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Energy and Telecommunications Interim Committee

62nd Montana Legislature

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June 29, 2012

TO: Energy and Telecommunications Interim Committee

FR: ETIC staff

RE: Regional Haze

During the ETIC's May meeting, the committee heard from the Department of Environmental Quality (DEQ) regarding Environmental Protection Agency (EPA) rulemaking related to regional haze.

The EPA is proposing a Federal Implementation Plan (FIP) to address regional haze in Montana. EPA developed the proposal in response to the State's decision in 2006 to not submit a regional haze State Implementation Plan revision. The FIP is needed to "satisfy requirements of the federal Clean Air Act that require states, or EPA in promulgating a FIP, to assure reasonable progress toward the national goal of preventing future haze and remedying existing man-made impairment of visibility in mandatory Class I areas."

The EPA accepted public comment on the proposal through June 19, 2012. The DEQ submitted public comments regarding the implementation plan. Senators Olson and Keane also submitted individual comments. Those comments are attached.

The EPA should finalize its plan in August.

Sonja Nowakowski

CI0429 2180slxf.



Brian Schweitzer, Governor

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June 19, 2012

Carl Daly
Director, Air Program
EPA Region 8, Mailcode 8P-AR
1595 Wynkoop Street
Denver, CO 80202-1129

RE: Docket ID No. EPA-R08-OAR-2011-0851

Dear Mr. Daly:

The Montana Department of Environmental Quality (Montana) is pleased to offer comments regarding EPA's proposed approach addressing regional haze in Montana. 77 FR 23988. Montana's foremost concern is that EPA's proposal lacks a real mechanism for achieving the goal set out in 42 USC §7491. Requiring BART controls separately and without consideration of the costs and regulatory interactions fails to prioritize health-based standards and would make, at best, nearly imperceptible visibility improvements.

In addition, Montana notes the proposal is extensive and complex (running to over a hundred pages in the Federal Register). On May 17, 2012, EPA published numerous corrections to the proposal. As a matter of maintaining basic fairness and consistency in process, Montana respectfully requests that EPA extend the comment period, resetting the original comment period of sixty days to begin from the date of the publication of corrections, or July 16, 2012.

The importance of adequacy in providing public notice and comment cannot be understated. Montana began reviewing and analyzing the contents of the proposal upon initial publication on April 20, 2012. However, the length of the document and the complexity of the subject matter, when taken together with the subsequent corrections, make the task much more difficult. Surely, other interested parties also share the concern that the time for comment is quite abbreviated.

The turnaround time for comment was insufficient from the promulgation of the initial proposal, but the corrections effectively shorten even that brief comment period. The May 17 corrections require a reappraisal of analysis made to date, impairing Montana's ability to thoroughly comprehend all aspects of the proposal and respond in the time currently allotted for comment.

While Montana strongly urges EPA to extend the comment period, it submits the following comments regarding EPA's proposal, reserving the right to supplement these comments as appropriate based on changed circumstances arising as a result of EPA's subsequent corrections or other errors in fact or analysis contained in the initial proposal.

If you have any questions regarding this submittal, please call me at (406) 444-0286.

Sincerely,

A handwritten signature in black ink, appearing to read "David L. Klemp". The signature is fluid and cursive, with the first name "David" being the most prominent.

David L. Klemp
Bureau Chief
Air Resources Management Bureau
Montana Department of Environmental Quality
Dklemp@mt.gov

**COMMENTS OF
THE MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY**

Regarding Docket ID No. EPA-R08-OAR-2011-0851

The Regional Haze Rule and Air Quality Regulation

The Regional Haze Rule (RHR) is a regulatory program arising out of a statute designed to implement regulations toward a national goal. The goal of the statute, as stated in 42 USC §7491, is “. . . the prevention of any future, and the remedying of any existing, [*sic*] impairment of visibility in mandatory class I Federal areas which impairment results from manmade [*sic*] air pollution” (National Goal). Congress further ordered EPA to promulgate regulations consistent with its direction. In 1990, as some large part of the goal remained unaccomplished, Congress supplemented its direction and set that supplemental direction in 42 USC §7492.

Unfortunately, it appears some general conflation of the national goal with the goals of 42 USC 7410 (Section 110) may have occurred. Over 50 comments and 100 other documents have already been posted to the rulemaking docket. In numerous comments, including a mass mailer campaign, the notion that the RH rule will prevent or correct adverse health effects arises. A quick perusal of news reports or organizational websites reveals the same or similar misperceptions. While some confusion in a small minority of uninformed persons may be expected in any rulemaking, the level of this misperception threatens to pervert not only the National Goal, but, ostensibly, the public health goals of Section 110. EPA and Montana both have a mutual interest in ensuring policy and rule processes constructively involve the public in decision-making. The process should be deliberately planned and organized to prevent any “scope creep” or convolution of context. Montana feels strongly that goal attainment in this and other programs could be imperiled if EPA does not clarify its goals and the appropriate scope of this rulemaking.

EPA itself has been active in promoting public-health-based emission reduction programs. From enforcement initiatives to proposals for various MACT standards, EPA is contributing to the protection of public health through Clean Air Act regulatory programs. Indeed, EPA and Montana have a history of balancing needs for the economy and public health. EPA’s focus on the outer contours of national programs leads to regulatory structures that do not distort the market and create unfair competitive advantages for existing sources state-by-state. Montana then fills in the details for these national programs, ensuring state sensibilities for inclusive process, protecting public health, and providing balanced economic growth are recognized. Montana is justly proud of its productive partnership with EPA and its stakeholders.

Interested parties are alarmed unnecessarily by this proposal. Montana is well-aware of its duties in regard to Section 110. As a state, Montana implements many programs in pursuit of Section 110 goals. Montana’s Mercury Rule, for instance, is a point of no small amount of satisfaction. The

Montana Mercury Rule is a model and sources in Montana have decreased emissions of mercury as a result of its implementation. Montana stakeholders, including public citizens, environmental groups, and source owner/operators worked in concert to make the Montana Mercury Rule a reality.

RECOMMENDATION: Montana suggests EPA issue a request for additional comment to (1) clarify the scope of the proposed Federal Implementation Plan (FIP) and release interested parties of any distress associated with the conflation of the National Goal with the goals of Section 110 and (2) extend the time period for comment commensurately.

EPA also makes a case for ordering the installation of control equipment for measurable emissions reductions absent a visibility improvement goal to achieve reasonable progress as measured in deciviews. One of the factors to consider when determining Best Available Retrofit Technology (BART) is any existing pollution control technology in use at the source. EPA may be interpreting this provision to mean BART requires the installation of any new pollution control technology that is useful for reducing emissions generally. As an abstract idea, the notion has a certain intuitive appeal. However, the statute and the RHR are both clear on this point. The determination focuses on *existing* pollution controls. A factor that is quite definitely not part of analysis is the suitability of additional controls for co-beneficial purposes that may be tangentially related to the National Goal.

The overall purposes of any State Implementation Plan, including Montana's, is the control of emissions to comply with the National Ambient Air Quality Standards as set forth in 42 USC §7410. The purpose of the RHR is to control emissions that cause or contribute to visibility impairment in class I Federal areas. Montana is adamant on this point because it forms the basis for its reluctant renunciation of authority over Montana's BART program. The consideration of a co-benefit strategy is not without merit, but the imposition of BART is set forth very clearly in statute and rule. The determination of BART has everything to do with visibility impairment and improvement, not the attainment or maintenance of the NAAQS.

RECOMMENDATION: Montana suggests EPA limit the BART criteria to that set forth in the rule at 40 CFR 51.308(e) and refuse to propose new controls that are not calculated to fulfill BART criteria.

In 1998, the U.S. Senate Subcommittee on Clean Air, Wetlands, Private Property and Nuclear Safety and the Committee on Environment and Public Works considered the effects of the RHR and EPA's proposal for implementation. At hearing, several members of Congress expressed concern about the paucity of attention given to the effects of smoke on visibility. Senator Dirk Kempthorne of Idaho, for example, noted, "[T]hese fires are the single biggest contributor to haze in Idaho--yet Federal land managers want to be exempted!"

The proposed RH FIP fails to make a realistic allowance for smoke contributions to haze in Montana skies. Some presumption should be included in the rule structure regarding the disposition of open burning emissions. While the "glide path" for attaining natural conditions is set as the year 2064, EPA's proposed FIP shows Montana class I Federal areas reaching natural conditions in 135 to 437 years

(an average of 218 years for Montana's class I Federal areas)! In a discussion of contribution assessment, the proposal states, "Fire appears to be a major factor contributing to the spatial differences . . . The daily monitoring [presumably IMPROVE monitoring] for Glacier NP shows an episode of exceptionally high organic carbon mass during August 2003 that indicates a fire event. This single episode influenced the five-year average values for Glacier NP."

Given events in recent years, EPA's description may be an understatement. Fire appears to be the major factor regarding Montana's visibility impairment. When Congress first passed the Visibility Protection Act in 1977, no one envisioned the sizable impact of non-stationary sources on visibility in western states. The Visibility Protection Act of 1977, 42 USC §7491, and the addition of a visibility statute as part of Congress' Clean Air Act Amendments of 1990, 42 USC §7492, focused on stationary source contributions to regional haze, considering other sources as a general, secondary impact. The 1988 Yellowstone fire had not occurred, the U.S. Forest Service was not engaged in a protracted "fuels management" scheme, and it was eastern, not western vistas that were nearly impossible to view. In the years since those statutes were passed, circumstances have changed a great deal and the studies of visibility, including its causes and its economic costs and benefits, have changed over time as well.

Montana point sources should not be forced to install and operate BART controls if open burning emissions are not consistently (temporally and spatially) characterized as part of either background concentrations or natural background. Sources could then be spared the burden of mitigating visibility impairment alone. John Seitz, EPA's former Director of Air Quality Planning and Standards told Congress as much when he stated at hearing (in response to a question from Sen. Wayne Allard about the expectation that stationary sources alone should be expected to reverse visibility impairment, "[C]learly, we will not be going after stationary services to make up [for smoke contributions to regional haze] . . ." Clean Air Act: Proposed Regional Haze Regulations: Hearings Before the U.S. Senate Subcommittee on Clean Air, Wetlands, Private Property and Nuclear Safety and the Committee on Environment and Public Works, 105th Cong., S. Hrg. 105-677.

RECOMMENDATION: Montana suggests EPA include all smoke emissions from open burning and wildfires in its Natural Background estimates and recalculate the Uniform Rate of Progress and Reasonable Progress Goals for each of Montana's class I Federal areas consistent with this presumption.

The proposed RH FIP, in many cases, does not provide enough analysis or justification to support conclusions made in the document by EPA. The BART Guidance states, "States will be required to consider all five factors, including visibility impacts, **on an individual source basis** when making each individual source BART determination [emphasis added]." The BART Guidance allows for the use of a "dollar per deciview" metric, which would make sense given the goal of improving visibility and EPA's establishment of the deciview as the measure of that improvement. The Reasonable Progress Guidance takes it a step further, stating, "...in assessing additional emissions reduction strategies for source categories or individual, large scale sources, simple cost effectiveness estimates based on a dollar-per-ton calculation **may not be as meaningful as a dollar-per-deciview** calculation, especially if the

strategies reduce different groups of pollutants [emphasis added.]” The use of deciviews is also consistent with the RHR’s reasonable progress goals, baseline visibility, current visibility conditions, and natural conditions, as they are all expressed in deciviews.

The RHR establishes the deciview as the principal metric for measuring visibility. However, EPA has chosen not to include a dollar per deciview calculation, instead using an annual cost and a dollar per ton, specifically removing deciviews from the equation and appearing to place more emphasis on consistency within industrial source types instead of focusing on individual source impact on visibility. For example, in the North Dakota RH SIP/FIP, coal-fired utilities with much higher estimated visibility impact and proximity to Class I areas were required to install similar BART as was proposed for Colstrip Units 1 and 2, where the visibility impact was, arguably, negligible.

The uniform sourcing of data does not appear to be a factor in arriving at costs. In several instances in the proposed RH FIP, EPA chooses to accept, discard, or include new cost information without reason or justification. In one instance, EPA uses Integrated Planning Model (IPM) data “. . . to ensure that our methods also reflect the most recent cost levels seen in the marketplace.” However, under similar circumstances, in the North Dakota FIP, even in instances where EPA appeared to dispute costs, IPM costs were not used; costs used were those provided by sources and, in one case, by an outside consultant retained by EPA.

In its proposal, EPA proposed Non-Selective Catalytic Reduction (NSCR) as an appropriate technology requirement for Devon Energy pursuant to Reasonable Progress regulations, but provided no information or analysis of any visibility benefit as a result. As EPA stated in the Proposed RH FIP, “The BART Guidelines recommend that states utilize a five-step process for determining BART for sources that meet specific criteria. In proposing a FIP we are considering this recommendation applicable to us as it would be applicable to a state. Although this five-step process is not required for making RP determinations, we have elected to largely follow it in our RP analysis because there is some overlap in the statutory BART and RP factors and because it provides a reasonable structure for evaluating potential control options.” The BART Guidelines specifically include the evaluation of visibility impacts in Step 5, which also would appear to be required under the RP guidelines, because the purpose for RP is to provide visibility benefit according to the Long Term Strategy.

RECOMMENDATION: EPA needs to use dollars per deciview instead of dollars per ton as a metric for evaluating emission control feasibility under BART and Reasonable Progress. In addition, EPA needs to justify its use of certain cost estimates over others and provide analysis with respect to the visibility impacts of the specified pollution control equipment requirements imposed on Devon Energy.

Montana is in a unique position of not promulgating the RH requirements for our state but is tasked with implementing those requirements as a consequence of Montana’s Title V permitting program. While EPA lists limitations and/or control requirements, compliance demonstrations and recordkeeping for the various determinations, no mention is made of the inevitable interaction of these requirements with Montana’s SIP approved minor and potentially major source permitting programs or the incorporation of these requirements into the Title V Operating Permit program.

EPA Process versus Montana Process

EPA, in the proposed RH FIP, lacks consideration for existing Montana SIP requirements. The proposed BART requirements could not be implemented in compliance with the Montana Air Quality Permit program pursuant to the Montana SIP without appropriate notification and application, as necessary. For example, the addition of control technology to an emitting unit would, at minimum require a “de minimis” notification under the Administrative Rules of Montana, ARM 17.8.745: “The owner or operator of any facility making a de minimis change... shall notify the department if the change would include...a change in control equipment, ...stack flow, stack gas temperature, source location, or fuel specifications...” Further, any change that would cause or contribute to a violation of an ambient air quality standard would be prohibited in Montana; therefore, a demonstration would need to be made to ensure compliance with those standards. A demonstration is likely to require significant resources and analysis, particularly in light of the new sulfur dioxide and nitrogen dioxide standards anticipated for some major sources referenced in this action.

Beyond de minimis changes (which, by definition, are limited to an increase in potential emissions at a facility of 5 tons per year of any regulated pollutant), some of the proposed control technology requirements may require either a minor source Montana Air Quality Permit, or perhaps even a major modification under Montana’s New Source Review (NSR) program. Montana is particularly concerned with the lack of analysis associated with the estimated 78 tons per year of ammonia slip (September 23, 2011 PPL submittal titled “NOx Control Update to PPL Montana’s Colstrip Generating Station BART Report”) that will potentially be emitted if Selective Non-Catalytic Reduction (SNCR) is installed on Colstrip Units 1 and 2. EPA provides no analysis with respect to environmental impacts of the ammonia emissions.

Ammonia is a known visibility-impairing pollutant. However, more importantly, potential exists for formation of ammonia sulfates and nitrates that will be emitted as direct particulate matter with an aerodynamic diameter of 2.5 microns or less (PM_{2.5}). Given an ammonia slip rate of 78 tons per year and considering the complex reaction conditions downstream of the SNCR through the scrubber train, a significant increase of PM_{2.5} emissions at Colstrip is quite conceivable. An NSR major modification would significantly change the time and money required to implement the proposed BART. An NSR major permit modification as described would be politically controversial, legally complex, and technically challenging. Montana questions whether the resources for such an undertaking should be the logical consequence of a regulatory scheme to mitigate visibility impairment.

EPA also fails to mention or provide any analysis or consideration to the potential impact of adding SNCR to existing mercury controls required by the Montana Mercury Rule, even though the statute and rule both direct consideration of any existing pollution control technology in use at the source. Based on information provided by PPL with respect to Selective Catalytic Reduction (SCR), which, if required, would have been installed at approximately the same location on the boiler as SNCR, the sorbent injection system would be displaced on Colstrip Units 1 and 2. The Montana Mercury Rule

was developed following the promulgation of the now-vacated Clean Air Mercury Rule (CAMR, a health-based, not visibility-based standard) that required states to either incorporate mercury trading or implement state-specific mercury control regulations. That very same sorbent injection system, required under the Montana Mercury Rule, would demonstrate compliance with the mercury limitations in the recently finalized Mercury Air Toxics Standard (also a health-based standard). The Montana Mercury Rule is a product of a successful collaboration among Montana stakeholders and represents an achievement for all Montanans. Montana will be very reluctant to compromise the Montana Mercury Rule for questionable visibility improvement.

With respect to ensuring compliance with BART requirements, as proposed, EPA needs to more thoroughly analyze and consider practical enforceability with respect to averaging times and chosen compliance demonstration methods pursuant to Title V implementation as well as EPA's own BART Guidance. The BART Guidance states, "Emissions limits must be enforceable as a practical matter (contain appropriate averaging times, compliance verification procedures and recordkeeping requirements)." For example, PM emission limits on Colstrip Units 1 and 2 and Corette are listed as 0.1 lb/MMBtu on a 30-day rolling average with a compliance demonstration of an annual stack test for each unit. A 30-day averaging time is not practically enforceable using an annual stack test. In addition, a discrepancy exists between the proposed Corette PM limit (which should actually be based on the equation in ARM 17.8.309 – Particulate Matter – Fuel Burning Equipment, not the 0.26 lb/MMBtu limit that is erroneously included in Corette's current Title V Operating Permit¹) and 0.10 lb/MMBtu set forth in the table at §52.1396a, as proposed.

EPA's proposal for Devon Energy suffers the same defects. EPA should review the oxides of nitrogen (NO_x) limit with respect to its averaging time and compliance determining method for practical enforceability.

RECOMMENDATION: EPA needs to consider the consequential implementation issues above, including: (1) RH FIP interaction with Montana's minor and major source permitting programs as described above (including the ammonia reaction/condensable PM_{2.5} issue) and (2) the issue of practical enforceability with respect to averaging times and chosen compliance demonstration methods. In addition, EPA needs to analyze the potential impact of any chosen control technology on current emission control technologies, including mercury controls.

As indicated by Montana's letter describing efforts to focus on the health-based aspects of the SIP, Montana's air quality program, indeed, focuses on health-based standards. And although Montana's role in the proposed RH FIP is limited to one of a commenter and, ultimately, the implementer of the requirements, a simpler, more appropriate and cost-effective approach to reducing

¹ The 0.26 lb/MMBtu limit in the Title V reflects the calculation of the equation in ARM 17.8.309 at the maximum heat input. However, because the emissions limit in ARM 17.8.309 is calculated, it varies based on the actual heat input. Therefore, the 0.26 lb/MMBtu may reflect the potential emissions, but does not reflect the applicable condition under all circumstances, which is why the numeric limit will be replaced with the equation in the renewal of that Title V Operating Permit.

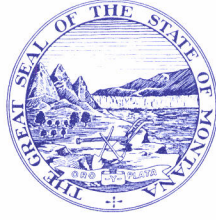
visibility impairment would be to allow the many health-based standards recently final or in process to be put into service first. Requiring BART controls separately and without consideration of the costs and interactions (potentially negative in the case of the current mercury control system at Colstrip) fails to prioritize health-based standards and would make, at best, nearly imperceptible visibility improvement.

The Mercury Air Toxics Standard, the new SO₂ and NO_x ambient standards, the forthcoming Boiler Maximum Achievable Control Technology standards, etc., are expected to have significant impact on emissions of fine particulate, sulfur dioxide, and nitrogen dioxide. Pursuant to §51.308(d)(3)(v), “The State must consider, at a minimum, the following factors in developing its long-term strategy: (A) Emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment.” EPA does not include, much less describe the potential benefit, of the above-mentioned regulatory programs in the proposed RH FIP.

EPA’s approach in the Western United States is significantly different from its approach in the Eastern states. Eastern states are much less affected by fire impacts (impacts that will not be remedied by BART controls on major sources, as discussed previously). As EPA is aware, on May 30, 2012, EPA finalized a rule that allows the trading programs in the Cross-State Air Pollution Rule (CSAPR) to serve as an alternative to determining source-by-source BART. Therefore, major sources in the East may comply with BART by merely participating in CSAPR, not necessarily by reducing emissions. CSAPR, also as EPA is aware, is a health-based standard, which Montana believes should take precedence over visibility standards. Therefore, EPA in the East is advocating the position that Montana has taken for our own state: realize the benefits (including visibility) from health-based standards and make compliance with those standards the demonstration for BART.

RECOMMENDATION: EPA needs to evaluate and consider the above-mentioned regulatory programs with respect to the visibility improvement potential of the proposed BART. EPA should reconsider its strategy in the West with respect to BART and propose different exemptions or cap the cost of controls based on a sensible ratio of dollars to deciviews calculated to realistically mitigate visibility impairment.

Montana State Senate



SENATOR ALAN OLSON
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June 15, 2012

Mr. James Martin
Administrator
U.S. Environmental Protection Agency Region 8
Mail Code 8P-AR
1595 Wynkoop Street
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Mr. Martin:

I'd like to provide you with some personal questions and comments as chairman of the 2011 Montana Senate Energy Standing Committee and the 2011-2012 Energy and Telecommunications Interim Committee regarding the regional haze federal implementation plan (FIP) for Montana. The Montana Legislature is not currently in session, and this letter does not reflect any position taken on behalf of either committee. I understand the Environmental Protection Agency is accepting public comment, and I would like to request that EPA Region 8 allow for flexibility in developing the plan and allow the state of Montana to implement the federal rules. I recognize that in 2006 the State of Montana opted not to implement a state implementation plan, leaving that responsibility with the EPA. However, it is my understanding that the Montana Department of Environmental Quality (MDEQ)—the air quality regulating and permitting entity in Montana—will implement the federal proposal and should logically be able to regain primacy of the program following completion of this rule-making effort.

I am concerned that the EPA has proposed a federal plan that will require costly emission control technologies at several Montana facilities that may not result in any perceivable improvement in visibility. I recognize the need to protect and improve visibility in Class I areas but have concerns about a one-size fits all federal implementation plan that fails to first demonstrate through monitoring and modeling how Montana's industrial facilities impact visibility in our National Parks and Wilderness Areas. Montana's industrial facilities expected EPA to follow previously established modeling protocol from the Best Available Retrofit Technology (BART) guidelines and were disappointed to learn EPA had followed a different protocol for the FIP. No specific rationale was provided for this change. Moreover, they object to the fact they have not been

provided sufficient opportunity to review EPA's modeling methodology before final comments are due.

The Regional Haze rule also provides for a cost-benefit analysis typically described in "dollars per deciview" of visibility improvement. Why does the proposed FIP fail to include a similar cost-benefit analysis? Data provided to EPA indicated excessive costs in this category which apparently have been ignored. I also am concerned that the EPA ignored retrofit factors when determining estimated costs for compliance for the proposed FIP. Why did the agency fail to use company-supplied cost estimates from vendors and use 2002 estimated cost data?

I'm certain you're aware that facilities in Montana are faced with complying with a number of proposed and final regulations at the same time, including this proposed FIP, the utility MACT, the sulfur dioxide National Ambient Air Quality Standards, the boiler MACT and others. I believe the regional haze FIP should first coordinate the timing and requirements of these standards and second consider the balance of plant impacts at Montana facilities when requiring specific control technologies for certain sources.

The EPA recently approved a state implementation plan in North Dakota that provides a certain amount of flexibility to implement sensible and cost-effective standards for improving visibility in selected areas of the state. Extensive monitoring and modeling done in North Dakota showed that emission control technologies would be technically infeasible at some North Dakota facilities and would result in no discernable improvements to visibility. I request Montana be provided with the same flexibility in implementing a federal plan.

I encourage the EPA to recognize MDEQ's proficiency in complying with Clean Air Act requirements. The MDEQ is familiar with emission sources in its jurisdiction and the underlying, and individual, facts and circumstances of the sources. The EPA should recognize the MDEQ's expertise.

Thank you for considering my comments on this important issue.

Sincerely,



Senator Alan Olson, R-Roundup
Chairman, Montana Senate Energy Standing Committee

Cc.

Governor Brian Schweitzer
Senator Max Baucus
Senator Jon Tester
Representative Dennis Rehberg