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PETER MAGGIORE
SECRETARY

June 28, 2002

Ms. Lydia Wegman
Director, Air Quality Strategies and Standards Division
USEPA Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

Re: New Mexico Regional Haze Stakeholders' Workgroup Questions Related to the May 24 DC Circuit Court Ruling in *American Corn Growers vs. USEPA*

Dear Ms. Wegman:

Stakeholders in New Mexico began a collaborative decision making process on April 22, 2002 to develop a recommendation to the New Mexico Environment Department (NMED) on whether to develop a state implementation plan (SIP) revision under Section 308 or Section 309 of the Regional Haze Rule [64 Fed. Reg. 35714 (July 1, 1999)]. New Mexico is one of nine western states that have the option of developing a SIP under Section 309 of the Regional Haze Rule. Attached is a list of the organizations that are participating in the New Mexico stakeholder process.

We received a copy of your letter to Rick Sprott, dated June 7, 2002, which clarifies some of the questions about Section 309 that the stakeholders have raised since the recent DC Circuit Court ruling in *American Corn Growers v. EPA*. However, the New Mexico stakeholders still have some questions about the ruling's effect on both Section 308 and 309, which are listed below. The following questions were formulated by our stakeholder group, not the NMED Air Quality Bureau, and thus do not reflect the opinions and questions of the Bureau.

1. What is the interpretation of the plural in the Court decision as in "BART provisions"? What are the referenced "BART provisions" in the Court decision? These questions are directed at clarifying the Agency's interpretation of the reference to 308(e) in the Annex development process under 309(f).
2. Could EPA promulgate any revised regional haze rule and annex simultaneously (i.e., in the same comment and rulemaking process that is currently underway noticed in the May 6, 2002 Federal Register)?

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3. How could “new” BART provisions differ from those invalidated by the court?
4. Is EPA planning to change the SIP due dates? How would this affect sections 308 and 309?
5. What is EPA's understanding of the scope of the remand from the Court? Does EPA believe the entire regional haze rule (308 and 309) has been remanded to EPA or only those specific provisions discussed in detail (BART and the deadline-extension)?
6. Will EPA preserve the states abilities to benefit from participation in a regional planning organization (deadline, etc.)?

The Cabinet Secretary of the New Mexico Environment Department, Mr. Peter Maggiore, is also transmitting these same questions in a letter to Administrator Whitman.

I would appreciate a prompt response to these questions, as our stakeholder process to develop recommendations will be continuing until these and other questions can be answered. If you have any questions or need clarification on any of these questions, please contact me at (505) 955-8091.

Sincerely,

/original signed by Sandra Ely/

Sandra Ely, Chief
Air Quality Bureau

cc: New Mexico Regional Haze Stakeholders Workgroup
Shawn Kendall, The Kendall Group, Inc.
Tom Diggs, Region VI, EPA