



STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD

IN THE MATTER OF PROPOSED REVISIONS
TO THE STATE IMPLEMENTATION PLAN
FOR REGIONAL HAZE

No. EIB 10-05 (R)

PETITION FOR REGULATORY CHANGE

The New Mexico Environment Department (“Department”), pursuant to 20.1.1 NMAC – *Rulemaking Procedures*, hereby petitions the Environmental Improvement Board (“Board”) to revise New Mexico’s State Implementation Plan (SIP) for Regional Haze. The revised SIP and a statement of reasons are attached. The Board is authorized to adopt this plan by the Air Quality Control Act, NMSA 1978 § 74-2-5.

The Department requests that the Board schedule a hearing or hearings for October, 2010. The Department anticipates that the hearing will take two to three days to conduct.

Respectfully submitted,

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STATEMENT OF REASONS

Introduction

The federal regional haze rule, 40 CFR §§ 51.308 – 51.309, requires States to submit state implementation plans (SIPs) to address regional haze visibility impairment in 156 Federally-protected parks and wilderness areas, known as Class I areas. New Mexico is home to nine such Class I areas.

The Department proposes revisions to its State Implementation Plan (SIP) under Section 308 of the federal regional haze rule. (40 CFR § 51.308). These revisions would replace and expand upon SIP revisions previously adopted pursuant to Section 309 (40 CFR § 51.309) of the haze rule.

The Board approved revisions to the SIP for Regional Haze in December, 2003. These revisions were developed by the Department pursuant to Section 309. Section 309 is the regulatory mechanism provided by the haze rule for western States and Tribes to implement the recommendations of the Grand Canyon Visibility Transport Commission. Section 309 is an optional alternative for western States. States choosing not to implement Section 309 are required to adopt regional haze plans in accordance with Section 308, the generic section of the regional haze rule applicable to States in the rest of the country. The EPA has not acted upon New Mexico's 2003 Section 309 SIP submittal.

Developments in the intervening years have rendered Section 309 inoperable. On February 18, 2005, the U.S. Court of Appeals for the D.C. Circuit, in response to a coal industry petition, vacated an essential element of the Section 309 approach. *Center for Energy and Economic Development v. EPA*, 398 F.3d 653 (D.C. Cir. 2005) (“*CEED*”). Specifically, the Court vacated the “Annex” rule. The Annex rule was a 2003 amendment to Section 309 which had provided sulfur dioxide (SO₂) “milestones” for a backstop emissions trading program. (68 Fed. Reg. 33,764 (June 5, 2003)). Under the provisions of Section 309, the inclusion of an acceptable SO₂ backstop trading program is a necessary condition for approval of a Section 309 SIP.

On October 13, 2006, the EPA promulgated additional amendments to the regional haze rule, in order to correct the legal flaws in the backstop trading program that the D.C. Circuit found in *CEED*. 71 Fed. Reg. 60612. This October 2006 rule revision allowed States to resubmit Section 309 SIPs containing a revised SO₂ backstop trading program by December 17, 2007. However, New Mexico and the other States attempting to retain Section 309 SIPs after the

CEED decision (Arizona, Utah, and Wyoming) have been unable to reach agreement with the EPA on quantitative values for the revised milestones.

Therefore, because the SO₂ backstop trading program is a necessary condition for Section 309 viability, and because the States and EPA have not reached agreement on the terms of such a program, New Mexico is obligated to adopt a SIP pursuant to Section 308 instead.

Organization of the SIP

The provisions of Section 308 can be divided into three categories. First, § 308(d)(1) – (d)(4) contain the so-called “core” requirements of the SIP. In order, these are (1) reasonable progress goals; (2) calculation of baseline and natural visibility conditions; (3) a long term strategy for regional haze, and (4) monitoring strategy and other implementation plan requirements. These core requirements are addressed in Chapters 4 – 9, 11, and 12 of the proposed SIP.

The second category is provisions related to Best Available Retrofit Technology (BART). These provisions are found in § 308(e), and are addressed in Chapter 10 of the proposed SIP.

The third category is miscellaneous administrative provisions related to future SIP revisions, progress reports, adequacy demonstrations, and coordination with federal land managers. These provisions are found in §§ 308(f) – (i) and are primarily addressed in Chapter 13 of the proposed SIP.

A more detailed breakdown on the reasons the Department is proposing each Chapter of the SIP follows below.

Chapter 1: Introduction.

This Chapter provides additional statutory and regulatory context for the SIP, as well as background information on visibility impairment

Chapter 2: New Mexico Regional Haze SIP Development Process

This Chapter describes the actions the Department has taken and will continue to take to consult with Federal Land Managers, other States, and Tribes. These actions are taken to comply with the requirements of Section 308(i)(4) with respect to Federal Land Managers, Section 308(d)(3)(i) with respect to States, and in recognition of general principles of Tribal sovereignty.

Chapter 3: New Mexico Class I Areas

This Chapter provides general information about the nine Class I areas subject to the regional haze rule that are located in New Mexico. It is included to provide context for the SIP and emphasize the importance of visibility in some of the State’s most precious and pristine natural areas.

Chapter 4: Regional Haze Monitoring Network

This Chapter describes the portion of the Inter-Agency Monitoring of PROtected Visual Environments (IMPROVE) network that will be used to monitor visibility-related air quality parameters in New Mexico Class I areas. This network will be used to collect and report aerosol monitoring data for long-term reasonable progress tracking as required by Section 308(d)(4).

Chapter 5: Technical Information and Data

This Chapter describes the information relied upon in developing the plan. It describes the Western Regional Air Partnership (WRAP), committees and workgroups of the WRAP, and work products developed by the WRAP that were used to develop this plan. It is included to provide transparency as to the technical bases underlying the Section 308 SIP.

Chapter 6: New Mexico Class One Area Baseline, Natural Conditions, and Uniform Rate of Progress

This Chapter provides the derivation, for each New Mexico Class I Area, of baseline (2000—2004) visibility conditions; natural visibility conditions, and the uniform rate of progress necessary to move from baseline conditions to natural conditions by the year 2064. These analyses are included in part to satisfy the requirements of Section 308(d)(2) and Section 308(d)(1)(i)(B).

Chapter 7: Visibility Impairment at New Mexico Class I Areas

This chapter provides a summary of visibility impairment at the Class I areas covered in this plan, based on IMPROVE monitoring data. Each section of the Chapter includes a summary of the pollutants causing visibility impairment and a summary of the visibility improvement needed from baseline (2000-2004) to the 2018 Uniform Rate of Progress Goal, and to the 2064 natural condition goal. This information is provided because it is a necessary step in developing long term strategies, in accordance with Section 308(d)(1)(i)(B).

Chapter 8: Sources of Visibility Impairment

This Chapter describes the emissions inventory used to characterize the anthropogenic and natural sources of visibility impairing pollutants affecting visibility in New Mexico Class I Areas. This information is provided because it is necessary in order to set reasonable progress goals as required by Section 308(d)(3), and is included in accordance with Section 308(d)(3)(iii).

Chapter 9: Visibility Modeling and Source Apportionment

This Chapter describes the regional air quality modeling relied upon by the Department in this SIP, for purposes including but not limited to developing the reasonable progress goals as required by Section 308(d)(1). It also provides information required by Section 308(d)(3)(iii).

Chapter 10: Best Available Retrofit Technology (BART) Evaluation

This Chapter describes the processes the Department used to determine (a) which facilities in New Mexico are “BART-eligible,” (b) which of those facilities are “subject to BART,” and (c) what technology constitutes BART for those facilities. The Department determined that only one facility in New Mexico is subject to BART – the PNM San Juan Generating Station. A summary of the BART determination is included in Chapter 10, and the full determination is included as Appendix A. The BART determination is included in the SIP in accordance with Section 308(e)(1).

BART requirements for Sulfur Dioxide had been addressed through the sulfur dioxide milestones and backstop trading program under New Mexico’s § 309 SIP. Because the § 309 approach is no longer viable, for the reasons explained above, New Mexico will need to revisit the need for any BART determinations for control of Sulfur Dioxide.

Chapter 11: Reasonable Progress Goal Demonstration

In this Chapter, the Department establishes reasonable progress goals for each Class I area in the state, and explains its rationale for selecting these goals. This includes consideration of the baseline and natural conditions and the uniform rate of progress to natural conditions as discussed in Chapters 6 and 7; the sources of impairment and source apportionment as discussed in Chapters 8 and 9; and consideration of additional controls to non-BART eligible sources using a four factor analysis as provided in the regional haze rule. This Chapter is included to satisfy the requirements for setting reasonable progress goals contained in § 308(d)(1).

Chapter 12: Long-Term Strategy (LTS)

This Chapter presents New Mexico’s long-term strategy to achieve the reasonable progress goals established in Chapter 11, including enforceable emissions limitations, compliance schedules, existing and anticipated state and federal regulations, and other measures. It also addresses the affect of New Mexico emissions on Class 1 areas in other states. This Chapter is included to satisfy the requirements for a long term strategy contained in § 308(d)(3).

Chapter 13: Other Sip Requirements and Commitments

This Chapter discusses New Mexico’s compliance with other sections of the regional haze rule, including future progress reports, SIP revisions, determination of plan adequacy, and enforceability of the plan. It is included to demonstrate compliance with §§ 308 (f), (g), (h), and §308(d)(3)(v)(F).