New Mexico's Proposed Infrastructure Certification for The $PM_{2.5}$ NAAQS Revision

June, 2015

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 promulgated by the U.S. Environmental Protection Agency (EPA). The initial SIPs for states were approved by EPA on May 31, 1972 (37 FR 10842). 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 CAA and addresses how New Mexico will implement, maintain and enforce the 2012 revised $PM_{2.5}$ NAAQS which was promulgated on December 14, 2012 (78 FR 3086, January 15, 2013).

One infrastructure obligation, specified in CAA Section 110(a)(2)(D)(i)(I), requires states to adequately address the interstate transport of criteria pollutants that contribute to nonattainment or interfere with maintenance of the NAAQS in other states. Guidance on development and submission of infrastructure SIPs issued by the EPA on September 13, 2013 did not address Section 110(a)(2)(D)(i)(I). To date, the EPA has not published specific transport guidance for the 2012 primary annual $PM_{2.5}$ NAAQS, but in order to meet statutory deadlines for submittal of infrastructure SIPs, states do not have the option of waiting for the EPA to provide additional guidance before proceeding with infrastructure and transport SIP development, review, and submittal. The NMED is proceeding with this proposed SIP certification to ensure that there are adequate opportunities for public notice and comment as required by state and federal statutes. A detailed technical analysis discussion demonstrating that New Mexico specifically addresses the interstate transport requirements in the CAA for the 2012 $PM_{2.5}$ NAAQS is contained in Attachment B.

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 (EIB) and the New Mexico Environment Department (NMED) the authority to implement the CAA in New Mexico.

The regulatory authority to implement CAA programs is codified in the New Mexico Administrative Code (NMAC), specifically at Chapter 2, *Air Quality (Statewide)* of Title 20, *Environmental Protection*. The regulations that are part of the approved New Mexico SIP are cited at 40 CFR 52.1620(c).

Those requirements of CAA Section 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 and submission to EPA as a SIP revision of attainment plans.

State of New Mexico
110(a)(2) SIP Requirements for 2012 $PM_{2.5}$ NAAQS

§ 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.*

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 the 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 (44 FR 21019, April 9, 1979; revised 49 FR 44101, November 2, 1984; recodification approved in 62 FR 50518, September 26, 1997), approving various statutory and regulatory provisions on New Mexico's SIP.

The EIB has promulgated rules to limit and control emissions of PM, including $PM_{2.5}$. These rules include enforceable emission limits, control measures, permits, fees, and compliance schedules and are found at: 20.2.3 NMAC, *Ambient Air Quality Standards*; 20.2.5 NMAC, *Source Surveillance*; 20.2.7 NMAC, *Excess Emissions*; 20.2.8 NMAC, *Emissions Leaving New Mexico*; 20.2.10 NMAC, *Woodwaste Burners*; 20.2.11 NMAC, *Asphalt Process Equipment*; 20.2.13 NMAC, *Gypsum Processing Plants*; 20.2.14 NMAC, *Particulate Emissions From Coal Burning Equipment*; 20.2.15 NMAC, *Pumice, Mica And Perlite Processing Equipment*; 20.2.16 NMAC, *Nonferrous Smelters (New And Existing) – Particulate Matter*; 20.2.17 NMAC, *Nonferrous Smelters (Existing) – Particulate Matter*; 20.2.18 NMAC, *Oil Burning Equipment – Particulate Matter*; 20.2.19 NMAC, *Potash, Salt Or Sodium Sulfate Processing Equipment – Particulate Matter*; 20.2.20 NMAC, *Lime Manufacturing Plants – Particulate Matter*; 20.2.21 NMAC, *Fugitive Particulate Matter Emissions From Nonferrous Smelters*; 20.2.22 NMAC, *Fugitive Particulate Matter Emissions From Roads Within The Town Of Hurley*; 20.2.30 NMAC, *Kraft Mills*; 20.2.60 NMAC, *Open Burning*; 20.2.61 NMAC, *Smoke And Visible Emissions*; 20.2.65 NMAC, *Smoke Management*; 20.2.66 NMAC, *Cotton Gins*; 20.2.72 NMAC, *Construction Permits*; 20.2.73 NMAC, *Notice Of Intent And Emissions Inventory Requirements*; 20.2.74 NMAC, *Permits - Prevention Of Significant Deterioration (PSD)*; 20.2.75 NMAC, *Construction Permit Fees*; 20.2.79 NMAC, *Permits - Nonattainment Areas*; and 20.2.99 NMAC, *Conformity To The State Implementation Plan Of Transportation Plans, Programs And Projects*.

The EIB has also promulgated rules governing affirmative defenses in the event of excess emissions during start-up, shutdown, malfunctions, and emergencies. See 20.2.7 NMAC,

Excess Emissions. However, this infrastructure SIP certification does not contain any new provisions related to affirmative defenses. 20.2.7 NMAC does not provide for "director's discretion" to allow revisions to or exemptions from emission limits.

§ 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.*

New Mexico's Requirements

New Mexico maintains and operates a multi-station monitoring network to measure ambient concentrations of $PM_{2.5}$. 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, *Ambient Air Quality Surveillance*, Subpart G, *Federal Monitoring*, Appendix A, and are located at sites that have met the minimum siting requirements of 40 CFR Part 58, Appendix E. All data is submitted to EPA's Air Quality System (AQS) system in accordance with the schedule prescribed by 40 CFR Part 58.

New Mexico's Statewide Air Quality Surveillance Network was first approved by EPA on August 6, 1981 (46 FR 40005), and consists of stations that measure ambient concentrations of the criteria pollutants, including $PM_{2.5}$ (not including lead (Pb)). The air quality surveillance network undergoes annual review by EPA. On September 4, 2014, NMED submitted its 2014 Annual Air Monitoring Network Plan (AAMNP) that included the plans to address the 2012 $PM_{2.5}$ NAAQS. EPA approved New Mexico's 2014 AAMNP on April 14, 2015. The NMED Web site provides the $PM_{2.5}$ monitor locations, and current and historical monitoring 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

Enforcement. 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). The *Environmental Improvement Act* provides the NMED with authority to enforce the state's environmental quality rules (see 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 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 Major Source PSD permitting requirements are found at 20.2.74 NMAC. New Mexico's PSD program was conditionally approved into the State's SIP on February 27, 1987 (52 FR 5964) and fully approved on July 15, 2011 (76 FR 41698). 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).

When the 2012 $PM_{2.5}$ NAAQS was promulgated, EPA did not make any changes to the existing $PM_{2.5}$ Significant Emissions Rates (SERs), Significant Impact Levels (SILs) or Significant Monitoring Concentrations (SMC) (see 78 FR at 3260, January 15, 2013). However, on December 9, 2013 (78 FR 73698), EPA amended 40 CFR 51.166 and 52.21 to address the January 22, 2013, United States Court of Appeals for the District of Columbia Circuit vacatur and remand of two PSD provisions regarding the SILs and SMC for $PM_{2.5}$, (Sierra Club v. EPA 705 F. 3d458 (D.C. Cir. 2013)) that were promulgated by EPA on October 20, 2010 (75 FR 64864). The Court's vacatur of the $PM_{2.5}$ SILs and the SMC means that these provisions can no longer be relied upon by either permit applicants or permitting authorities. The EIB adopted corresponding amendments to 20.2.74 NMAC on July 11, 2014, which became effective on August 18, 2014. This SIP revision was submitted to the EPA on August 6, 2014.

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, 82558, 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 that were submitted on December 1, 2010 (76 FR 20907). On July 20, 2011, EPA approved New Mexico's GHG rules, effective August 19, 2011 (76 FR 43149).

On December 11, 2013, EPA approved revisions to New Mexico's SIP submitted on January 8, 2013 with respect to Plantwide Applicability Limits (PALs) for GHG sources (see 20.2.74.7.AZ.(1) NMAC and 20.2.74.320 NMAC, *Actuals Plantwide Applicability Limits (PALS)*), but deferred action on revisions related to the Biomass Deferral Rule (see 20.2.74.7.AZ.(2).(a) NMAC). (78 FR 75, 253, Dec. 11, 2013). Like the federal Biomass Deferral Rule (which had been vacated by the D.C. Circuit on July 12, 2013), the biomass deferral provision at 20.2.74.7.AZ.(2).(a) NMAC expired by its own terms on July 21, 2014.

On June 23, 2014, the U.S. Supreme Court in *Utility Air Regulatory Group*, 134 S. Ct. 2427, vacated those portions of EPA's Tailoring Rule that required sources to obtain a PSD or Title V

permit based solely on GHG emissions. On April 10, 2015, the U.S. Court of Appeals for the D.C. Circuit issued an order amending its decision in *Coalition For Responsible Regulation v. EPA*, 684 F.3d 102 (2012), in accordance with the Supreme Court's decision in UARG, and ordered the EPA to revise the applicable federal regulations to effectuate the UARG decision. New Mexico will revise its PSD regulations (including repeal of the biomass deferral and step 2 provisions) once EPA has undertaken the rulemaking required by the courts.

Minor Source Permitting: 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). 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). 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)	*Contain adequate provisions–* *(i) prohibiting any source or other type of emissions activity within the State 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, or* *(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) insuring compliance with the applicable requirements of Sections126 and 115 (relating to interstate and international pollution abatement);*

New Mexico's Requirements

EPA Guidance (September 13, 2013 Memo, p. 30) states that, "Section 110(a)(2)(D)(i) contains two subsections: (D)(i)(I) and (D)(i)(II). Section 110(a)(2)(D)(i)(I) addresses any emissions activity in one state that contributes significantly to nonattainment, or interferes with maintenance, of the NAAQS in another state." The EPA refers to these requirements as Prong 1 (significant contribution to nonattainment) and Prong 2 (interference with maintenance). Prongs 1 and 2 are addressed in the Technical Analysis shown as Attachment B.

This Guidance Memo also describes Element 110 (a)(2)(D)(i)(II) which requires infrastructure SIP provisions that prohibit any source or emissions activity in one state from interfering with measures required in other states to prevent significant deterioration of air quality (Prong 3) or from interfering with measures required in other states to protect visibility (Prong 4).

Prong 3

With respect to the prevention of significant deterioration element of Section110 (a)(2)(D)(i)(II), as stated above in Element 110(a)(2)(C) of this Infrastructure SIP certification, 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 $PM_{2.5}$ standard.

Prong 4

With respect to the visibility element of Section110 (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 Section 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 its disapproval of the visibility portion (i.e., Prong 4) of the September 17, 2007 SIP submittal that addressed the "good neighbor" provision of 110(a)(2)(D)(i) for the 1997 8-hour O_3 and 1997 $PM_{2.5}$ NAAQS, effective September 21, 2011. (76 FR 52388). EPA also promulgated a Federal Implementation Plan (FIP) imposing limits for nitrogen oxides (NOx) and sulfuric acid (H_2SO_4) on the San Juan Generating Station (SJGS). EPA imposed 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) regarding NOx. 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 52,390). EPA partially approved this 2007 SIP revision with respect to the PSD element of Prong 3, along with the "interfere with maintenance" element of Prong 2, on November 26, 2010 (75 FR 72,688), and partially approved the 2007 SIP with respect to the "significant contribution to non-attainment" element of Prong 1 on June 11, 2010 (75 FR 33,174).

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 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 52,424). 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 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 settlement 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. In October and November 2013, New Mexico submitted SIP revisions reflecting the measures agreed to in the tentative agreement.

On October 9, 2014 (79 FR 60985) EPA approved a revision to the New Mexico Regional Haze SIP that addressed BART for SJGS, making the emission limitations federally enforceable; satisfying CAA 110(a)(2)(D)(i)(II) with respect to interstate transport of air pollution and visibility protection for the 8-hour ozone and $PM_{2.5}$ NAAQS (the New Mexico Visibility Transport SIP). (80 FR 15963, 15964, March 26, 2015). Because of this, EPA withdrew their FIP for New Mexico that applies to SJGS.

Therefore, the requirement for New Mexico under Section 110(a)(2)(D)(i)(II) is satisfied by the SIP revisions approved on November 27, 2012 and October 9, 2014. As of the time of the drafting of this Infrastructure SIP, the 10th Circuit Appeal of the FIP remains in abeyance.

EPA guidance (September 13, 2013 Memo, p. 35) provides that Section 110(a)(2)(D)(ii) is satisfied when an Infrastructure SIP ensures compliance with the applicable requirements of CAA Sections 126(a), (b) and (c) (*Interstate Pollution Abatement*), and 115 (*International Air Pollution*).

As stated above in Element 110(a)(2)(C) of this Infrastructure SIP, New Mexico has a SIP-approved PSD program which includes provisions that satisfy the interstate pollution abatement requirements of Section 126 of the CAA.

No source or sources within New Mexico are the subject of an active finding under Section 126 of the CAA with respect to the 2012 $PM_{2.5}$ NAAQS.

New Mexico does not have any $PM_{2.5}$ nonattainment areas nor is the state within close proximity to any $PM_{2.5}$ nonattainment areas. The closest $PM_{2.5}$ nonattainment area (2006 standard) to New Mexico is approximately 287 miles away in Utah (Provo). Due to the lack of $PM_{2.5}$ nonattainment areas in or within close proximity to New Mexico, NMED has concluded that no revisions to the state's 2007 SIP revision for Section 110(a)(2)(D)(ii)are necessary at this time.

There are no final findings under Section115 of the CAA against New Mexico with respect to any air pollutant. If there are one or more future final findings under Section115 of the CAA, NMED will consult with EPA Region VI.

§ 110(a)(2)(E)(i)	*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) 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).*

New Mexico's Requirements

New Mexico has adequate personnel to implement the SIP with respect to the $PM_{2.5}$ NAAQS

requirements. The *Department of Environment 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)(4)). NMED is also authorized to receive State appropriations to implement environmental programs (NMSA 1978, § 9–7A-11A). 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.

The resources to carry out the SIP are provided through State General Funds, Permit Fees, and the CAA Sections 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 (NMSA 1978, § 74–2–5.2) 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)).

New Mexico does not anticipate the need for additional resources to implement the plan for the 2012 $PM_{2.5}$ NAAQS beyond those which have been utilized for the preparation of the plan and plan revisions submitted to EPA and other current programmatic demands.

For information on statutory authority, refer to Infrastructure SIP Element 110(a)(2)(A) above.

State statutes that have been revised since the last approval of statutes into the SIP (1984 & 1990) are shown as Attachment A, and are included as part of this SIP revision.

§ 110(a)(2)(E)(ii)	*(ii) requirements that the state comply with the requirements respecting State boards under Section 128, and*

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, § 74-1-4A).

20.1.1.111 NMAC, *General Provisions - Recusal* addresses when and how a board member should recuse themselves from rulemaking procedures when their impartiality of fairness may reasonably be questioned.

On April 20 and July 16, 1990, NMED submitted SIP revisions to EPA addressing State Board composition and conflict of interest disclosure requirements. EPA approved this SIP revision on June 1, 1999. (64 FR 29235).

§ 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.*

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 rules, regulations and orders promulgated by the board" (NMSA 1978, § 74– 1–6F). 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, § 74–2–5.1H and NMSA 1978, § 74–2– 5B(2) respectively).

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 EIB and the Department Secretary retain jurisdiction and control for administration and enforcement 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 $PM_{2.5}$.

The New Mexico SIP, applicable laws and regulations do not contain any provisions that prevent the use of any credible evidence (including continuous emission monitoring data) to establish violations of applicable requirements. (See 20.2.72.218 NMAC, *Enforcement*).

Under the New Mexico regulations at 20.2 NMAC Parts 7-8, 65, 70, 72-74, 79, and 81, NMED is required to analyze the emissions data from point, area 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 submittals to the National Emissions Inventory (NEI) database. The 2013 Major Source Point Inventory data was submitted to EPA on November 6, 2014, and the

Facility Inventory data was submitted on October 29, 2014. EI data becomes available to the public through the NEI.	
§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

Authority:

The *Air Quality Control Ac*t provides NMED with authority to address environmental emergencies, and NMED has contingency plans to implement emergency episode provisions in the SIP.

Specifically, per the *Air Quality Control Ac*t:

74-2-10, *Emergency Powers Of The Secretary And The Director*

§ 74-2-10A. "Notwithstanding any other provision of the *Air Quality Control Act*, if the Secretary or the Director determines that a source or combination of sources presents an imminent and substantial endangerment to the public health or welfare or to the environment, he may bring suit in the district court for the county in which the source is located to restrain immediately any person causing or contributing to the alleged air pollution to stop the emission of air contaminants causing or contributing to such air pollution or to take such other action as may be necessary."

§ 74-2-10 B. "If it is not practicable to assure prompt protection of the public health or welfare or the environment by commencement of a civil action, the Secretary or the Director may issue orders necessary to protect the public health or welfare or the environment. An order shall be effective for a period of not more than twenty-four hours, unless the Secretary or the Director brings a civil action before the expiration of twenty-four hours. If the Secretary or the Director brings an action within that time, the order shall be effective thereafter for forty-eight hours or for such longer period as may be authorized by the court pending litigation."

Contingency Plan

NMED has contingency plans to implement emergency episode provisions in the SIP.

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).

EPA did not revise the Air Quality Index (AQI) and did not establish a Significant Harm Level (SHL) for $PM_{2.5}$ when the revised $PM_{2.5}$ NAAQS was finalized in 2012. Therefore, once $PM_{2.5}$ SHLs are adopted by EPA, the *Air Pollution Episode Contingency Plan For New Mexico* will be updated to include the ambient concentrations for $PM_{2.5}$ that define and initiate each episode stage.

The 2011-2013 $PM_{2.5}$ ambient air quality monitoring data for New Mexico does not exceed 12.0 µg/m^3. The $PM_{2.5}$levels have consistently remained below this level and, furthermore, the State has appropriate general emergency powers to address $PM_{2.5}$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.

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.

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)).

§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

Section 110 (a)(2)(I) is not being addressed in this infrastructure SIP submittal because "according to the EPA's interpretation of the CAA, this element does not need to be addressed in the context of an infrastructure SIP submission." (EPA 9/13/13 Guidance Memo, p. 52). Instead, this element is addressed in a State's nonattainment SIP or attainment plan, and is subject to a different submission schedule than that for Section 110 infrastructure elements. Moreover, New Mexico presently does not have any nonattainment areas for $PM_{2.5}$.

§110(a)(2)(J)	*Meet the applicable requirements of Section 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*, 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"; "[N]otice of the hearing shall be given at least thirty days prior to the hearing date and shall state the subject, the time and the place of the hearing and the manner in which interested persons may present their views."; and "[A]t 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– 6B, C 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 including: "Officials and agencies having jurisdiction over the location where the proposed construction would occur as follows: any other state or local air pollution control agencies; the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency; and any state, Federal Land Manager (FLM), or Indian governing body whose lands may be affected by emissions from the source or modification"(20.2.74.400.C.(4).(c) 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, *Additional Requirements For Sources Impacting Class I Federal Areas).* 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, 20.2.99 NMAC, *Conformity To The State Implementation Plan Of Transportation Plans, Programs And Projects*, 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 (20.2.99.102 NMAC, *Consultation*, and 20.2.99.110 NMAC *Public Consultation Procedures*).

20.2.99 NMAC was most recently amended on July 11, 2014 at a hearing before the EIB, to remove sections that are no longer federally required. This SIP revision was submitted to EPA on August 8, 2014. (80 FR 7341, 7343, February 10, 2015; 80 FR 19020, April 9, 2015).

Public Notification

The revision to the New Mexico SIP concerning public notification was approved on August 24, 1983 (effective October 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 $PM_{2.5}$ and other criteria pollutants. Additionally, as part of the CAA Section 105 grant process New Mexico is required to submit monitoring data to the Air Quality System (AQS) in a timely manner.

Prevention Of Significant Deterioration

New Mexico's PSD program was conditionally approved into the SIP on February 27, 1987 (52 FR 5964) and fully approved on July15, 2011, effective August 15, 2011 (76 FR 41698). Subsequent EPA actions pertaining to New Mexico's PSD program may be 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. The EIB adopted amendments to 20.2.74 NMAC on July 11, 2014, and the amendments became effective on August 18, 2014. This SIP revision was submitted to the EPA on August 6, 2014.

New Mexico's minor source permitting requirements are found at 20.2.72 NMAC, and were approved on May 14, 1973 (38 FR 12702). For more information, refer to Infrastructure SIP Element 110(a)(2)(C) above.

The 2012 $PM_{2.5}$ NAAQS final rule incorporated a grandfathering option for pending PSD permit applications for which the reviewing authority had determined the application to be complete on or before December 14, 2012 or for which the reviewing authority had published public notice that a draft permit or preliminary determination for the permit had been issued prior to March 18, 2013. Projects eligible under this provision were required to meet the requirements associated with the previous primary annual $PM_{2.5}$ NAAQS rather than the revised primary annual $PM_{2.5}$ NAAQS. (78 FR 3086, 3252, January 15, 2013).

New Mexico does not have any pending PSD permit applications that would be subject to the previous annual $PM_{2.5}$ NAAQS under the grandfathering provision.

Visibility Protection

EPA Guidance (September 13, 2013 Memo, pp. 54-55) states that, "Under 40 CFR Part 51 Subpart P, *Protection of Visibility*, implementing the visibility requirements of CAA Title I, Part C, States are subject to requirements for RAVI, NSR for possible impacts on air quality related values in Class I areas, and regional haze planning." However, when EPA revised the $PM_{2.5}$ NAAQS, these requirements under Part C did not change, and EPA believes that there are no new visibility protection requirements under Part C as a result of the revised NAAQS; thus there are no newly applicable visibility protection obligations pursuant to Element 110(a)(2)(J)

For information on the visibility protection program, see Element 110(a)(2)(D), Prong 4, above.

§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"; this provides NMED with necessary authority to develop air quality assessments and conduct modeling (NMSA 1978, § 74– 2–5.1(A)). 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, including 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 NAAQS. New Mexico's SIP-approved minor source permitting and PSD rules (20.2.72 NMAC and 20.2.74 NMAC), provide NMED with the authority to conduct modeling to ensure permitted emissions do not exceed any NAAQS.

New Mexico's NSR rules ensure that all ambient air quality modeling required by those rules is performed in accordance with EPA Guidance (See 20.2.72.203 NMAC and 20.2.74.305 NMAC). Upon request, NMED will submit current and future data relating to modeling to EPA.

§110(a)(2)(L)	*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:* *(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; and an operating permit emission fee schedule. (NMSA 1978, § 74–2–7 *Permits; Permit Appeals To The Environmental Improvement Board Or The Local Board; Permit Fees*).

New Mexico's Permit Fee System implements a fee system for all preconstruction air permits issued by NMED. New Mexico's regulation for construction permit fees is found at 20.2.75 NMAC. The most recent amendments to 20.2.75 NMAC were approved on March 29, 2012 (77 FR 18923, effective May 29, 2012). New Mexico's Title V program (20.2.70 NMAC, *Operating Permits*) and associated fees (20.2.71 NMAC, *Operating Permit Emissions 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.*

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 NSR (i.e. 20.2.74 NMAC, *Permits - Prevention Of Significant Deterioration (PSD)*, 20.2.72 NMAC, *Construction Permits* and 20.2.79 NMAC, *Permits - Nonattainment Areas*) and Transportation Conformity (20.2.99 NMAC) also provide for public participation.

For a detailed analysis of consultation and participation conducted by NMED, refer to Infrastructure SIP Element 110(a)(2)(J) above.