



August 17, 2011

VIA ELECTRONIC MAIL ONLY- obarta@mt.gov

Ms. Oline Barta
Montana Department of Environmental Quality
P.O. Box 200901
Helena, Montana 59620-0901

Re: Comments in Support of Montana Department of Environmental Quality Section
Clean Air Act Section 110(l) Demonstration, Montana Oil & Gas Registration
Program, Subchapter 17 of the Montana Administrative Code¹

Dear Ms. Barta:

Continental Resources, Inc. is an independent oil and natural gas exploration and production company headquartered in Enid, Oklahoma. In Montana, Continental has significant operations and leasehold positions in the West Cedar Hills Red River Unit located in Fallon County and the Bakken formation located in Richland County. With operations in Montana spanning more than a decade, Continental has gained substantial practical experience with Montana's Subchapter 17 Oil & Gas Registration Program over the past five plus years and has a critical interest in ensuring that the fundamental protections, equities and efficiencies the program provides are approved by EPA for incorporation into the Montana State Implementation Plan ("SIP").

Section 110(l) of the federal Clean Air Act ("CAA")² governs EPA's review and approval of the Subchapter 17 Oil & Gas Registration Program and its incorporation into the Montana SIP. That provision requires that SIP revisions submitted to EPA for review and approval first be adopted by Montana "after reasonable notice and public hearing." The public notice and public hearing process initiated by the Montana Department of Environmental Quality ("MDEQ") pursuant to the Montana Administrative Procedures Act meets this initial requirement of CAA § 110(l).³

¹ ARM 17.8.1601, 17.8.1602, 17.8.1603, 17.8.1604, 17.8.1605, 17.8.1606, and 17.8.743 (with the exception of 17.8.743(1)(c)) adopted by the Board of Environmental Review (Board) on December 2, 2006 and ARM 17.8.1701, 17.8.1702, 17.8.1703, 17.8.1704, 17.8.1705, 17.8.1710, 17.8.1711, 17.8.1712, 17.8.1713, and 17.8.744 adopted by the Board on March 23, 2006 (Oil & Gas Registration Program).

² 42 U.S.C. § 7410(l).

³ The Montana Board of Environmental Review adopted the Subchapter 17 Oil & Gas Registration Program on March 23, 2006 pursuant to public notice and comment rulemaking procedures in the Montana Administrative Procedures Act. Section 2-4-301, *et seq.*, MCA. Therefore, this is the second time the Program has been subject to public notice and comment.

Section 110(l) further provides that EPA “shall not approve a revision” of a SIP “if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress” to achieving attainment. As provided in CAA § 171,⁴ the term “reasonable further progress” is defined to mean “such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.” In *Hall v. EPA*⁵, the Ninth Circuit Court of Appeals ruled that the “objective” and extent of EPA’s CAA § 110(l) review authority:

“is to determine whether ‘the ultimate effect of a State's choice of emission limitations is compliance with [NAAQS].’ *Train, 421 U.S. at 79. Cf. 63 Fed. Reg. 8,573, 8,574* (Feb. 20, 1998) (‘The Act charges [the EPA] with the determination as to whether the state's choices will result in attainment ...of the NAAQS.’). The nature of the judgment that the EPA must make is to “measure the existing level of pollution, compare it with the national standards, and determine the effect on this comparison of specified emission modifications.’ *Train, 421 U.S. at 93*. In other words, the EPA must determine the extent of pollution reductions that are required and determine whether the emissions reductions effected by the proposed revisions will be adequate to the task.”⁶

In short, EPA’s CAA § 110(l) review authority is limited to assessing: (a) the extent to which emissions reductions are required to attain NAAQS; and (b) whether the proposed SIP revision will provide those reductions. Where oil and gas development is concerned generally, and the Subchapter 17 Oil & Gas Registration Program specifically, the “relevant air pollutant” is VOC, which is an ozone precursor. The MDEQ Demonstration correctly points out that there are no ozone nonattainment areas in Montana.⁷ The MDEQ Demonstration also presents evidence that, to the extent emissions reductions may be needed to achieve attainment in discreet areas of the State for criteria pollutants other than ozone, the Subchapter 17 Oil & Gas Registration Program has had no effect on those areas and is not being relied on in formal attainment demonstrations filed by the State with EPA.

⁴ 42 U.S.C. § 7501.

⁵ 273 F.3d 1146 (9th Cir. 2001).

⁶ *Id.* at 1159.

⁷ See MDEQ Demonstration at 20.

Subchapter 17 took effect in early 2006. Since the Registration Program has been in effect for over five years, MDEQ is uniquely situated to prepare, as it has, a Demonstration that reports on the real world impacts of the program on ambient air and administrative practices. The Demonstration confirms that the Oil & Gas Registration Program does not interfere with any requirement for attainment of NAAQS, while providing significant administrative efficiencies to MDEQ and operators alike. The former results because the control requirements for registered oil and gas sources are at least as stringent as Montana Air Quality Permit (“MAQP”) provisions for minor source Best Available Control Technology (“BACT”) and because the emission controls imposed on oil and gas sources are at least equivalent to those that would be imposed if the sources were covered by an MAQP. The latter results from the notice-based nature of the registration program, which is bolstered by an active field enforcement program.

Since Subchapter 17 Oil & Gas Registration Program was adopted over five (5) years ago, the State has installed an air monitoring station near Sidney, Montana (#30-083-0001). Sidney is an area in the eastern portion of the State where over the last six or seven years some of most active and concentrated oil and natural gas development has occurred. Understanding the VOC emissions from this area after such development activity is of particular interest. The ozone air monitoring data from Sidney⁸ demonstrate that the ozone concentrations in that part of the State are *below* the NAAQS. As shown in the table below, which also includes the observed concentrations of ozone in areas of the State other than Sidney, the concentrations across the State are so similar that there is *no basis* to assert that VOC emissions from oil and gas well facilities in eastern Montana, many which are authorized by Subchapter 17, are either inconsistent with or otherwise adversely impacting ozone concentrations elsewhere in the State.

Site ⁹	O ₃	NAAQS	Averaging Period
Sidney	58 ppb	75 ppb	8 – Hour
Missoula/Frenchtown	56 ppb		
Billings/Shepard	59 ppb		
Yellowstone Park	65 ppb		
Broadhus	56 ppb		
Birney	68 ppb		

⁸ Data obtained from MDEQ, February 23, 2011 represents calendar year 2009.

⁹ Data reported in this table are courtesy of the Montana Petroleum Association (“MPA”) as obtained from the Bureau (and other public sources), and as further detailed in comments supplied by MPA to Docket No. EPA-R08-OAR-0662.

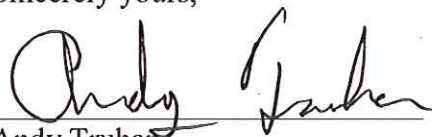
The continued operation of the Sidney monitoring station provides MDEQ an important tool for ensuring that the continued development of oil and natural gas in eastern Montana by way of the Subchapter 17 Oil & Gas Registration Program will not adversely affect the attainment status of that air shed and others in the State.

The "Demonstration" prepared by MDEQ substantiates the State's claim that the Subchapter 17 Oil & Gas Registration Program does not interfere with requirements to attain NAAQS or to demonstrate "reasonable further progress" in Montana. Implementation of the Subchapter 17 Oil & Gas Registration Program has proven to be protective of the NAAQS while providing continued administrative and operational efficiencies for both the State and operators alike. The program efficiencies account for the unique nature of oil and gas development; namely that emissions from such development cannot be estimated and permitted until well drilling and completion occur, and production actually commences. This simple reality is reflected by the fact that oil and gas production rates can vary substantially even between wells developed in the same field. This degree of variability highlights why oil and gas production sites differ from more traditional stationary sources like factories, utilities and refineries where emissions can be estimated with a high degree of confidence prior to construction. Finally, since Montana has observed the steady decline in ambient concentrations of regulated air pollutants during the 5.5-year period the Oil & Gas Registration Program has been in effect, there is no credible basis for asserting that the Subchapter 17 Oil and Gas Registration Program has adversely affected air quality in the State.

The MDEQ Demonstration provides EPA the information and data it should require to approve Subchapter 17 Oil and Gas Registration Program for incorporation into the Montana SIP under its Section 110(I) review authority.

Thank you in advance for your consideration of Continental's comments. Should you have any questions regarding anything set forth above or in the comments, please call me at 580/249-4574.

Sincerely yours,



Andy Truhan
Director Environmental Compliance

Cc: Donald P. Fischbach, Esq.
Kathryn Duval