPA approved New Mexico's GHG rules submitted on December 1, 2010 (see 76 FR 43149 (July 20, 2011)).

Minor Source Permitting: EPA has determined that New Mexico's Minor New Source Review (NSR) program, adopted pursuant to section 110(a)(2)(C) of the CAA, regulates emissions of all

regulated air contaminants for which there is a NAAQS (77 FR 62195). New Mexico's Minor NSR permitting requirements are found at 20.2.72 NMAC and were approved into the SIP on May 14, 1973 (38 FR 12702). The most recent revisions to New Mexico's Minor NSR program were approved into the SIP on March 11, 2013 (78 FR 15296).

§ 110(a)(2)(D)

- (i) Contain adequate provisions 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.
 - (II) Interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility.
- (ii) Insure compliance with the applicable requirements CAA sections § 126 and 115 (interstate and international pollution abatement).

New Mexico's Requirements

Based on EPA guidance from the November 19, 2012 EPA Gina McCarthy Memo, "Next Steps for Pending Redesignation Requests and State Implementation Plan Actions Affected by the Recent Court Decision Vacating the 2011 Cross-State Air Pollution Rule," the requirements of § 110 (a)(2)(D)(i)(I) are not being addressed in this infrastructure SIP submittal.

With respect to the prevention of significant deterioration element of § 110 (a)(2)(D)(i)(II), as stated above in section 110(a)(2)(C) of this infrastructure SIP, the New Mexico PSD program has been approved by EPA into the SIP. New Mexico's PSD program contains the necessary provisions to implement the NO₂ standard.

With respect to the visibility element of § 110 (a)(2)(D)(i)(II), several prior SIP submissions are relevant. On September 17, 2007 New Mexico submitted a SIP to address the interstate transport provisions of CAA 110(a)(2)(D)(i) for the 1997 8-hour ozone and PM_{2.5} NAAQS. In this submission, the state indicated that it intended to meet the requirements of section 110(a)(2)(D)(i)(II) with respect to visibility by submission of a Regional Haze SIP revision, which was then due on December 17, 2007. EPA had previously approved New Mexico's Visibility Protection Plan and a Long-Term Strategy for Visibility Protection as SIP revisions on January 27, 2006 (71 FR 4490). New Mexico had also submitted a Regional Haze SIP to EPA on December 1, 2003, and a revised Regional Haze SIP on July 5, 2011.

On August 22, 2011, EPA finalized disapproval of the visibility portion of the September 2007 SIP submission. 76 FR 52388. (EPA approved the 2007 SIP with respect to the PSD element of § 110 (a)(2)(D)(i)(II), along with the "interfere with maintenance" element of § 110 (a)(2)(D)(i)(I), on November 26, 2010 (75 FR 72688), and approved the 2007 SIP with respect to the "significant contribution to non-attainment" element of § 110 (a)(2)(D)(i)(I) on June 11, 2010 (75 FR 33174)). In the August 22, 2011 final rule, EPA promulgated a Federal Implementation Plan (FIP) imposing limits for NO_x on the San Juan Generating Station (SJGS). EPA intended these limits to ensure that emissions from New Mexico sources do not interfere with other states' measures to protect visibility in accordance with section 110(a)(2)(D)(i)(II)

for the 1997 8-hour ozone and 1997 PM_{2.5} NAAQS, and also to address the requirements under the Regional Haze program for Best Available Retrofit Technology (BART). EPA based the timing of the FIP issuance in part on the existence of a consent decree deadline for action under Section 110(a)(2)(D) (76 FR at 52390).

On November 27, 2012 (77 FR 70693), EPA approved New Mexico's 2003 and 2011 Regional Haze SIP submittals, but expressly declined to take action on the portion of the 2011 SIP making a nitrogen oxides (NOx) BART determination for SJGS, which consisted of selective non-catalytic reduction (SNCR) with an emission rate of 0.23 lbs/mmBtu.

In its August 22, 2011 final rule, EPA determined that a NOx emission limit from the SJGS of no greater than 0.27 – 0.28 lb/mmBtu was necessary in order to satisfy the requirements of Section 110(a)(2)(D)(i)(II), and that no other additional reductions in New Mexico were required under that section (76 FR at 52424). Although New Mexico's July 5, 2011 NOx BART determination of 0.23 lb/mmBtu represented a lower emission rate than EPA determined to be necessary to satisfy Section 110(a)(2)(D)(i)(II), EPA promulgated its own NOx BART determination of 0.05 lb/mmBtu using selective catalytic reduction (SCR).

New Mexico has challenged EPA's NOx BART FIP for the SJGS, and the case remains pending in the U.S. Court of Appeals for the Tenth Circuit. New Mexico, EPA, and Public Service Company of New Mexico (the operator of the SJGS) have reached a tentative agreement which would require the shutdown of two of the four SJGS units and installation of SNCR on the remaining two, with an emission rate of no greater than 0.23 lb/mmBtu. On September 5, 2013, the EIB adopted a SIP revision incorporating the substantive terms of the tentative agreement. On December 17, 2013, EPA determined that the revised SIP submission was administratively complete. As provided in the Term sheet, EPA will take action within 135 days of that date to approve or disapprove this revised SIP, after fulfilling its obligations to provide public notice and an opportunity for comment.

The requirement for New Mexico under Section 110(a)(2)(D)(i)(II) is presently satisfied by the FIP; however, the FIP may be replaced by the revised SIP if EPA finds it meets the applicable Clean Air Act requirements. Therefore, regardless of which plan is ultimately implemented (the SIP, the FIP, or the revised SIP), the NOx emission rate from San Juan will be considerably less than 0.27 – 0.28 lb/mmBtu, and will satisfy the visibility element of § 110(a)(2)(D)(i)(II).

Finally, with respect to § 110(a)(2)(D)(ii), as stated above in Section 110(a)(2)(C) of the infrastructure SIP, New Mexico has a SIP-approved PSD program which includes provisions that satisfy the requirements of section 126 of the CAA. There are no final findings under section 115 of the CAA against New Mexico with respect to any air pollutant. If in the future there are one or more final findings under section 115 of the CAA, NMED will consult with EPA Region VI.

<p>§ 110(a)(2)(E)(i)</p>	<p>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)</p>
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	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).
<p>New Mexico's Requirements The resources to carry out the state implementation plan are provided through State General Funds, Permit Fees, and the CAA §§ 103 and 105 grant process. The Air Quality Control Act designates the NMED as the State air pollution control agency for all purposes under federal legislation relating to air pollution and provides the NMED with the power to accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, or from any person (NMSA 1978, § 74-2-5.1(F)).</p> <p>New Mexico has adequate personnel to implement the SIP with respect to NO₂ requirements. The Environmental Improvement Act provides that the secretary of the NMED shall employ and fix the compensation of those persons necessary to discharge his duties (NMSA 1978, § 9-7A-6(B)). NMED is also authorized to receive State appropriations to implement environmental programs (NMSA 1978, § 9-7A). Should EPA determine that New Mexico lacks adequate personnel to carry out the SIP, EPA may issue a finding with respect to that deficiency, which New Mexico would have a legal obligation to correct.</p> <p>New Mexico does not anticipate the need for additional resources to implement the plan for the NO₂ NAAQS beyond those which have been utilized for the preparation of the plan and plan revisions submitted to EPA and other current programmatic demands.</p>	
§ 110(a)(2)(E)(ii)	(ii) requirements that the state comply with the requirements respecting state boards under section 128, and
<p>New Mexico's Requirements The New Mexico Environmental Improvement Act requires that at least a majority of the membership of the EIB shall be individuals 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 federal Clean Air Act or the Air Quality Control Act (NMSA 1978, § 74-1-4).</p> <p>On April 20, 1990, NMED submitted a SIP revision to EPA for Board composition and conflict of interest disclosure. EPA approved the SIP revision on June 1, 1999 (64 FR 29235).</p>	
§ 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.
<p>New Mexico's Requirements The Air Quality Control Act delegates authority to the EIB to adopt, promulgate, publish, amend and repeal regulations consistent with the Air Quality Control Act to attain and maintain national ambient air quality standards and prevent or abate air pollution (NMSA 1978, § 74-2-5(B)(1)). The Environmental Improvement Act provides NMED with the power "to enforce the</p>	

rules, regulations and orders promulgated by the board” (NMSA 1978, § 74– 1–6(F)). The Air Quality Control Act also gives NMED the duty to develop and present to the EIB a plan for the regulation, control, prevention or abatement of air pollution and gives the EIB the authority to adopt such a plan. (NMSA 1978, § 74–2–5.1(H) and NMSA 1978, § 74–2– 5(B)(2)).

Pursuant to NMSA 1978, § 74-2-4, local authority has been established for Albuquerque-Bernalillo County, New Mexico, through the creation of the Albuquerque-Bernalillo County Air Quality Control Board and local administration by the City of Albuquerque Department of Environmental Health. Albuquerque-Bernalillo County develops and submits its own SIP revisions, and is not covered by this infrastructure SIP. Under NMSA 1978, § 74-2-4.D, the NMED and the EIB retain jurisdiction and control for administration of the Air Quality Control Act with respect to any failure to act by a local authority.

§110(a)(2)(F)

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, which reports shall be available at reasonable times for public inspection;

New Mexico’s Requirements

New Mexico’s regulations at 20.2 NMAC parts 5, 7–8, 10–20, 30–34, 40–41, and 72–74 require source monitoring for compliance, recordkeeping and reporting, and provide for enforcement with respect to all the NAAQS and their precursors. These source monitoring program requirements generate data for NO₂.

Under the New Mexico’s regulations at 20.2.NMAC parts 7-8, 65, 70, 72-74, 79, 81 and 88 NMED is required to analyze the emissions data from point, area, mobile, and biogenic sources. The NMED uses this data to track progress towards maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with New Mexico and EPA requirements.

The NMED is current with its submittals to the NEI database; the 2012 data for larger sources was submitted to EPA in 2013.

The data and reports are available for public inspection at reasonable times.

§110(a)(2)(G)

Provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority.

New Mexico’s Requirements

The Air Quality Control Act provides NMED with authority to address environmental emergencies, and NMED has contingency plans to implement emergency episode provisions in

the SIP.

Upon a finding that any owner/operator is unreasonably affecting the public health, safety or welfare, or the health of animal or plant life, or property, the New Mexico Air Quality Control Act authorizes NMED, after a reasonable attempt to give notice, to declare a state of emergency and issue without hearing an emergency special order directing the owner/operator to cease such pollution immediately (NMSA 1978, § 74-2-10).

New Mexico promulgated the “Air Pollution Episode Contingency Plan for New Mexico,” which includes contingency measures, and these provisions were approved into the SIP on August 21, 1990 (55 FR 34013).

The 2010–2012 NO₂ ambient air quality monitoring data for New Mexico does not exceed the 100 ppb 1-hour primary NAAQS or the 53 ppb annual primary and secondary NAAQS. The NO₂ levels have consistently remained below these levels and, furthermore, the State has appropriate general emergency powers to address NO₂ related episodes to protect the environment and public health.

§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 national ambient air quality standard which it implements, or to otherwise comply with any additional requirements established under this Act.

New Mexico’s Requirements

New Mexico’s SIP is a compilation of regulations, plans, and submittals that act to improve and maintain air quality in accordance with national standards. The Air Quality Control Act provides that the EIB shall adopt, promulgate, publish, amend, and repeal regulations consistent with the Air Quality Control Act to attain and maintain national ambient air quality standards and prevent or abate air pollution (NMSA 1978, § 74–2–5(B)(1)). In addition, the Air Quality Control Act requires NMED to 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 (NMSA 1978, § 74–2–5.2(B)). New Mexico has the authority to revise its SIP from time to time as may be necessary to take into account revisions of primary or secondary NAAQS, or the availability of improved or more expeditious methods of attaining such standards. New Mexico also has the authority under the above provisions to revise its SIP in the event the EPA, pursuant to the CAA, finds the SIP to be substantially inadequate to attain the NAAQS.

§110(a)(2)(I)

In the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D (relating to nonattainment areas);

New Mexico's Requirements

§110 (a)(2)(I) is not being addressed in this infrastructure SIP submittal. According to EPA's interpretation of the CAA, this element does not need to be addressed in the context of an infrastructure SIP submission. Moreover, New Mexico presently does not contain any nonattainment areas for NO₂.

§110(a)(2)(J)

Meet the applicable requirements of § 121 (relating to consultation), section 127 (relating to public notification), and Part C (relating to prevention of significant deterioration of air quality and visibility protection);

New Mexico's Requirements

All SIP revisions undergo public notice and hearing, which provides for comment by the public, including local political subdivisions.

The Air Quality Control Act, as codified at NMSA 1978, § 74-2-6, provides that, "no regulations or emission control requirement shall be adopted until after a public hearing by the environmental improvement board or the local board" and provides that, "at the hearing, the environmental improvement board or the local board shall allow all interested persons reasonable opportunity to submit data, views, or arguments orally or in writing and to examine witnesses testifying at the hearing" (NMSA 1978, § 74-2-6(B) and (D)). In addition, the Air Quality Control Act provides that the NMED shall have the power and duty to 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 (NMSA 1978, § 74-2-5.2(B)).

New Mexico's SIP-approved PSD rules mandate that the NMED shall provide for public participation and notification regarding permitting applications to any other state or local air pollution control agencies, local government officials of the city or county where the source will be located, and Federal Land Managers (FLM) whose lands may be affected by emissions from the source or modification (20.2.74.400 NMAC). New Mexico's PSD rules also require NMED to consult with FLMs regarding permit applications for sources impacting Class I Federal areas (20.2.74.403 NMAC). New Mexico has committed in the SIP to consult continually with the FLMs on the review and implementation of the visibility program and to notify the FLM of any advance notification or early consultation with a major new or modifying source prior to the submission of the permit application.

New Mexico's SIP-approved Transportation Conformity rule requires that interagency consultation and opportunity for public involvement be provided before making transportation conformity determinations and before adopting applicable SIP revisions on transportation-related SIPs (20.2.99.116 and 20.2.99.124 NMAC).

New Mexico's provisions regarding public notification of instances or areas in which any primary NAAQS was exceeded were approved into the SIP on August 24, 1983 (48 FR 38466). Air quality data from New Mexico's monitoring network is published in real time on NMED's website. The website also provides information on the health effects of NO₂ and other criteria pollutants. Additionally, as part of the 105 grant process New Mexico is required to submit monitoring data to the Air Quality System (AQS) in a timely manner.

New Mexico's PSD program was conditionally approved into the SIP on February 27, 1987 (52 FR 5964) and fully approved effective August 15, 2011 (76 FR 41698). Other EPA actions pertaining to New Mexico's PSD program are found at: 52 FR 5964, 53 FR 44191, 55 FR 43013, 56 FR 20137, 61 FR 53639, 68 FR 11316, 68 FR 74483, 72 FR 50879, and 75 FR 72688. New Mexico's minor source permitting requirements were approved at 38 FR 12702. For more information, refer above to infrastructure SIP element 110(a)(2)(C).

EPA approved New Mexico's Visibility Protection Plan and approved a Long-Term Strategy for Visibility Protection into New Mexico's SIP on January 27, 2006 (71 FR 4490). New Mexico submitted a Regional Haze SIP to EPA on December 1, 2003. On July 5, 2011, New Mexico submitted a revised Regional Haze SIP to EPA. EPA approved both submittals, except for the submitted nitrogen oxides (NOx) Best Available Retrofit Technology (BART) determination for the San Juan Generating Station, on November 27, 2012 (77 FR 70693). As described above under § 110(a)(2)(D), New Mexico and EPA have reached a tentative settlement in a dispute over competing BART determinations for the San Juan Generating Station, under which NMED conducted a revised BART determination approved by the EIB and submitted to EPA.

§110(a)(2)(K)

Provide for:

- (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and
- (ii) the submission, upon request, of data related to such air quality modeling to the Administrator;

New Mexico's Requirements

The Air Quality Control Act authorizes NMED to "develop facts and make investigations and studies" (NMSA 1978, § 74-2-5.1(A)). This provides NMED with necessary authority to develop air quality assessments and conduct modeling. NMED may provide data related to air quality modeling and analyses to the EPA upon request. The Air Quality Control Act authorizes NMED to cooperate with the federal government "in regard to matters of common interest in the field of air quality control", thereby allowing it to submit data and reports to EPA (NMSA 1978, § 74-2-5.2(B)).

New Mexico has developed Air Dispersion Modeling Guidelines that follow EPA guidelines for air dispersion modeling. The New Mexico Air Dispersion Modeling Guidelines also include internal policy language. The Air Quality Bureau within NMED contains a modeling section with four qualified modelers, two with Ph.D.'s.

The Air Quality Bureau routinely conducts air dispersion modeling for the purpose of determining the impact of air pollutant emissions in relation to the national ambient air quality standards. New Mexico's SIP-approved PSD rules provide NMED with the authority to conduct modeling to ensure permitted emissions do not exceed any national ambient air quality standard.

New Mexico's PSD regulations ensure that all ambient air quality modeling required by those regulations is performed in accordance with EPA Guidance. See 20.2.74.305 NMAC.

Upon request, NMED will submit current and future data relating to modeling to EPA.	
§110(a)(2)(L)	<p>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, a fee sufficient to cover</p> <ul style="list-style-type: none"> (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;

New Mexico's Requirements
The Air Quality Control Act provides the EIB with the legal authority for establishing an emission fee schedule and a construction permit fee schedule to recover the reasonable costs of acting on permit applications, implementing, and enforcing permits (NMSA 1978, § 74-2-7). New Mexico's Permit Fee System was approved by EPA on November 24, 1997 (62 FR 50514). New Mexico's Permit Fee System implements a fee system for all preconstruction air permits issued by NMED. New Mexico's regulations for construction permit fees are found at 20.2.75 NMAC. New Mexico's Title V program and associated fees legally are not part of the SIP, but were approved by EPA on November 26, 1996 (61 FR 60032) as part of the New Mexico Title V Program.

§ 110(a)(2)(M)	Provide for consultation and participation by local political subdivisions affected by the plan.
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New Mexico's Requirements
The Air Quality Control Act provides that, "no regulations or emission control requirement shall be adopted until after a public hearing by the environmental improvement board or the local board" and provides that, "at the hearing, the environmental improvement board or the local board shall allow all interested persons reasonable opportunity to submit data, views, or arguments orally or in writing and to examine witnesses testifying at the hearing" (NMSA 1978, §§ 74-2-6(B) and (D)). The Act Quality Control Act also establishes NMED's power and duty to 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 (NMSA 1978, § 74-2-5.2(B)).

New Mexico's SIP-approved regulations for PSD (20.2.74, 20.2.72 and 20.2.79 NMAC) and Transportation Conformity (20.2.99 NMAC) also provide for public participation. For more information, refer above to infrastructure SIP element 110(a)(2)(J).

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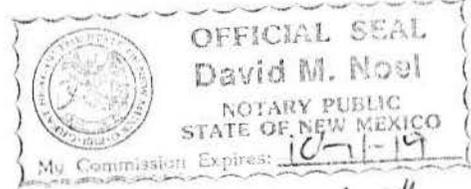
Air Quality Bureau

STATE OF NEW MEXICO
County of Bernalillo SS

Linda MacEachen, being duly sworn, declares and says that she is Classified Advertising Manager of **The Albuquerque Journal**, and that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, and that payment therefore has been made of assessed as court cost; that the notice, copy of which is hereto attached, was published in said paper in the regular daily edition, for 1 times, the first publication being on the 10th day of February, 2014, and the subsequent consecutive publications on _____, 20____.

Linda MacEachen

Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this 10th day of February of 2014



PRICE \$ 203.58

Statement to come at end of month.

ACCOUNT NUMBER 1007594



**NEW MEXICO
ENVIRONMENT DEPARTMENT**

**Notice of Opportunity for Public
Hearing and Comment
New Mexico's Proposed
Infrastructure Certification for
The 2010 Nitrogen Dioxide (NO2)
NAAQS Revision**

The New Mexico Environment Department (NMED) announces an opportunity to comment on and/or request a public hearing on a proposed certification that New Mexico has an adequate, federally approved State Implementation Plan (SIP) that addresses all elements of a Clean Air Act (CAA) Section 110(a)(2) Infrastructure Plan, as applicable to the 2010 Nitrogen Dioxide National Ambient Air Quality Standards (NAAQS). The purpose of the proposed certification is to confirm to the U.S. Environmental Protection Agency (EPA) that the State of New Mexico has the required "infrastructure" in place under the current SIP to implement, maintain and enforce the 2010 Nitrogen Dioxide NAAQS. Section 110(a)(1) of the CAA requires states to submit certification letters or revised SIPs to the EPA Administrator within three (3) years following the promulgation of a new or revised NAAQS.

Legislative authority for New Mexico's air quality program is codified in Chapter 74 (Environmental Improvement) of the New Mexico Statutes, which gives the New Mexico Environmental Improvement Board and the Environment Department the authority to implement the CAA in New Mexico (Albuquerque/Bernalillo County is under the jurisdiction of a local board and agency). The proposed certification was developed by NMED to comply with the requirements contained in Section 110 of the CAA and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. The proposed certification does not adopt or amend any regulations; therefore, it is not subject to the mandatory public hearing requirement of NMSA 1978 § 74-2-6. However, a hearing may be requested as described below.

The proposed certification, New Mexico's Proposed Infrastructure Certification for the 2010 Nitrogen Dioxide (NO2) NAAQS Revision, is available for a 30-day public comment period.

Submission of comments on the proposed certification may be written or oral. All comments must be received by March 10, 2014. All public comments received during the comment period will be evaluated and responded to as appropriate by NMED prior to submission of the proposed certification to EPA. If a request for a public hearing is received during the 30-day public comment period, a hearing date, time and location will be announced at a later date, in accordance with 20.1.1 NMAC - Rulemaking Procedures - Environmental Improvement Board, including an additional public comment period. For more information, contact Michael Baca, (575) 524-6300. Upon completion of the 30-day public comment period and, if requested, the hearing process, all documents included in the New Mexico 2010 Nitrogen Dioxide certification will be submitted to EPA to be included in the New Mexico State Implementation Plan.

The proposed certification may be reviewed during regular business hours at the NMED Air Quality Bureau office, New Mexico Environment Department, 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico, 87505-1816. A full text of NMED's proposed certification is available on NMED's web site at www.nmenv.state.nm.us, or by contacting Michael Baca, michael.baca1@state.nm.us (575) 524-6300.

Written comments and/or a public hearing request regarding the proposed certification should be submitted via email to Michael Baca, michael.baca1@state.nm.us or mailed to:

New Mexico Environment Department, Air Quality Bureau
ATTN: Michael Baca
1170 N. Solano Dr., Ste. M
Las Cruces, NM 88001

Comments and/or public hearing requests may instead be submitted by fax to the Air Quality Bureau, ATTN: Michael Baca at (575) 526-3891.

**DEPARTAMENTO DEL MEDIO
AMBIENTE DE NUEVO MÉXICO**

**Notificación de Oportunidad de
Audience Pública y
Comentarios
Certificación de Infraestructura
Propuesta de Nuevo México
para
Las 2010 Dióxido de Nitrógeno
(NO2) Normas Nacionales de
Calidad del Aire Ambiental**

El Departamento del Medio Ambiente de Nuevo México (NMED) anuncia una oportunidad para hacer comentarios sobre y/o solicitar una audiencia pública sobre una certificación propuesta de que Nuevo México tiene un Plan Adecuado de Implementación Estatal federalmente aprobado (SIP) que trata todos los elementos de un plan de infraestructura de una Ley de Aire Limpio (CAA) Sección 110(a)(2), según es aplicable a las 2010 dióxido de nitrógeno Normas Nacionales de Calidad del Aire Ambiental (NAAQS). La finalidad de la propuesta certificación es confirmar a la Agencia de Protección Ambiental de los EE.UU. (EPA) que el Estado de Nuevo México tiene implementada la "infraestructura" requerida bajo el SIP actual para implementar, mantener, y hacer cumplir la dióxido de nitrógeno NAAQS. La Sección 110(a)(1) de la CAA requiere que los estados presenten cartas de certificación o SIPs revisados al Administrador de EPA dentro de tres (3) años siguiendo la promulgación de una nueva o revisada NAAQS.

La autoridad legislativa para el programa de calidad del aire de Nuevo México está codificada en el Capítulo 74 (Mejora Ambiental) de los Estatutos de Nuevo México, que dan a la Junta de Mejora Ambiental de Nuevo México y al Departamento del Medio Ambiente la autoridad para implementar la CAA en Nuevo México (El Condado de Albuquerque/Bernalillo está bajo la jurisdicción de una junta y agencia local). La propuesta certificación fue desarrollada por NMED para cumplir con los requisitos contenidos en la Sección 110 de la CAA y 40 CFR Parte 51, Requisitos para la Preparación, Adopción y Presentación de Planes de Implementación. La propuesta certificación no adopta o enmienda ningunas regulaciones; por lo tanto, no está sujeta al requisito obligatorio de audiencia pública de NMSA 1978 § 74-2-6. Sin embargo, puede que se requiera una audiencia según se describe a continuación.

La propuesta certificación, La certificación de la propuesta infraestructura de Nuevo México para las 2010 dióxido de nitrógeno NAAQS, está disponible por un tiempo para de comentarios públicos de 30 días. La presentación de comentarios sobre la propuesta certificación puede ser escrita u oral. Todos los comentarios deben recibirse antes de 10 de marzo 2014. Todos los comentarios públicos recibidos durante el período de comentarios serán evaluados y contestados según sea apropiado por NMED antes de la presentación de la certificación propuesta a la EPA.

Si se recibe una solicitud de una audiencia pública durante el tiempo de comentarios públicos de 30 días, se anunciará la fecha, hora y lugar de la audiencia en una fecha posterior, de acuerdo con 20.1.1 NMAC - Procedimientos de Reglamentación - Junta de Mejora Ambiental, incluyendo un periodo adicional de comentarios públicos. Para más información, póngase en contacto con Michael Baca, (575) 524-6300. A la terminar el tiempo de comentarios públicos de 30 días y, si se solicita, el proceso de audiencia, todos los documentos incluidos en la certificación dióxido de nitrógeno NAAQS de Nuevo México se presentarán a EPA para ser incluidos en el Plan de Implementación del Estado de Nuevo México. La certificación propuesta puede ser revisada durante horas regulares de oficina en la Oficina del Departamento de Calidad del Aire de NMED, 1301 Siler Road, Edificio B, Santa Fe, Nuevo México. Un texto completo de la certificación propuesta de NMED está disponible en el sitio web www.nmenv.state.nm.us, o poniéndose en contacto con Michael Baca, (575) 524-6300 o via email a michael.baca1@state.nm.us.

Los comentarios escritos y/o la solicitud de una audiencia pública relacionada a la certificación propuesta deberán enviarse por correo electrónico a Michael Baca, michael.baca1@state.nm.us o enviarse por correo a:

Departamento del Medio Ambiente de Nuevo México, Departamento de Calidad del Aire
1170 N. Solano Dr., Ste. M
Las Cruces, NM 88001
Atención: Michael Baca

Comentarios y/o solicitudes de audiencia pública pueden también enviarse por fax al Departamento de Calidad del Aire, Atención: Michael Baca al (575) 526-3891.



NEW MEXICO
ENVIRONMENT DEPARTMENT



Air Quality Bureau

SUSANA MARTINEZ
Governor
JOHN A. SANCHEZ
Lieutenant Governor

525 Camino de los Marquez, Suite 1
Santa Fe, New Mexico, 87505
Phone (505) 476-4300 Fax (505) 476-4375
www.nmenv.state.nm.us

RYAN FLYNN
Cabinet Secretary
BUTCH TONGATE
Deputy Secretary

MEMORANDUM

DATE: March 12, 2014

TO: Ryan Flynn, Cabinet Secretary

THROUGH: Michael Vonderheide, Director, Environmental Protection Division *MV*
Jeffrey Kendall, General Counsel
Butch Tongate, Deputy Secretary

FROM: Richard Goodyear, Chief, Air Quality Bureau *RG*

SUBJECT: Governor's Designee Submittal Letter for the 2010 Nitrogen Dioxide National Ambient Air Quality Standard Infrastructure Certification

On March 10, 2014, the New Mexico Environment Department Air Quality Bureau (AQB) completed a 30-day public comment period for New Mexico's 2010 Nitrogen Dioxide National Ambient Air Quality Standards (NAAQS) Infrastructure Certification (2010 Nitrogen Dioxide Infrastructure Certification). The purpose of the 2010 Nitrogen Dioxide Infrastructure Certification is to demonstrate compliance with Federal Clean Air Act (CAA) requirements with respect to the 2010 NAAQS for nitrogen dioxide. The NAAQS are established by the United States Environmental Protection Agency (EPA) to protect public health and welfare.

On January 22, 2010, EPA promulgated a revised NAAQS for nitrogen dioxide. The 2010 Nitrogen Dioxide Infrastructure Certification confirms that New Mexico has an adequate, federally-approved State Implementation Plan (SIP) that addresses all elements of a CAA Section 110(a)(2) infrastructure plan, as applicable to the 2010 nitrogen dioxide NAAQS. Section 110(a)(2) of the CAA requires states to submit a certification that the state has the required "infrastructure" in place under the current SIP to implement, maintain and enforce the 2010 nitrogen dioxide NAAQS. Section 110(a)(1) of the CAA requires states to submit certification letters or revised SIPs to the EPA Administrator within three (3) years following the promulgation of a new or revised NAAQS.

To expedite the process of submitting New Mexico's infrastructure certification for the 2010 nitrogen dioxide NAAQS, AQB provided an opportunity for public comment through a 30-day public notice process, as allowed under federal guidance for infrastructure certification of a state's SIP. The existing New Mexico SIP does not require any regulatory amendments to satisfy the requirements of the CAA for the 2010 nitrogen dioxide NAAQS; therefore, the infrastructure certification was not subject to the mandatory public hearing requirement of NMSA 1978 § 74-2-6. However, if during the comment period a hearing is requested by the public, a hearing date, time and location would be announced at a later date following all requirements under 20.1.1 NMAC – Rulemaking Procedures – Environmental Improvement Board, including another public comment period. No requests for hearing were received during this 30-day public comment period for the proposed 2010 Nitrogen Dioxide Infrastructure Certification. No comments on the Nitrogen Dioxide Certification were received by the AQB.