

STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD

COPY



IN THE MATTER OF PROPOSED APPROVAL
OF NEW MEXICO'S INFRASTRUCTURE
STATE IMPLEMENTATION PLAN FOR
OZONE NATIONAL AMBIENT
AIR QUALITY STANDARD

EIB 18-06 (R)

MOTION TO VACATE HEARING

On May 4, 2018, the New Mexico Environment Department ("Department") filed a Petition for approval of New Mexico's Infrastructure State Implementation Plan Certification ("i-SIP Certification") with the Administrator for the Environmental Improvement Board ("Board"). During its meeting on May 25, 2018, the Board determined that a public hearing shall be held on the Petition. The public hearing was scheduled for September 28, 2018. A public hearing must be held by the Board in cases where a regulation or emission control requirement shall be adopted. NMSA 1978, §74-2-6(B). Since the Department's Air Quality Bureau is not seeking a regulatory change or requesting the Board to adopt an emission control requirement, New Mexico is not required to hold a public hearing.

Pursuant to 40 C.F.R. §51.102(a), New Mexico must provide the public the opportunity to request a public hearing and if a request for hearing is received, New Mexico must hold the scheduled hearing or schedule a public hearing. New Mexico may cancel the public hearing through a method it identifies if no request for a public hearing is received during the notification period. During the mandatory 30-day public comment period, starting on May 27, 2018 and ending on June 27, 2018, the Department announced an opportunity to comment on and/or request a public hearing on the proposed i-SIP Certification. See Exhibit A. The Department did not receive any hearing requests from the public and therefore, the Department requests that the Hearing Officer

vacate the hearing scheduled for September 28, 2018. See Exhibit B. The Department attaches to this Motion a draft Order to Vacate Hearing for the Hearing Officer's consideration. There are no other parties to the proceeding and so concurrence was not sought.

WHEREFORE, for the foregoing reasons, the Department asks the Hearing Officer to vacate the hearing.

NEW MEXICO ENVIRONMENT
DEPARTMENT

By: /s/ Mia Napolitano
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CERTIFICATE OF SERVICE

I hereby certify that copy of the Motion to Vacate Hearing was sent via the stated methods below on July 13th, 2018.

Via First Class U.S. Mail and Email:

Gideon Elliot
New Mexico Attorney General's Office
P.O. Drawer 1508
Santa Fe, New Mexico 87504
Counsel for the Environmental Improvement Board

/s/ Mia Napolitano
Mia Napolitano
Assistant General Counsel

 **Albuquerque Journal**

Published in the Albuquerque Journal on Sunday May 27, 2018

NEW MEXICO ENVIRONMENT DEPARTMENT Notice of Opportunity for Public Hearing and Comment New Mexico's Proposed Infrastructure Certification for the 2008 Ozone Revised National Ambient Air Quality Standard The New Mexico Environment Department (NMED) announces an opportunity to comment on and/or request a public hearing on a proposed certification that New Mexico has an adequate, federally-approved State Implementation Plan (SIP) that addresses all elements of a Clean Air Act (CAA) Section 110(a)(2) infrastructure plan ("i-SIP"), as applicable to the 2008 ozone National Ambient Air Quality Standard (NAAQS). The purpose of the proposed certification is to confirm to the U.S. Environmental Protection Agency (EPA) that the State of New Mexico has the required "infrastructure" in place under the current SIP to implement, maintain, and enforce the 2008 ozone revised NAAQS. Specifically, this certification addresses CAA Section 110(a)(2)(D)(i)(I), which requires that New Mexico's SIP prohibit emissions that will significantly contribute to nonattainment of a NAAQS or interfere with maintenance of a NAAQS in a downwind state. Section 110(a)(2)(D)(i)(I) is referred to as the "Good Neighbor Provision" and to SIP revisions addressing this requirement as "Good Neighbor SIPs". Based on EPA guidance, these provisions were not addressed in NMED's original i-SIP certification for the 2008 ozone NAAQS. Legislative authority for New Mexico's air quality program is codified in Chapter 74, Environmental Improvement, of the New Mexico Statutes, which gives the New Mexico Environmental Improvement Board and NMED the authority to implement the CAA in New Mexico, excluding Albuquerque/Bernalillo County which is under the jurisdiction of a local board and agency. The proposed certification was developed by NMED to comply with the requirements contained in Section 110 of the CAA and 40 CFR Part 51; Requirements for Preparation, Adoption, and Submittal of Implementation Plans. The proposed certification does not adopt or amend any regulations; therefore, it is not subject to the mandatory public hearing requirement of NMSA 1978 Section 74-2-6, Adoption of Regulations; Notice and Hearings. However, a hearing may be requested as described below. The proposed Interstate Transport State Implementation Plan Certification to Satisfy the Requirements of The Clean Air Act 110(a)(2)(D)(i)(I) for the 2008 Ozone NAAQS For New Mexico, is available for a 30-day public comment period. Submission of comments on the proposed certification may be written or oral. All comments must be received by June 27, 2018. All public comments received during the comment period will be evaluated and responded to as appropriate by NMED prior to submission of the final certification to EPA. If a request for a public hearing is received during the 30-day public comment period, a hearing date, time and location will be announced at a later date, in accordance with 20.1.1 NMAC Rulemaking Procedures Environmental Improvement Board, including an additional public comment period. For more information, contact Neal Butt, (505) 476-4317. Upon completion of the 30-day public comment period and the hearing, if requested, all documents included in the New Mexico 2008 Ozone NAAQS Good Neighbor SIP Certification will be submitted to EPA to be included in the New Mexico SIP. The proposed certification may be reviewed during regular business hours at the New Mexico Environment Department's Air Quality Bureau office, 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico, 87505-1816. A full text of NMED's proposed certification is also available on NMED's web site at <https://www.env.nm.gov/air-quality/proposed-regs/>, or by contacting Neal Butt at neal.butt@state.nm.us or by phone at (505) 476-4317. Written comments and/or a public hearing request regarding the proposed certification should be submitted via e-mail to Neal Butt, neal.butt@state.nm.us or mailed to: New Mexico Environment Department, Air Quality Bureau ATTN: Neal Butt 525 Camino de los Marquez, Suite 1 Santa Fe, New Mexico, 87505-1816 or faxed to: Air Quality Bureau, ATTN: Neal Butt at (505) 476-4375. Journal: May 27, 2018

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AFFIDAVIT OF NEAL BUTT

I, Neal Butt, being duly sworn, state the following:

1. I am an Environmental Analyst with the Control Strategies Section of the Air Quality Bureau. I submit this affidavit in support of NMED's *Motion to Vacate Hearing*.
2. On May 27, 2018, the New Mexico Environment Department (NMED) announced an opportunity to comment on and/or request a public hearing on a proposed certification that New Mexico has an adequate, federally-approved State Implementation Plan (SIP) that addresses all elements of a Clean Air Act (CAA) Section 110(a)(2) infrastructure plan ("i-SIP"), as applicable to the 2008 ozone National Ambient Air Quality Standard (NAAQS). Specifically, this certification addresses CAA Section 110(a)(2)(D)(i)(I), which requires that New Mexico's SIP prohibits emissions that will significantly contribute to nonattainment of a NAAQS or interfere with maintenance of a NAAQS in a downwind state. The proposed certification does not adopt or amend any regulations; therefore, it is not subject to the mandatory public hearing requirement of NMSA 1978 Section 74-2-6, *Adoption of Regulations; Notice and Hearings*.
3. The 30-day comment period closed on June 27, 2018. No comments were received by the public, and no hearing was requested; therefore, the hearing should be cancelled. Comments were received from the EPA, and have been addressed by NMED in the final certification.

Neal Butt

Neal Butt
New Mexico Environment Department

SUBSCRIBED AND SWORN to before me this 13th day of July 2018 by Neal Butt.

Sandra R. Jean
Notary Public

My commission expires:

9-24-19

