

NEW MEXICO STATE IMPLEMENTATION PLAN

REVISION

TO SATISFY THE REQUIREMENTS OF CLEAN AIR ACT 110(a)(2)(D)(i)(II) WITH RESPECT TO VISIBILITY FOR THE 8-HOUR OZONE AND PM 2.5 NAAQS PROMULGATED IN JULY 1997

A. Introduction

The “Good Neighbor” provision of the Clean Air Act (CAA) at §110(a)(2)(D)(i) requires that each state implementation plan (SIP) submitted to EPA must address emissions from within the state that affect other states through interstate transport. EPA concisely summarized the requirements of this provision as follows:

Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interstate transport. The SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other states; (2) interfere with maintenance of the NAAQS in other states; (3) interfere with provisions to prevent significant deterioration of air quality in other states; or (4) interfere with efforts to protect visibility in other states.

75 Fed. Reg. 72688, 72689-90, Nov. 26, 2010. On September 17, 2007, New Mexico submitted a SIP to EPA addressing each of the four elements. EPA approved this SIP with respect to element (1) on June 11, 2010 (75 Fed. Reg. 33174), and approved it with respect to elements (2) and (3) on November 26, 2010 (75 Fed. Reg. 72688).

With respect to the fourth and final element, regarding visibility, the September 17, 2007 SIP stated that New Mexico would submit an approvable SIP under for regional haze by December, 2007. This commitment was in accordance with EPA guidance applicable at the time, which provided that “a state could meet the visibility prong of the transport

requirements of section 110(a)(2)(D)(i)(II) of the CAA by submission of the RH SIP, due in December 2007.” 76 Fed. Reg. 491, 496 (Jan. 5, 2011). See also *Guidance for the State Implementation Plan Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour ozone and PM2.5 National Ambient Air Quality Standards*, EPA, August 15, 2006, pp 9-10.

New Mexico failed to submit an approvable Regional Haze SIP by December, 2007, and on January 15, 2009, EPA published a “Finding of Failure to Submit State Implementation Plans Required by the 1999 regional haze rule.” 74 Fed. Reg. 2392 (Jan. 15, 2009).

In a separate action, EPA had previously entered into a consent decree with WildEarth Guardians as a result of that group’s complaint alleging that EPA had failed to perform a non-discretionary duty to either approve SIPs or promulgate FIPs to satisfy the requirements of 110(a)(2)(D)(i), for several states including New Mexico. *WildEarth Guardians v. Lisa Jackson*, Case No. 4:09-CV-02453 (USDC N. Cal). The Consent Decree required EPA to propose a 110(a)(2)(D) FIP for New Mexico by November 10, 2010; the deadline was later extended to December 22, 2010 by stipulation of the parties.

In accordance with the Consent Decree, on December 20, 2010, EPA proposed disapproval of New Mexico’s September 17, 2007 110(a)(2)(D) SIP with respect to the visibility prong, and proposed a FIP consisting of a determination of Best Available Retrofit Technology (BART) for the San Juan Generating Station (SJGS). EPA’s rationale for this FIP was that installation of BART controls at the SJGS was necessary to ensure that New Mexico achieved the emission reductions relied upon by neighboring states in setting their reasonable progress goals for visibility improvement.

Concurrently with the filing of the petition for this SIP, on February 28, 2011 the New Mexico Environment Department filed a petition for adoption of an approvable Regional Haze SIP. That SIP also contains a proposed BART determination for the SJGS. Although NMED’s proposed BART determination differs from that proposed by EPA, as explained below it achieves the reductions relied upon by other states in setting their visibility goals.

Therefore, contingent upon the Board’s adoption of NMED’s proposed regional haze SIP including BART for SJGS, this SIP revision will satisfy New Mexico’s obligations under the visibility prong of 110(a)(2)(D).

B. Emissions Reductions Necessary To Satisfy § 110(A)(2)(D)

The proposed FIP provides a reasoned explanation of EPA’s determination of the emissions limits necessary at the SJGS in order to ensure that New Mexico emissions do not interfere with the visibility protection measures of other states. EPA looked to New Mexico’s participation in the Western Regional Air Partnership (WRAP) in

collaboratively developing regional haze SIPs. EPA noted that as a result of this process, which included the exchange of technical information, “the common understanding was that each State would take action to achieve the emission reductions relied upon in their reasonable progress demonstrations under the [Regional Haze Rule]”. 76 Fed. Red. At 496. Thus, EPA found that “an implementation plan that provides for emission reductions consistent with the assumptions used in the WRAP [photochemical grid] modeling will ensure that emissions from New Mexico do not interfere with measures designed to protect visibility in other states.” *Id.*

Therefore, EPA used the emission rates assumed in the WRAP’s modeling for NO_x and SO₂ from the SJGS as the criteria for avoiding interference with other states visibility measures. Finding that the existing federally enforceable emission limits were higher than those rates, the EPA determined that further reductions were required.

Specifically, EPA noted that the WRAP modeling assumed NO_x emission rates of 0.27 lbs./mmBtu for SJGS units 1 & 2, and 0.28 lbs./mmBtu for units 3 & 4. For SO₂ from SJGS, the modeling assumed an emission rate of 0.15 lbs/mmBtu for all four units. *Id.* at 497. EPA compared these WRAP modeling assumptions to the federally enforceable limits applicable to SJGS through a consent decree entered into by the operator of SJGS, Public Service Company of New Mexico (PNM), NMED, and environmental groups, which are: 0.30 lbs/mmBtu for NO_x and 0.15 lbs/mmBtu for SO₂. *Id.* Noting the discrepancy between the federally enforceable limits and the WRAP assumptions, EPA concluded that “it is appropriate to establish federally enforceable limits for pollutants that impact visibility projections within the WRAP photochemical modeling.” *Id.* EPA then went on to site its authority to issue a regional haze FIP for New Mexico, including BART for the SJGS, as a mechanism to achieve the needed reductions. *Id.* For all other sources in New Mexico, EPA proposed finding that they are sufficiently controlled to prevent interference with visibility programs of other states. *Id.*

In summary, EPA adopted the WRAP assumptions for SJGS of 0.27 – 0.28 lbs/mmBtu for NO_x and 0.15 lbs/mmBtu for SO₂ as the criteria for approvability of a § 110(a)(2)(D) implementation plan.

C. Satisfaction of the § 110(a)(2)(D) Requirements

1. NO_x

On February 28, 2011, the Department proposed a complete regional haze SIP, including a BART determination for NO_x for the SJGS. The BART determination calls for installation of Selective Non-Catalytic Reduction (SNCR) on all four SJGS units, and an emission rate of 0.23 lbs/mmBtu. This emission rate is well under the 0.27 – 0.28 lbs/mmBtu rate relied upon by other states in setting their reasonable progress goals. Therefore, upon the Board’s adoption of the regional haze SIP and its BART determination, New Mexico will also have satisfied the requirements of § 110(a)(2)(D) for NO_x.

2. SO₂

The proposed FIP noted that SJGS appears to meeting the 0.15 lbs/mmBtu emission rate assumed by the WRAP even though there was no enforceable requirement that it do so. EPA proposed to impose that rate as a federally enforceable limit in the FIP. EPA also noted that it was not proposing to find that the limit satisfies the BART requirement for SO₂, as that requirement would be satisfied by New Mexico's participation in the SO₂ backstop trading program. 76 Fed. Reg. at 498.

Consistent with EPA's statement, the regional haze SIP submitted to the Board on February 28, 2011 addressed the BART requirement for SO₂ through participation in the SO₂ backstop trading program. In order to address the separate requirement to satisfy § 110(a)(2)(D) for SO₂, SJGS has agreed to a permit modification to implement a limit of 0.15 lbs/mmBtu for SO₂.

Upon the Department's approval of that permit modification and the Board's approval of this SIP, New Mexico will have satisfied the requirements of § 110(a)(2)(D) for SO₂.