STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD

IN THE MATTER OF PROPOSED REVISIONS
TO THE STATE IMPLEMENTATION PLAN
TO SATISIFY THE REQUIREMENTS OF
CLEAN AIR ACT 110(a)(2)(D)(i)(II)
WITH RESPECT TO VISIBILITY **No. EIB 11-02 (R)**

ORDER AND STATEMENT OF REASONS
FOR ADOPTION OF SIP REVISIONS

This matter comes before the New Mexico Environmental Improvement Board ("Board") upon a petition filed by the New Mexico Environment Department ("NMED" or "Department"), proposing amendments to New Mexico's State Implementation Plan ("SIP") under Section 110(a)(2)(D)(i)(II) of the Clean Air Act. A public hearing on the matter was held in Farmington, New Mexico on June 2, 2011 with a quorum of the Board present during the hearing. The Board heard testimony from the Department and admitted exhibits into the record. Opportunity for public comment was provided during the hearing. Opportunity for public comment was also provided in a related hearing in No. EIB 11-01(R) in Santa Fe, New Mexico on June 1, 2011. On June 2, 2011, the Board deliberated and voted to adopt the proposed amendments for the reasons that follow:

II. STATEMENT OF REASONS

1. The federal Clean Air Act ("CAA") at Section 110(a)(2)(D)(i)(II) requires states to submit State Implementation Plans ("SIPs") containing adequate measures to prohibit emissions from within the state which will interfere with measures included in another state's SIP to address visibility. 42 U.S.C. § 7410(a)(2)(D)(i)(II).

2. The CAA requires states to submit SIPs to address visibility impairment caused by regional haze at certain National Parks, Wilderness Areas, and other federally protected areas ("Class I areas"), in accordance with regulations promulgated by the U.S. Environmental Protection Agency ("EPA"). CAA §§ 169A & 169B (42 U.S.C. §§ 7491 & 7492).

3. The EPA regulations governing SIP submittals under CAA 169A and 169B are contained in 40 C.F.R. 51.308 – 51.309 ("Regional Haze Rule Sections 308 and 309").

4. On January 15, 2009, the EPA issued a finding that New Mexico had failed to submit a SIP pursuant to Sections 309(d)(4) and 309(g) of the Regional Haze Rule. 74 Fed. Reg. 2393 (Jan. 15, 2009) (*See* NMED Ex. 2 at p. 494).

5. On February 18, 2010, the EPA entered into a Consent Decree to settle a lawsuit brought by WildEarth Guardians. The Consent Decree provided that on or before May 10, 2011, EPA would either approve a SIP or promulgate a federal implementation plan (FIP) to satisfy New Mexico's obligations under CAA § 110(a)(2)(D). The Consent Decree further provided that EPA would propose approval of a SIP or promulgation of a FIP by November 10, 2010. The November 10 deadline was subsequently extended to December 22, 2010, by stipulation of the parties. (*See* Proposed SIP at p. 2).

6. On December 20, 2010, the EPA signed a proposed a FIP for New Mexico under CAA § 110(a)(2)(D). The proposed FIP was published in the Federal Register on January 5, 2011. 76 Fed. Reg. 491 (Jan. 5, 2011) (NMED Ex. 2). The proposed FIP consisted of partial implementation of a regional haze plan for New Mexico – specifically, a determination of the Best Available Retrofit Technology ("BART") for the San Juan Generating Station ("SJGS"). The EPA's rationale for this action was that in developing

their regional haze SIPs, neighboring states relied on modeling conducted by the Western Regional Air Partnership ("WRAP") which assumed emission rates for the SJGS of 0.15 lbs/Mmbtu for sulfur dioxide (SO_2) and 0.27 – 0.28 lbs/Mmbtu of nitrogen oxides (NOx). Therefore, EPA reasoned, the SJGS must be subject to enforceable limits to prevent emissions in excess of these levels, in order to prevent interference with other states' regional haze SIPs. EPA also proposed finding that all other sources of emissions in the state were sufficiently controlled to eliminate interference with the visibility programs of other states.

7. Pursuant to 20.1.300.A NMAC, any person may petition the Board for amendment of regulations within the jurisdiction of the Board.

8. On February 28, 2011 NMED filed a petition with the Board for a public hearing in this matter.

9. On February 28, 2011, NMED also filed proposed SIP revisions under Section 309 of the Regional Haze Rule which provided, among other things, a BART determination for all four units of SJGS with a NOx emission limit of 0.23 lbs/Mmbtu on a 30 day rolling average.

10. In its petition in this matter, the Department proposed a SIP revision under CAA § 110(a)(2)(D) which provided that the State's obligations under that section would be deemed satisfied if the permit for SJGS were modified to limit emissions to 0.15 lbs/Mmbtu SO_2 and the Board adopted the proposed BART determination of 0.23 lb/Mmbtu NOx.

11. On March 15, 2011, at a meeting conducted in compliance with the Open Meetings Act and other applicable requirements, the Board granted the Department's request for a hearing in June, 2011 and appointed Felicia Orth, Esq. as the Hearing Officer.

12. On March 31, 2011, Notice of Hearing was published in the Navajo Times, the Farmington Daily Times (in English and Spanish), the Albuquerque Journal (in English and Spanish) and the New Mexico Register. *See* NMED Exhibit 5.

13. On March 31, 2011 the Hearing Officer issued an Order Establishing Procedures that required the Department to file its Notice of Intent to present technical testimony ("NOI") by May 2, 2011, and any other party to submit its NOI by May 17, 2011.

14. On May 16, 2011, the Department approved a revision to NSR Permit No. 0063-M6R2 for the SJGS, establishing an SO_2 emission limit for each unit of 0.15 lbs./Mmbtu on a 30 day rolling average.

15. On May 17, 2011, entries of appearance were filed by Public Service Company of New Mexico and by San Juan Coal Company.

16. Also on May 17, 2011, Entries of Appearance were filed by counsel for M-S-R Public Power Agency and for the Western Environmental Law Center (representing the Natural Resources Defense Council, San Juan Citizens Alliance, and WildEarth Guardians).

17. On June 2, 2011, after the conclusion of the hearing in No. EIB 11-01(R), the Board adopted the Department's proposed regional haze SIP revisions including a NOx emission limit for each of the four units of the SJGS of 0.23 lbs/Mmbtu as a result of the BART determination for that facility.

18. A hearing was convened in this matter on June 2, 2011 Farmington, New Mexico on June 2, 2011. In addition, the Hearing Officer invited public comment on this matter during

the hearing in No. EIB 11-01(R) (the regional haze SIP hearing) on June 1, 2011 in Santa Fe, New Mexico.

19. Pursuant to the Order Establishing Procedure, NMED pre-filed its technical testimony in full narrative form with its NOI, and provided a brief summary at the hearing.

20. Bill Grantham of the Office of General Counsel and Mary Uhl of the Air Quality Bureau provided support for the proposed revisions on behalf of NMED.

21. In addition to the written and oral public comment received in EIB 11-01(R), the Board received public comment in support of the petition from Maureen Gannon, Director of Environmental Services for PNM.

22. A copy of the May 16, 2011 technical revision to NSR Permit No. 0063-M6R2 was admitted into the record as Exhibit NMED 6.

23. The SO_2 emission limit for the four units of the SJGS of 0.15 lbs/Mmbtu contained in Permit No. 0063-M6R2 is exactly equal to the emission rate assumed in the WRAP modeling and therefore will prevent New Mexico SO_2 emissions from interfering with the visibility measures of other states, in accordance with the rationale underlying EPA's proposed FIP under CAA § 110(a)(2)(D)(i)(II).

24. The NOx emission limit for the four units of the SJGS of 0.23 lbs/Mmbtu provided by New Mexico's BART determination is less than the 0.27 – 0.28 lbs/Mmbtu emission rate assumed in the WRAP modeling and therefore will prevent New Mexico NOx emissions from interfering with the visibility measures of other states, in accordance with the rationale underlying EPA's proposed FIP under CAA § 110(a)(2)(D)(i)(II).

25. According to the EPA's analysis, these two emission limits therefore satisfy all of New Mexico's obligations under CAA § 110(a)(2)(D)(i)(II) with respect to visibility.

26. The Board has the authority to approve these proposed amendments pursuant to NMSA 1978, Sections 74-2-5 (B) & (C).

27. In accordance with NMSA 1978, Section 74-2-5(C)(1)(a), the proposed SIP revisions and regulations are no more stringent than but at least as stringent as required by the federal act and federal regulations pertaining to visibility protection in mandatory class I areas.

28. The proposed amendments satisfy the statutory requirements of the Air Quality Control Act, NMSA 1978, Section 74-2-5(E), which sets forth the factors to be considered by the Board: (1) character and degree of injury to or interference with health, welfare, visibility and property; (2) the public interest, including the social and economic value of the sources and subjects of air contaminants; and (3) technical practicability and economic reasonableness of reducing or eliminating air contaminants from the sources involved and previous experience with equipment and methods available to control the air contaminants involved.

29. The notice and hearing requirements of NMSA 1978, Section 74-2-6 and Section 74-1-9 and 20.1.1 NMAC were satisfied in this rulemaking process.

30. The proposed amendments are adopted for any or all of the reasons stated above.

III. ORDER

By unanimous vote of all the Board members, the proposed SIP revisions were approved by the Board on June 2, 2011. The SIP revisions proposed by the Department in its February 28, 2011 petition are to be submitted as expeditiously as possible by the Department to the EPA for approval.

Dated: 6/13/2011

On Behalf of the Board