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February 14, 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 sulfur dioxide. The submittal for this SIP revision is attached, which includes the Sulfur Dioxide Infrastructure Certification, public notices, affidavit of publication, response to comments, and clarifying changes. The public notice was conducted in accordance with 40 CFR §51.102, and included a 30 day public comment period. Public comments were received from the Sierra Club and EPA. No 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 sulfur 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,

Ryan Flynn
Secretary-Designate

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 Sulfur Dioxide (SO_2) 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 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 NAAQS for sulfur dioxide, which was revised in June 2010. 75 FR 35520 (June 22, 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 and submission to EPA as a SIP revision of attainment plans.

State of New Mexico
110(a)(2) SIP Requirements for Sulfur 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.

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, 74-2-5.5.2. 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 sulfur dioxide. 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.

New Mexico's Requirements

New Mexico maintains and operates a multi-station sulfur dioxide 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) system 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 sulfur dioxide. 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 sulfur dioxide NAAQS. EPA approved New Mexico's 2012 AAMNP on December 19, 2012. The NMED web site provides the sulfur dioxide 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 (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 sulfur dioxide 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 52,388. (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 72,688), 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 33,174)). In the August 22, 2011 final rule, EPA promulgated a Federal Implementation Plan (FIP) imposing limits for NOx 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 PM2.5 NAAQS, and also to address the requirements under the Regional Haze program for Best Available Retrofit Technology (BART). EPA based the timing 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.

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 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 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. EPA will take action to approve or disapprove this revised SIP in accordance with its obligations to provide 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 there are one or more final findings under section 115 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

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)).

New Mexico has adequate personnel to implement the SIP with respect to sulfur dioxide 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.

New Mexico does not anticipate the need for additional resources to implement the plan for the sulfur dioxide NAAQS beyond those which have been utilized for the preparation of the plan and plan revisions submitted to EPA and other current programmatic demands.

§ 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, § 74-1-4).

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).

§ 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– 1–6(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 sulfur dioxide.

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 their submittals to the NEI database; the 2012 data for larger sources

was submitted to EPA in 2013.

The data and reports will be 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 to, after a reasonable attempt to give notice, declare a state of emergency and issue without hearing an emergency special order directing the owner/operator to cease such pollution immediately (NMSA 1978, § 74-7-10).

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 sulfur dioxide ambient air quality monitoring data for New Mexico does not exceed the75 ppb 1-hr NAAQS standard or the 0.5 ppm 3-hr secondary NAAQS standard. The sulfur dioxide levels have consistently remained below this level and, furthermore, the State has appropriate general emergency powers to address sulfur dioxide 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 sulfur dioxide.

§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 sulfur dioxide 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). New Mexico's PSD program is in the SIP (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 (RH) 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 San Juan, under which NMED will submit a revised BART determination to the EIB for possible approval and submission 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 analysis 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 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)	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 (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.

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).

Clarifying changes to "New Mexico's Proposed Infrastructure Certification for The 2010 Sulfur Dioxide (SO_2) NAAQS Revision"

1. Paragraph 1 last sentence in State of New Mexico § 110(a)(2)(A) SIP Requirements for Sulfur Dioxide was changed to correct the citations and add clarifying language:

   "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)."
   Changed to
   "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)."

2. In paragraph 2, 2nd and 3rd sentences of State of New Mexico § 110(a)(2)(B) SIP Requirements for Sulfur Dioxide, "ozone" was changed to "sulfur dioxide" which was a typographical error. The change is shown below:

   "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 [~~ozone~~] <u>sulfur dioxide</u> NAAQS. EPA approved New Mexico's 2012 AAMNP on December 19, 2012. The NMED Web site provides the [~~ozone~~] <u>sulfur dioxide</u> monitor locations, and current and historical data."

3. The last sentence of State of New Mexico § 110(a)(2)(C) SIP Requirements for Sulfur Dioxide paragraph 3 was clarified "(see 76 FR 43149 [~~dated~~] (July 20, 2011))," and a redundant citation NAAQS (20.2.72.200 NMAC) was removed in paragraph 4.

4. Some of the citations in State of New Mexico § 110(a)(2)(K) SIP Requirements for Sulfur Dioxide were corrected so that the first paragraph now reads:

   "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 analysis 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))."

Responses to Comments Received During the Public Comment Period December 15, 2013 through January, 16, 2014

Comments were received from EPA and also from Elizabeth Toba Pearlman on behalf of Sierra Club

Written comments on the proposed certification were received from Elizabeth Toba Pearlman on behalf of Sierra Club on January 15, 2014.

These comments contain extensive legal arguments similar to those submitted by the Sierra Club to other states with respect to their SO_2 I-SIPs, to which some states have provided response. (See, eg. "New York State Implementation Plan for the Infrastructure Assessment for Sulfur Dioxide," "Texas Commission on Environmental Quality Revisions to the State of Texas Air Quality Implementation Plan, Infrastructure Demonstration and Transport Plan for Sulfur Dioxide Implementation," and "Georgia Environmental Protection Division Certification of 110(a) Infrastructure Elements for the 2010 1-Hour SO_2 NAAQS.") The arguments appear to be part of an attempt by the Sierra Club to redefine the requirements for infrastructure SIPs. Because New Mexico's SO_2 I-SIP conforms with the applicable requirements of CAA § 110 *as defined and interpreted by EPA*, NMED does not believe a detailed response to each of Pearlman's legal arguments is warranted or necessary as a prerequisite to submission of the I-SIP to EPA.

In general, however, NMED believes that Pearlman's legal arguments are not on point. For example, Pearlman points to EPA actions on SIP submissions by Missouri and Indiana as purported evidence for of certain EPA interpretations regarding infrastructure SIPs. However, as New York observes in its responses, neither of these cases involved *infrastructure* SIPs. [See "New York State Implementation Plan for the Infrastructure Assessment for Sulfur Dioxide"]. Similarly, Pearlman points to a U.S. Supreme Court decision, *Alaska DEQ v. EPA* (540 U.S. 461 (2004)) for a purported holding with respect to Infrastructure SIPs. See comments at p. 6. Although the Court cites CAA § 110(a)(2) as part of its discussion of the statutory and regulatory background, the issue in that case was "whether EPA's oversight role, described by Congress in CAA §§ 113(a)(5) and 16 . . . extends to ensuring that a state permitting authority's [Best Available Control Technology] determination is reasonable in light of the statutory guides," *Id.* at 484, where the facility in question was indisputably subject to PSD requirements. The case therefore provides no authority regarding the applicable requirements of an *infrastructure* SIP. In short, NMED does not believe that Pearlman's comments provide evidence of any shortcoming in New Mexico's SO_2 I-SIP in light of EPA's longstanding interpretation of CAA § 110(a)(2). To the extent that the Sierra Club seeks to change the law regarding I-SIPs, New Mexico will respond in the appropriate forum, but will not attempt to litigate the issues in these responses to comments. With that caveat, NMED provides the additional responses to specific issues raised in Pearlman's comments.

Pearlman states that New Mexico's Infrastructure SIP must include enforceable 1-hour SO_2 emissions limits to ensure attainment and maintenance of the NAAQS, including the

San Juan Generating Station and the Prewitt Escalante Generating Station. Pearlman also cites multiple instances where EPA or courts have relied on dispersion modeling in an attempt to determine compliance with the SO_2 NAAQS. Pearlman provides modeling to support these comments.

Response: The certification of the CAA § 110(a)(2) infrastructure elements are required by the CAA for any new or revised NAAQS. The applicable document certifies that New Mexico's current SIP includes all of the applicable elements, with the exception of § 110(a)(2)(D)(i)(I), which is not required without further action by EPA and 110(a)(2)(I), which is for plan revisions for nonattainment areas and is addressed under CAA title I part D under a different submission schedule. This infrastructure SIP certification is consistent with all guidance for infrastructure SIPS provided by EPA including the current guidance for the 2008 ozone NAAQS, the 2010 nitrogen dioxide NAAQS, the 2010 sulfur dioxide NAAQS, and the 2012 fine particulate matter ($PM_{2.5}$) NAAQS.

Pearlman cites § 110(a)(2)(A) per New Mexico's certification as the basis for the requirement of "enforceable one-hour SO_2 emission limits to ensure attainment and maintenance of the NAAQS." However, establishing emissions limitations to achieve attainment with NAAQS is not the purpose of element A. EPA clarifies in the infrastructure guidance that this element does not address those emissions limitations and other control measures needed to attain the NAAQS in areas designated nonattainment for NAAQS. Section 110(a)(2)(I) element I, is the section that requires plan revisions for nonattainment areas (including necessary emissions limits). As stated above, element I is addressed by a different requirement in the CAA.

Additionally, Pearlman's arguments for the use of dispersion modeling are based on documents or decisions related to formal nonattainment designation processes. The "White Paper" that Pearlman cites is "Pre-Decisional" and its purpose is to facilitate input from states, tribes, and other interested stakeholders on EPA's implementation of the 2010 SO_2 NAAQS. It is also important to note that, under the CAA, States are responsible for designation recommendations and EPA makes the final determination of attainment status. Until the attainment status is formally promulgated by EPA, no emission limits to ensure attainment of the NAAQS can be determined.

EPA has outlined its implementation time line for the 2010 SO_2 NAAQS at: http://www.epa.gov/airquality/sulfurdioxide/pdfs/20130207SO2StrategyPaper.pdf. Under this strategy, EPA will make the initial, ambient monitoring based-designations by June 2013 and final designations based on yet to be final guidance and/or rule for dispersion modeling by December 2017. Note that states will have the option of using modeling or locating a monitor, based on modeling, to determine the design value for which nonattainment recommendations will be made. The guidance to use modeling data is not yet final. Under EPA's strategy, New Mexico will not be required to make any modeling-based recommendation to EPA until January 2017.

In summary, while EPA has issued a strategy that includes the use of dispersion modeling for nonattainment designations for the 2010 SO_2 NAAQS, no final guidance or rule has been issued. The modeling that Pearlman has submitted with these comments cannot be used for determining

a nonattainment status and, therefore, cannot be used to require emissions limitations to ensure attainment of the NAAQS.

Current New Mexico rules require the enforcement of all NAAQS, and all applicable sources must comply with those NAAQS. However, this comment is beyond the scope of this SIP certification. The purpose of this SIP certification is to demonstrate that the New Mexico SIP meets the infrastructure and transport requirements of CAA §110(a)(2) for the 2010 SO_2 NAAQS. This SIP certification explains how existing New Mexico statutes and rules will allow the state to meet its obligations under the CAA, demonstrating that basic program elements have been addressed for the SO_2 NAAQS. It shows that New Mexico has the appropriate statutory and regulatory authority to develop necessary rules and control measures so that all areas of the state can either maintain the standard or attain and then maintain the standard in the future. This SIP certification is not a demonstration of attainment of the 2010 SO_2 NAAQS. Attainment demonstration SIP revisions would be developed for any New Mexico areas that are designated nonattainment of the 2010 SO_2 NAAQS. Those SIP revisions would be developed with appropriate stakeholder input and would undergo separate notice and comment rulemaking procedures. At that time, the NMED would develop appropriate rules and control measures to allow any areas not meeting the 2010 SO_2 NAAQS to come into attainment by the appropriate attainment deadlines. Current monitoring data show that the areas in which NMED's SO_2 monitors are located are currently in attainment of the 2010 SO_2 NAAQS. The current permits for these sources, as for all sources of air contaminants within New Mexico, require such sources to meet all applicable state and federal rules and regulations, including the 2010 SO_2 NAAQS. No changes were made to the SIP revision in response to these comments.

Pearlman states that New Mexico's Infrastructure SIP must include provisions to ensure SO_2 emissions will not cause or significantly contribute to nonattainment or interfere with maintenance of the SO_2 NAAQS in downwind States. Pearlman also includes modeling to support this comment.

Response: Pearlman is referring to CAA § 110(a)(2)(D)(i)(I) or element D. The certification clearly discussed why this element cannot be addressed at this time. The legal discussion, which is clearly articulated in EPA's infrastructure SIP guidance to the states, is included in the certification and is reiterated below:

> "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 sulfur dioxide standard."

Under this section of the Act, states are responsible for reducing their "significant contribution," to those downwind nonattainment or maintenance areas. The August 21, 2012 decision by the

U.S. Court of Appeals for the District of Columbia Circuit to vacate the 2011 Cross-State Air Pollution Rule (CSAPR) clarified that only EPA can determine "significant contribution," and that "a SIP cannot be deemed to lack a required submission or be deemed deficient for failing to implement the good neighbor obligation until after EPA has defined the State's good neighbor obligation." Once EPA determines New Mexico's significant contribution to nonattainment or maintenance areas in downwind states, then EPA may require New Mexico to submit a SIP revision under § 110(k)(5) or submit a new SIP under § 110(a)(1) of the CAA.

Since neither the State of New Mexico nor any other State has the ability to satisfy this requirement without EPA's determination of significant contribution, no revision to this certification is necessary in response to this comment

Pearlman states that New Mexico's Infrastructure SIP fails to include the new 2010 SO_2 NAAQS.

Response: An ambient impact analysis is required for sources of SO_2 emissions to determine compliance with the NAAQS per 40 CFR Part 50 and 20.2.72 NMAC.

Pearlman states that New Mexico's Infrastructure SIP fails to include provisions to ensure public notifications.

Response: New Mexico maintains and operates a multi-station sulfur dioxide 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) system in accordance with the schedule prescribed by 40 CFR Part 58. The NMED website provides the sulfur dioxide monitor locations, and current and historical data.

<u>Written comments were received from EPA on November 18, 2013</u>

EPA stated that they appreciated that our proposal (SIP certification matrix) clearly outlines the requirements of section 110(a)(2)(A) through (M) and addresses how New Mexico will implement, maintain and enforce the NAAQS for SO_2. In addition, the proposal is consistent with the most recent "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)" dated September 13, 2013.

Response: None

EPA made a comment specific to § 110(a)(2)(F)(iii) – Stationary Source Monitoring and Periodic Reports on Emissions and Emissions-related Data asking that we more specifically address public inspection of reports.

Response: NMED revised the document to add that "data and reports will be available for public inspection at reasonable times."