

**STATE OF NEW MEXICO  
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD**

**IN THE MATTER OF PROPOSED REVISIONS  
TO THE STATE IMPLEMENTATION PLAN  
UNDER CLEAN AIR ACT § 110(a)(2)(D)  
WITH RESPECT TO VISIBILITY**

**No. EIB 13- 03(R)**

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**PETITION FOR REGULATORY CHANGE**

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The New Mexico Environment Department ("Department"), pursuant to 20.1.1 NMAC - Rulemaking Procedures, petitions the Environmental Improvement Board ("Board") to approve a revision to the New Mexico State Implementation Plan ("SIP") with respect to the visibility element of § 110(a)(2)(D). The Board is authorized to adopt the proposed revisions by the Air Quality Control Act, NMSA 1978, §§ 74-2-2 et seq., and specifically by NMSA 1978 § 74-2-5.C (1). The proposed SIP revisions and a statement of the reasons for their adoption are attached.

The Department requests that the Board schedule the hearing for during its regular meeting in September 2013, immediately following the hearing in No. EIB 12-02(R). The Department anticipates that the time necessary to conduct the hearing will be approximately one hour.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT  
OFFICE OF GENERAL COUNSEL

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Bill Grantham  
Assistant General Counsel  
New Mexico Environment Department  
1190 St. Francis Drive, Suite N-4050  
Santa Fe, New Mexico 87505  
Telephone: (505) 222-9594  
[bill.grantham@state.nm.us](mailto:bill.grantham@state.nm.us)

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**STATEMENT OF REASONS**

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In August 2011, the U.S. Environmental Protection Agency (“EPA”) disapproved the visibility element of New Mexico’s September 17, 2007 State Implementation Plan (“SIP”) under Clean Air Act (“CAA”) § 110(a)(2)(D), the interstate transport provisions. EPA based its disapproval on the fact that with respect to the San Juan Generating Station (“SJGS”), currently effective enforceable emission limits for sulfur dioxide (“SO<sub>2</sub>”) and nitrogen oxides (“NO<sub>x</sub>”) were greater than the assumed emission rates contained in modeling performed by the Western Regional Air Partnership (“WRAP”). EPA reasoned that other western states had relied on the WRAP modeling in setting their own reasonable progress goals for visibility improvement, and that emissions in excess of the WRAP assumptions would “interfere with measures” in other states’ SIPs. Therefore, EPA promulgated a federal implementation plan (“FIP”) to address CAA § 110(a)(2)(D).

In the FIP, EPA established an SO<sub>2</sub> limit for SJGS equivalent to the WRAP assumptions. For NO<sub>x</sub>, however, EPA chose to adopt a more stringent limit, based not on the WRAP assumptions but on EPA’s determination of the best available retrofit technology (“BART”). Although a different BART determination made by New Mexico was then pending before EPA,

EPA chose to proceed with a NO<sub>x</sub> BART determination on a schedule driven by a deadline for EPA to take action under CAA § 110(a)(2)(D).

New Mexico and other parties subsequently sought review of the NO<sub>x</sub> BART FIP in the U.S. Court of Appeals for the Tenth Circuit. In an effort to settle this case, on February 15, 2013, New Mexico, EPA, and Public Service Company of New Mexico (“PNM”) (the operator of the SJGS) reached a tentative agreement on control strategies at the SJGS to satisfy both BART and CAA § 110(a)(2)(D) requirements. The provisions of the tentative agreement are contained in a “Term Sheet,” which is attached as Attachment 1 to this SIP.

The proposed SIP revision contains a more detailed discussion of this regulatory history, a demonstration that the Term Sheet conditions would satisfy the CAA § 110(a)(2)(D) requirements, and incorporates the substantive provisions of the Term Sheet. (These provisions are identical to the requirements in the proposed regional haze SIP revisions at issue in No. EIB 13-02 (R)).

The Department requests that the Board adopt these revisions in order to satisfy New Mexico’s outstanding requirements under CAA § 110(a)(2)(D), and to implement the provisions of the Term Sheet in furtherance of the tentative settlement agreement with respect to the NO<sub>x</sub> BART determination for the SJGS.