

Appendix M Regulatory Authority and Legislative Background

M.1. Clean Air Act and the Grand Canyon Visibility Transport Commission

The federal Clean Air Act established the National Ambient Air Quality Standards to protect public health. Currently the U.S. Environmental Protection Agency (EPA) has established National Ambient Air Quality Standards for five pollutants. States demonstrate compliance with these standards through a state implementation plan. The Clean Air Act also established a National Visibility Goal for 156 federal Class I Areas throughout the United States. Demonstrating progress toward that goal is required by states.

In 1990, Congress amended the Clean Air Act, and as part of these amendments created the Grand Canyon Visibility Transport Commission.¹ The Commission was charged with assessing the current scientific information on visibility impacts and making recommendations for addressing regional haze in the western United States. New Mexico was a member and active participant in the Grand Canyon Visibility Transport Commission. The Commission signed and submitted more than 70 recommendations to EPA in a report dated June 1996 that indicated that visibility impairment was caused by a wide variety of sources and pollutants, and that a comprehensive strategy was needed to remedy regional haze. Fire sources were among those specifically acknowledged in the Commission's Report as contributors to visibility impairment on an episodic basis:

All types of fire (prescribed fire and agricultural burning) must be addressed equitably as part of a visibility protection strategy. (Grand Canyon Visibility Transport Commission Report, p.47)

The report acknowledged the federal and state land managers' projection of significant increases in prescribed fire in order to reduce the effects of wildfire resulting from past decades of fire exclusion (Grand Canyon Visibility Transport Commission Report, p. 23). The report cited the need for minimizing the increase in emissions from all fire programs to the maximum extent feasible (Grand Canyon Visibility Transport Commission Report, p. 50).

M.2. Western Regional Air Partnership

The Western Regional Air Partnership (WRAP) was established in 1997 as the successor organization to the Grand Canyon Visibility Transport Commission. The WRAP is a voluntary organization comprised of western governors, including New Mexico, tribal leaders and federal agencies,² and is charged "to identify regional or common air management issues, develop and

¹ The Grand Canyon Visibility Transport Commission was comprised of the governors of eight western states (AZ, CA, CO, NM, NV, OR, UT, WY), four tribes (Acoma Pueblo, Hopi, Hualapai, and Navajo), four Federal land management agencies (U.S. Bureau of Land Management, U.S. Fish and Wildlife Service, U.S. Forest Service, National Park Service), the Columbia River Inter-Tribal Fish Commission, and the Environmental Protection Agency.

² The WRAP members include the governors of thirteen western states (AK, AZ, CA, CO, ID, MT, ND, NM, OR, SD, UT, WA, and WY). Tribal nations who are WRAP members include Pueblo of Acoma, Campo Band of Kumeyaay Indians, Cortina Indian Rancheria, Hopi Tribe, Hualapai Nation of the Grand Canyon, Nez Perce Tribe,

implement strategies to address these issues, and formulate and advance western regional policy positions on air quality.”(WRAP Charter, Purpose, p. 1.)

EPA recognizes the WRAP as the regional planning organization that is developing the necessary policy and technical tools to implement the Regional Haze Rule in the WRAP region. WRAP participants include state air quality agencies, tribes, federal/state/private land managers, the EPA, environmental groups, industry, academia and other interested parties. New Mexico has been a participant in the WRAP since its inception, and utilizes its products whenever applicable. This Smoke Management Program does recognize that technical tools and data are evolving and that some of these are preliminary and/or best available. It is New Mexico’s intent to accommodate future changes and advancements in the science regarding fire emissions and air quality impacts through annual review and five-year revisions of this Smoke Management Program.

M.3. Regional Haze Rule

Following the issuance of the Grand Canyon Visibility Transport Commission Report, the EPA issued the Regional Haze Rule in July 1999 to improve visibility in 156 national parks and wilderness areas across the country. The Regional Haze Rule outlines the requirements for states and tribes to address regional haze in these mandatory Class I areas. The Rule provides two pathways for western states to follow as they implement the requirements of the Rule: 1) develop regional haze implementation plans per the nationally applicable provisions of Section 308, or 2) Transport Region states may choose to incorporate the Grand Canyon Visibility Transport Commission recommendations into their regional haze implementation plans under Section 309 of the Rule.

The state of New Mexico submitted its regional haze state implementation plan (SIP) under Section 309 of the Rule. A smoke management program that addresses visibility effects in addition to public health protection is a requirement of Section 309. Smoke management programs that consider visibility effects are to be included in state implementation plans based on the following feasibility criteria: efficiency, economics, law, emission reduction opportunities, land management objectives and reduction of visibility impact. Through the New Mexico Smoke Management Program development process two more feasibility criteria were added to these: burner and public safety, and tribal traditional and cultural activities.

M.4. Existing Guidance on Smoke Management

The elements of a smoke management program as outlined in this document are based upon careful review and consideration of the Regional Haze Rule and the existing guidance on smoke management: the EPA’s *Interim Air Quality Policy on Wildland and Prescribed Fires* (EPA Interim Policy), the U.S. Department of Agriculture’s *Agricultural Air Quality Task Force’s Recommendation on Air Quality Policy on Agricultural Burning* (AAQTF Recommendation on

Northern Cheyenne Tribe, Salish and Kootenai Confederated Tribes, Pueblo of San Felipe, and Shoshone-Bannock Tribes of Fort Hall. Federal WRAP members are the Department of the Interior, the Department of Agriculture, and the Environmental Protection Agency.

Air Quality Policy), and the *WRAP Policy on Enhanced Smoke Management Programs for Visibility* (WRAP ESMP Policy).

M.5. Authority to Regulate Smoke Management

Statutory authority is given to New Mexico to regulate activities, such as prescribed burning, that will impact visibility in the state's Class I areas and ambient air quality standards through the Environmental Improvement Act, NMSA 1978, section 74-1-8 (A)(4), and Air Quality Control Act, NMSA 1978, section 74-2-1 et seq., including specifically, section 74-2-5(A), (B), and (C). State regulations implementing these statutes are found in Title 20, Chapter 2 of the New Mexico Administrative Code. Visibility protection is mandated federally through the Regional Haze Rule, 40 CFR Part 51.308 and 309 and in Sections 169A and B of the Clean Air Act.

M.6. State Recognizes Federal Authority to Manage Burn Operations

The New Mexico Air Quality Bureau has the legal responsibility to manage and regulate air quality throughout the state. New Mexico recognizes the legal authority of the Federal Land Management agencies or state agencies (to include, but not limited to, the Forest Service, National Park Service, Bureau of Land Management, Fish and Wildlife Service or New Mexico Department of Energy, Minerals and Natural Resources) to manage public lands. The development of this Smoke Management Program cannot limit that authority.

M.7. Relationship between State and Local Air Quality Authorities

The New Mexico Air Quality Bureau's jurisdiction is statewide except for Bernalillo County and tribal lands. The Bernalillo County Air Quality Control Board is the federally delegated authority for Bernalillo County. Local delegation authorizes the Board to administer and enforce the Clean Air Act and the New Mexico Air Quality Control Act, and to require air pollution sources in Bernalillo County to comply with air quality standards. This Smoke Management Program applies to all sources of fire in New Mexico except for those on tribal lands and in Bernalillo County.

M.8. Relationship with Local Fire and Law Enforcement Authorities and Others

This program does not cover fire safety. Fire safety falls under the jurisdiction of local fire authorities (Fire Departments, Fire Marshall, etc.). Burn authorization under this Smoke Management Regulation does not offer any protection from liabilities related to fire safety or property damage due to uncontrolled fire.

M.9. References

Clean Air Act

<http://www.epa.gov/oar/caa/contents.html>

EPA Interim Air Quality Policy on Wildland and Prescribed Fires

U.S. EPA, Office of Air Quality Planning and Standards, Interim Air Quality Policy on Wildland and Prescribed Fires, April 23, 1998.

<http://www.epa.gov/ttn/oarpg/t1/memoranda/firefnl.pdf>

Grand Canyon Visibility Transport Commission

Recommendations for Improving Western Vistas. June 10, 1996.

<http://www.wrapair.org/WRAP/reports/GCVTCFinal.PDF>

New Mexico Air Quality Control Act

<http://www.conwaygreene.com/NewMexico.htm>

Regional Haze Rule

Published in the Federal Register on July 1, 1999, 64 FR 35714.

http://www.epa.gov/ttn/oarpg/t1/fr_notices/rhfedreg.pdf

WRAP Policy on Enhanced Smoke Management Programs for Visibility

Approved by the Western Regional Air Partnership, November 12, 2002.

http://www.wrapair.org/forums/fejf/documents/esmptt/policy/030115_ESMP_Policy.pdf