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

**IN THE MATTER OF:  
CERTIFICATION FOR THE 2015 OZONE NAAQS  
TRANSPORT OR “GOOD NEIGHBOR” PROVISION  
OF THE STATE IMPLEMENTATION PLAN**

**No. EIB 21- 05 (R)**

**FINAL ORDER AND STATEMENT OF REASONS**

1. The Clean Air Act (“CAA”) requires New Mexico to adopt and submit a plan for the implementation, maintenance, and enforcement of primary and secondary National Ambient Air Quality Standards (“NAAQS”) to the U.S. Environmental Protection Agency (“EPA”). 42 U.S.C § 7410(a).

2. The state implementation plan (“SIP”) must include an enforcement program, emission limitations, and control measures. 42 U.S.C § 7410(a)(2)(C).

3. EPA reviews and approves SIP submittals pursuant to the CAA. 42 U.S.C § 7410(k).

4. If New Mexico fails to submit a SIP or the SIP fails to satisfy minimum criteria, EPA may promulgate a federal implementation plan (“FIP”). 42 U.S.C § 7410(c).

5. Under CAA Sections 110(a)(1) and (2), each state is required to submit an infrastructure SIP (“iSIP”) that provides for the implementation, maintenance and enforcement of each primary or secondary NAAQS within three years after promulgation of a new or revised NAAQS. 42 U.S.C § 7410(a)(1).

6. The purpose of an iSIP is to ensure that the state’s SIP contains the necessary structural requirements for the implementation of the new or revised NAAQS, whether by

certifying that the SIP already contains or sufficiently addresses the necessary provisions, or by making a substantive SIP revisions to update the SIP.

7. CAA Section 110(a)(2)(D)(i)(I) is often referred to as the “Good Neighbor Provision” and to SIP revisions addressing this requirement as “Good Neighbor SIPs”. It requires that each state’s SIP prohibit emissions that will significantly contribute to nonattainment of a NAAQS (“Prong 1”), or interfere with maintenance of a NAAQS (“Prong 2”), in a downwind state. 42 U.S.C. § 7410(a)(2)(D)(i)(I).

8. On October 1, 2015, EPA promulgated a revised NAAQS for Ozone. 80 Fed. Reg. 65291, October 26, 2015.

9. Section 110(a)(2) of the CAA requires states to submit to the EPA Administrator an iSIP that addresses the requirements of sections 110(a)(2)(A)-(M) of the CAA within three years after the promulgation of a new or revised NAAQS. This SIP is a compilation of elements that demonstrates how the State of New Mexico will implement, maintain and enforce the revised ozone NAAQS.

10. Based on EPA guidance, New Mexico did not address the 110(a)(2)(D)(i)(I) or Good Neighbor Provision requirements in the iSIP for the 2015 ozone NAAQS.

11. The New Mexico Environment Department (“Department”) submitted the iSIP certification for the 2015 ozone NAAQS to EPA on November 1, 2018, which was approved on October 18, 2019. No public comments or hearing requests were received regarding this matter during the EPA required 30-day public comment period. 84 Fed. Reg. 49057, September 18, 2019.

12. On December 5, 2019, the EPA issued a final action, “Findings of Failure to Submit a Clean Air Act Section 110 State Implementation Plan for Interstate Transport for the 2015 Ozone



National Ambient Air Quality Standards (NAAQS)”, effective January 6, 2020, which identified seven states, including New Mexico, that failed to submit iSIPs to satisfy certain interstate transport requirements of the CAA. These requirements pertain to significant contribution to nonattainment, or interference with maintenance, of the 2015 8-hour ozone NAAQS in other states. 84 Fed. Reg. 66612, December 5, 2019.

13. These findings of failure to submit establish a 2-year deadline for the EPA to promulgate a Federal Implementation Plan (“FIP”) to address the interstate transport SIP requirements, unless, prior to the EPA promulgating a FIP, the state submits, and the EPA approves, a SIP that meets these requirements.

14. Prior to submitting a SIP revision, New Mexico must provide reasonable notice and public hearing. 42 U.S.C. §7410 (1).

15. The Department develops and presents the proposed Good Neighbor SIP to the New Mexico Environmental Improvement Board (“Board”) for its consideration and approval. NMSA 1978, §§ 74-2-5 (2007).

16. A public hearing must be held by the Board in cases where a regulation or emission control requirement shall be adopted. A regulation includes any amendment or repeal thereof. NMSA 1978, § 74-2-6.

17. EPA released modeling data in 2017 assessing whether or not a state’s emissions of ozone precursors might violate the Good Neighbor provision for the 2015 ozone NAAQS in a downwind state. Additionally, EPA issued three memos in 2018 providing states guidance on interpreting and analyzing the modeling data in the context of the Good Neighbor provision.

18. Based on EPA’s modeling data and the Department’s analyses, New Mexico will not significantly contribute to downwind nonattainment or maintenance difficulties at any air

quality monitoring station in the United States for purposes of compliance with the Good Neighbor obligations under the 2015 ozone NAAQS in 2023. Therefore, New Mexico's SIP sufficiently addresses the necessary provisions without a substantive SIP revision or regulatory change and the Department will submit the proposed Good Neighbor SIP to EPA in the form of a certification.

19. Since the Department is not seeking a regulatory change or requesting the Board to adopt an emission control requirement, a public hearing is not automatically required. However, the Department received a request for hearing during the public comment period for this SIP; therefore the Department requested to schedule a public hearing. 40 C.F.R. § 51.102(a).

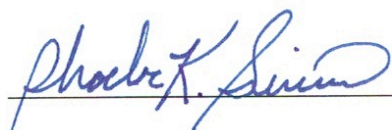
20. The Board held a virtual public hearing on May 28, 2021 to consider the proposed Good Neighbor SIP certification. The hearing was conducted in accordance with the procedures found in 20.1.1 NMAC. All public notice requirements were met, and a reasonable opportunity was provided for all persons to be heard.

21. During the hearing, the board heard testimony from witnesses for the Department and from Wild Earth Guardians.

22. At the conclusion of the public hearing, the administrative record was closed, the Board deliberated, and by a vote of 6 to 1 the Board decided to approve the proposed Good Neighbor SIP certification.

**WHEREFORE**, the Department's certification for the 2015 Ozone NAAQS transport or "Good Neighbor" provision of the New Mexico State Implementation Plan is hereby approved.

IT IS SO ORDERED.



Phoebe Suina, Chair  
Environmental Improvement Board

6-19-2021

Date