DEMONSTRATION
Pursuant to 42 USC §7410(l)
in support of the State of Montana's submission of the Montana Oil & Gas Registration Program

Submitted by the Montana Department of Environmental Quality

History and background of the Oil & Gas Registration Program

Pursuant to the Clean Air Act of Montana, 75-2-101, MCA, *et seq*. and the Federal Clean Air Act (CAA), Montana regulates sources emitting air pollution within its jurisdiction. As a result of a sharp increase in oil and gas well exploration and production throughout Montana, including distant, sparsely-populated areas, the state of Montana experienced a need for a way to effectively and efficiently regulate air pollution from the oil and gas industry that works with existing regulatory elements to successfully maintain Montana's air quality.

The Oil & Gas Registration Program is a successful regulatory response to a challenging activity not readily manageable through the standard permit structure. The Oil & Gas Registration Program does not interfere with any applicable requirements concerning attainment of a National Ambient Air Quality Standards (NAAQS), any reasonable further progress of a nonattainment area control plan, or any other applicable requirement of the CAA. The Oil & Gas Registration Program protects air quality and it does so without unduly depleting the Department's resources. The Department finds more resources are available for compliance determinations as a result of the resource-conserving nature of the Oil & Gas Registration Program.

In 2005, the Montana Legislature, responding to a need for industry regulation that would not overwhelm state agency resources, passed laws allowing owners and operators of oil and gas well facilities to complete and operate a facility for up to 60 days before submitting an application for a Montana Air Quality Permit (MAQP). The Legislature also directed the Board of Environmental Review (Board) to adopt rules requiring inspection, repair, recordkeeping, and emission controls from the time of the initial well completion date until the Department makes a decision on the permit application. As a result, in December 2005, the Board adopted ARM Title 17, Chapter 8, subchapter 16 and revised an internal reference in subchapter 7.

The processes of drilling and completing an oil and gas well facility and constructing a traditional facility subject to a Montana Air Quality Permit (MAQP) are inherently different. The owner/operator of a traditional MAQP facility has the benefit of a better understanding of the operational design and function of the emitting units at the facility. The owner/operator of a typical stationary source often has manufacturer specifications (e.g., maximum physical and operational capacities) for the specific emitting units as well as the advantage of reviewing similar, previously permitted facilities when determining potential to emit (PTE). For an oil and gas well facility, a majority of the potential emissions are dependent on the maximum production rates of the well, which are not known until the well is completed. These production rates can vary significantly from well to well, making it impractical and inaccurate for an owner/operator to base PTE on the production rates of nearby wells.

In March 2006, in response to the legislation seeking to maximize regulatory resources

and impose MAQP-equivalent emission control, the Board adopted ARM Title 17, Chapter 8, subchapter 17 and amended certain other rules associated with fee assessment and internal references. These rules established a registration program for oil or gas well facilities that would otherwise be subject to MAQP requirements.

What do Montana's rules regulate?

Montana's Oil and Gas Well Facility Registration Program (Oil & Gas Registration Program) is a complementary component of Montana's overall strategy to control emissions of air pollutants from minor sources. The Oil & Gas Registration Program regulates very specific facilities. These facilities are described in Attachment 1. It is critical to note these facilities are virtually identical and that Montana does not extend the registration option to compressor stations or major stationary sources. The Oil & Gas Registration Program also does not apply to drilling rigs because the Department assumes federal non-road diesel fuel standards and Tiered requirements for non-road engines would apply to these rigs and would control emissions without the need for a redundant state rule to accomplish the same outcome.

The Oil & Gas Registration Program is one component of a whole regulatory system

The Department emphasizes that the rules contained in ARM Title 17, Chapter 8, subchapter 16 and subchapter 17 in no way diminish the authority and/or rights of the EPA, the state, or its citizens. ARM Title 17, Chapter 8, subchapter 16 and subchapter 17 were adopted to implement the federal CAA and the Clean Air Act of Montana.

Further, the Oil & Gas Registration Program is not a standalone program within Montana's air quality program. As a step in relation to the whole, the Oil & Gas Registration Program must not be considered out of context. Except for Montana's minor source permit rules, from exploration through well completion and operation, oil and gas well facilities are required to comply with all of the rules generally applicable to other regulated emission sources, including but not limited to: Subchapter 1 general requirements; Subchapter 2 ambient standards; Subchapter 3 emission standards; and the major new source review rules in Subchapters 8 through 12. These are sources subject to existing SIP-approved rules and federal standards (e.g., NSPS, NESHAP, and MACT standards), for instance, in addition to the requirements of the Oil & Gas Registration Program. It would be inappropriate and misleading to take the Oil & Gas Registration Program out of this larger regulatory context and view it in isolation as if oil and gas well facilities are not subject to other Montana air quality requirements. Attachment 2 compares the requirements to which a minor source oil or gas well facility would be subject operating under either the Oil & Gas Registration Program or the MAQP program.

Like an oil or gas well facility choosing to operate under the SIP-approved permit program, a registered facility is subject to all applicable state and federal rules. A facility operating under the Oil & Gas Registration Program is also subject to SIP-approved, federally enforceable requirements. Table 1 is a comprehensive list of the SIP-approved, federally enforceable requirements to which a registered oil or gas well facility is subject.

Table 1. SIP-Approved Requirements Applicable to Registered Oil & Gas Well Facilities[1]

Requirement	Description
ARM17.8.101 – Definitions	Contains the definitions specific to ARM Title 17, Chapter 8, Subchapter 1, General Provisions.
ARM17.8.102 – Incorporation by Reference--Publication Dates ARM17.8.103 – Incorporation by Reference and Availability of Referenced Documents	Incorporates applicable federal requirements in found in the Federal Clean Air Act, Code of Federal Regulations (CFR) and EPA's Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I: A Field Guide to Environmental Quality Assurance. Consequently, an oil or gas well facility operating under the Oil & Gas Registration Program is subject to federal requirements.
ARM17.8.105 – Testing Requirements	Specifies that the Department has the authority to require any person or persons responsible for emitting any air contaminant into the atmosphere to conduct tests, emission or ambient. Test data must be maintained for a period of not less than one year and made available for review by the Department. Gives the Department broad authority to request a facility provide any information related to emissions or emission levels, Contains specific MRR requirements that an oil or gas well facility operating under the Oil & Gas Registration Program is subject.
ARM17.8.106 – Source Testing Protocol	Requires that all emission source testing, sampling and data collection, recording, analysis, and transmittal be performed as specified in the Montana Source Test Protocol and Procedures Manual. Alternate equivalent requirements must be submitted to the Department and written approval to use such requirements must be obtained from the Department. Contains specific MRR requirements that an oil or gas well facility operating under the Oil & Gas Registration Program is subject.

[1] An inconsistent internal reference to Mont. Code Ann. 75-2-103 (13) exists in ARM 17.8.1601(3) and 17.8.1701(5) because the Code was changed after the rule was submitted to EPA for inclusion into the SIP. Montana's rules are dynamic and Montana periodically corrects such inconsistencies when they are discovered. The Department intends to bring this matter to the attention of the Board for correction in an expedient matter.

Requirement	Description
ARM17.8.110 – Malfunctions	Contains the requirements for identifying, reporting, documenting, and resolving a malfunction. A failure caused entirely or in part by poor maintenance, careless operation, poor design, or any other preventable upset condition or preventable equipment breakdown is not a malfunction. An oil or gas well facility operating under the Oil & Gas Registration Program must notify the Department promptly by telephone whenever a malfunction occurs that is expected to create emissions in excess of any applicable emission limitation, or to continue for a period greater than four hours. The notification must include the following information: (a) identification of the emission points and equipment causing the excess emissions; (b) magnitude, nature, and cause of the excess emissions; (c) to the extent known, time and duration of the excess emissions; (d) description of the corrective actions taken or expected to be taken to remedy the malfunction and to limit the excess emissions; (e) information sufficient to assure the department that the failure to operate in a normal manner by the air pollution control equipment, process equipment, or processes was not caused entirely or in part by poor maintenance, careless operation, poor design, or any other preventable upset condition or preventable equipment breakdown; and (f) readings from any continuous emission monitor on the emission point and readings from any ambient monitors near the emission point. Contains specific MRR requirements that an oil or gas well facility operating under the Oil & Gas Registration Program is subject.
ARM17.8.111 – Circumvention	States that no person shall cause or permit the installation or use of any device or any means which, without resulting in reduction in the total amount of air contaminant emitted, conceals or dilutes an emission of air contaminant which would otherwise violate an air pollution control regulation.
ARM17.8.130 – Enforcement Procedures--Notice of Violation Order to Take Corrective Action	Describes the Department's process for issuing a notice of violation and bringing an alleged violator into compliance through a corrective action.
ARM17.8.131 – Enforcement Procedures--Appeal to Board	Gives an alleged violator the right to appeal the Department's notice of violation to the Board.

Requirement	Description
ARM17.8.132 – Credible Evidence	Specifies that any credible evidence will be allowed to establish compliance or noncompliance.
ARM17.8.140 – Rehearing Procedures--Form and Filing of Petition	Outlines the process that must be adhered to and information that must be submitted when requesting a rehearing from the Board regarding the Board's decision on the Department's notice of violation and resulting action.
ARM17.8.141 – Rehearing Procedures--Filing Requirements	Specifies the timeframe an aggrieved party has to file a petition for a rehearing from the Board regarding the Board's decision on the Department's notice of violation and resulting action.
ARM17.8.142 – Rehearing Procedures--Board Review	Outlines the process that the Board must follow after receiving a petition for a rehearing from the Board regarding the Board's decision on the Department's notice of violation and resulting action.
ARM 17.8.301 Definitions	Contains the definitions specific to ARM Title 17, Chapter 8, Subchapter 3, Emission Standards.
ARM 17.8.302 Incorporation by Reference	Incorporates applicable federal requirements found in the CFR and the Standard Industrial Classification Manual. Consequently, an oil or gas well facility operating under the Oil & Gas Registration Program is subject to federal requirements.
ARM 17.8.304 Visible Air Contaminants	Specifies the opacity limits that all facilities, registered or unregistered, must adhere.
ARM 17.8.308 Particulate Matter, Airborne	Specifies additional opacity limits and the need to take reasonable precautions to control emissions of airborne particulate matter that all facilities, registered or unregistered, must adhere.
ARM 17.8.309 Particulate Matter, Fuel Burning Equipment	Specifies the maximum allowable particulate matter emissions resulting from the combustion of fuel that all facilities, registered or unregistered, must adhere. Emission limits are based on the heat input of the fuel.
ARM 17.8.310 Particulate Matter, Industrial Processes	Specifies the maximum allowable particulate matter emissions resulting from an industrial process that all facilities, registered or unregistered, must adhere. Emission limits are based on the weight rate of the industrial process.
ARM 17.8.316 Incinerators	Details the required operational practices and parameters, including particulate matter emission and opacity limits, that all facilities, registered or unregistered, must adhere to when operating an incinerator. States that any performance tests shall be conducted in accordance with ARM 17.8.106 and the Montana Source Test Protocol and Procedures Manual.

Requirement	Description
ARM 17.8.320 Wood-Waste Burners	Details the required operational practices and parameters, including opacity limits that all facilities, registered or unregistered, must adhere to when operating a wood-waste burner. Includes specific MRR requirements that an oil or gas well facility operating under the Oil & Gas Registration Program is subject to.
ARM 17.8.322 Sulfur Oxide Emissions--Sulfur in Fuel	Contains limitations on the amount of sulfur allowed to be in solid, liquid, and gaseous fuels. All facilities, registered or unregistered, must adhere to these limits.
ARM 17.8.324 Hydrocarbon Emissions--Petroleum Products	Gives specific storage and handling requirements for petroleum products an oil or gas well facility operating under the Oil & Gas Registration Program is subject, as applicable, to these rules.
ARM 17.8.401 Definitions	Contains the definitions specific to ARM Title 17, Chapter 8, Subchapter 4, Stack Heights and Dispersion Techniques.
ARM 17.8.402 Requirements	Requires the basic requirements to ensure the emission control of a stack uses good engineering practice and a public hearing is held for any demonstration study done to obtain approval of a stack height no longer acceptable due to a new or revised SIP emission limitation.
ARM 17.8.403 Exemptions	Specifies the general conditions a stack height must meet to be exempt from Subchapter 4.
ARM 17.8.601 Definitions	Contains the definitions specific to ARM Title 17, Chapter 8, Subchapter 6, Open Burning.
ARM 17.8.602 Incorporation by Reference	Incorporates applicable requirements found in ARM Title 17, chapter 53, subchapter 5.
ARM 17.8.604 Materials Prohibited from Open Burning	Specifies the materials that may not be disposed of by open burning without first obtaining an air quality open burning permit from the Department.
ARM 17.8.605 Special Burning Periods	Specifies the categories of open burning that may be conducted during the entire year. Any other category may be conducted only during the months of March through November.
ARM 17.8.606 Minor Open Burning Source Requirements	Describes the requirements that must be adhered to when conducting open burning that does not require an air quality open burning permit from the Department.
ARM 17.8.610 Major Open Burning Source Restrictions	Contains the submittal, public notice, request for public hearing, control, and deviation notification requirements for all major open burning sources.
ARM 17.8.611 Emergency Open Burning Permits	Allows the Department to issue emergency air quality open burning permits. States the conditions for issuing such a permit, the information that must be provided to the Department prior to burning, and the timeframes that must be followed.

Requirement	Description
ARM 17.8.612 Conditional Air Quality Open Burning Permits	Outlines how the Department determines if a conditional open burn permit is applicable and the application requirements. Specifies the control and public hearing requirements.
ARM 17.8.613 Christmas Tree Waste Open Burning Permits	Outlines application requirements for a Christmas tree waste open burning permit. Specifies the submittal, public notice, request for public hearing, and control requirements.
ARM 17.8.614 Commercial Film Production Open Burning Permits	Outlines application requirements for a commercial film production open burning permit. Spe cifies the submittal, public notice, request for public hearing, and control requirements.
ARM 17.8.615 Firefighter Training	Outlines application requirements for a firefighter training open burning permit. Specifies the submittal, public notice, request for public hearing, and control requirements.
ARM 17.8.744 Montana Air Quality Permits--General Exclusions	States that an oil or gas well facility operating under the Oil & Gas Registration Program is exempt from obtaining a Montana Air Quality Permit. This does not prevent an oil or gas well facility from obtaining a permit if the facility so chooses.

It is important to note that Montana not only fully satisfies its responsibilities under the CAA, but Montana also creates and maintains rules promulgated pursuant to the Clean Air Act of Montana, a statute that predates the CAA. Attachment 3 contains the rules to which oil and gas well facilities are subject under state law. These rules are included in this analysis to demonstrate Montana's serious commitment to both state and federal law.

As a matter of good administration and compliance practice, ARMB staff informs owners and operators of their obligations to comply with all applicable state and federal rules, including the Oil & Gas Registration Program rules. An example of this is set forth at Attachment 4. The letter indicates, without limitation, other applicable requirements. It is important to note that owners and operators of oil and gas well facilities are subject to and are obligated to comply with all applicable requirements, whether or not they choose to register or pursue an MAQP and whether or not they receive a letter containing this information.

Montana's Oil & Gas Registration Program allows a registration eligible oil or gas well facility to register in lieu of obtaining a MAQP. The Oil & Gas Registration Program ensures that an oil or gas well facility is required to control emissions from the time the well is completed (Subchapter 16) and after it has been registered and continues operations (Subchapter 17). The Oil & Gas Registration Program requirements (e.g., emission control, inspection and repair, recordkeeping, etc.) are summarized in Table 2 below.

Table 2. Oil & Gas Registration Program Requirements

Requirement	Description
ARM 17.8.1601 Definitions	Defines terms specific to ARM Title 17, Chapter 8, Subchapter 16, Emission Control Requirements for Oil and Gas Well Facilities Operating Prior to Issuance of a Montana Air Quality Permit.
ARM 17.8.1602 Applicability and Coordination with Montana Air Quality Permit Rules	Requires oil and gas wells facilities subject to this subchapter to control emissions and requires a facility choosing to operate under this subchapter to submit an application for a Montana air quality permit within 60 days after the initial well completion date for the facility. As long as a facility complies with the requirements of this subchapter, the facility may operate until the Department's decision on the permit application is final or the facility is registered in lieu of obtaining a permit.

Requirement	Description
ARM 17.8.1603 Emission Control Requirements	Requires specific emission controls, including: • VOC vapors greater than 500-BTU/scf from oil and gas wellhead equipment must be routed to a gas pipeline, or, if a gas pipeline is not located within a ½-mile of the oil and gas well facility, captured and routed to emissions minimizing technology or to a smokeless combustion device equipped with an electronic ignition device or a continuous burning pilot system; • VOC vapors greater than 500-BTU/scf from oil and condensate storage tanks and loading transport vehicles with the PTE of 15-tpy or greater must be captured and routed to a gas pipeline, or if a gas pipeline is not located within a ½-mile of the oil and gas well facility, captured and routed to emissions minimizing technology, or to a smokeless combustion device equipped with an electronic ignition device or a continuous burning pilot system; • Hydrocarbon liquids must be loaded into transport vehicles using submerged fill technology; • Emissions from stationary internal combustion engines of rich burn or lean burn design greater than 85-brake horsepower must be controlled; and • Operations must comply with the ambient air quality standards for hydrogen sulfide and other criteria pollutants. • Requiring smokeless combustion devices to meet the requirements of 40 CFR 60.18 means resultant control efficiencies consistent with 40 CFR 60.18 may be assumed. Also requires the facility to operate air pollution control equipment and comply with the air pollution control practices from the initial well completion date for the facility until the department decision on the permit application is final (or registered in lieu of a permit). The rules require 95% control efficiency to ensure vapor recovery into a pipeline would not be excluded (vapor recovery manufacturers only guarantee 95%).

Requirement	Description
ARM 17.8.1604 Inspection and Repair Requirements	Requires the owner or operator of an oil or gas well facility to inspect all volatile organic compounds (VOC) piping components for leaks each calendar month. Leak detection methods may incorporate the use of sight, sound, or smell. Monthly leak inspections include all facility equipment including air pollution control equipment (i.e. from the well head, all the way through the end of the control device). Specifies that the first attempt to repair any leaking equipment must be made within 5-days of detecting the leak or as soon as practicable, but no later than 15-days after the leak is initially detected, unless the repair is technically infeasible without a facility shutdown. Such equipment shall be repaired before the end of the first facility shutdown after the leak in initially detected.
ARM 17.8.1605 Recordkeeping Requirements	Requires the owner or operator of an oil or gas well facility to record, and maintain onsite or at a central field office, a record of each monthly inspection. Requires the inspection records to include, at a minimum, the following information: • Date of the inspection; • Findings of the inspection; • Leak determination method used; • Any corrective action taken; and • Inspector's name and signature. Requires all records of inspection and repair be kept as a permanent business record for at least 5-years, be available for inspections, and be submitted to the department upon request.
ARM 17.8.1606 Delayed Effective Date	States that the requirements of this subchapter are not effective until January 1, 2006.
ARM 17.8.1701 Definitions	Contains the definitions specific to ARM Title 17, Chapter 8, Subchapter 17, Registration of Air Contaminant Sources.
ARM 17.8.1702 Applicability	Allows a registration eligible facility to register with the Department in lieu of submitting an application for, and obtaining, a Montana air quality permit. Specifies that an oil or gas well facility subject to the major source/Title V requirements is not eligible to register.

Requirement	Description
ARM 17.8.1703 Registration Process and Information	Specifies the information that must be provided to the Department at the time of registration. This information includes: • Facility name and mailing address; • Owner/operators name, address, and telephone number; • Physical location of facility; • Contact person and telephone number; • General nature of business; • Standard industrial classification code (SIC); • SIC description; • Narrative description of the site and facility; and • Site map. Also, specifies that the following equipment-specific information be provided: • Manufacturer's name; • Unit type; • Date of manufacture; and • Maximum rated design capacity. The above information is provided on a form created by the Department. The form also requires the oil or gas well facility to calculate PTE (Pre and Post Registration). A copy of the form is provided in Attachment 5. Requires the registered facility to notify the Department of any change(s) to the registration information within 15-days after the change(s). States that if a registered facility that is modified and becomes subject to the provisions of 42 USC 7475, 7503, or 7661, it shall meet the requirements of ARM Title 17, chapter 8, subchapters 8, 9, 10 and/or 12 (i.e., if the facility becomes a major source it must comply with applicable state and federal rules and is no longer eligible for registration).
ARM 17.8.1704 Registration Fee	States that the appropriate registration fee must be submitted to the Department for a new registration and no fee is required for notifying the Department of changes to the registration information.

Requirement	Description
ARM 17.8.1705 Operating Requirements: Facility-Wide	Requires the owner or operator of a registered facility to allow the Department access to the facility at all reasonable times for the purpose of making inspections or surveys, collecting samples, obtaining data, auditing any monitoring equipment, and observing any monitoring or testing. The owner or operator of a registered facility monitors and records annual production information for all emission points in the annual emission inventory request. The request includes, but is not limited to, all emissions associated with emitting units registered to operate at the facility. Production information must be gathered on a calendar year basis and submitted to the department by the date required in the emission inventory request. The owner or operator of a registered facility is required maintain onsite records showing daily hours of operation and daily production rates and corresponding emission levels for the previous 12 months. The records compiled in accordance with this subchapter must be maintained by the owner or operator for at least five years following the date of the measurement must be available at the plant site, unless otherwise specified in this subchapter, for inspection by the department, and must be submitted to the department upon request.
ARM 17.8.1710 Oil or Gas Well Facilities General Requirements	Requires the owner or operator of a registration eligible oil or gas well facility to submit a complete registration within 60 days after the initial well completion date for the facility if the oil or gas well facility chooses to register in lieu of obtaining a permit. Allows the owner or operator of an oil or gas well facility who submits an application for a Montana air quality permit to request that the application be used in lieu of a registration form for registration of the oil or gas well facility. Specifies that all emissions control equipment must be operated to provide the maximum air pollution control for which it was designed.

Requirement	Description
ARM 17.8.1711 Oil or Gas Well Facilities Emission Control Requirements	Contains specific control requirements to which sources are required to adhere at the time of registration. Requirements include: • VOC vapors greater than 200-BTU/scf from any oil and gas well equipment must be routed to a gas pipeline or must be captured and routed to a smokeless combustion device equipped with an electronic ignition device or a continuous burning pilot system, meeting the requirements of 40 CFR 60.18, and operating at a 95% or greater control efficiency, or routed to air pollution control equipment with equal or greater control efficiency than a smokeless combustion device; • Hydrocarbon liquids must be loaded into transport vehicles using submerged fill technology; and • Emissions from stationary internal combustion engines of rich burn or lean burn design greater than 85-brake horsepower must be controlled by a catalyst.
ARM 17.8.1712 Oil or Gas Well Facilities Inspection and Repair Requirements	Requires the owner or operator of an oil or gas well facility to inspect all VOC piping components for leaks each calendar month. Leak detection methods may incorporate the use of sight, sound, or smell. The monthly leak inspections include all facility equipment including air pollution control equipment (i.e., from the well head, all the way through the end of the control device). Specifies that the first attempt to repair any leaking equipment must be made within 5-days of detecting the leak or as soon as practicable, but no later than 15-days after the leak is initially detected, unless the repair is technically infeasible without a facility shutdown. Such equipment shall be repaired before the end of the first facility shutdown after the leak is initially detected.

Requirement	Description
ARM 17.8.1713 Oil or Gas Well Facilities Recordkeeping and Reporting Requirements	Requires the owner or operator of an oil or gas well facility to record, and maintain onsite or at a central field office, a record of each monthly inspection. Requires the inspection records to include, at a minimum, the following information: • Date of the inspection; • Findings of the inspection; • Leak determination method used; • Any corrective action taken; and • Inspector's name and signature. Requires all records of inspection and repair be kept as a permanent business record for at least 5-years, be available for inspections, and be submitted to the department upon request. States that registration eligible facility with a detectible level of hydrogen sulfide must submit an air quality analysis demonstrating compliance with MAAQS for sulfur dioxide and hydrogen sulfide.

Montana's Oil & Gas Registration Program is an effective and innovative approach

The CAA contains no requirement for controlling emissions from sources with a lower PTE than those subject to New Source Review (NSR) promulgated pursuant to parts C and D of Title I of the CAA. In order to ensure smaller sources of air pollutants in Montana are subject to regulatory schemes that track activity and impose reasonable control, Montana law requires sources with a PTE greater than 25 tons per year (tpy) of any regulated pollutant to apply for a permit to construct pursuant to the MAQP requirements under ARM 17.8.740, *et seq*.

The Clean Air Act calls for a *program* to regulate minor stationary sources in addition to a major stationary source permit program complying with parts C and D of Title I of the CAA. 42 USC §7410(a)(2)(C). The CAA does not specify the form of the program and does not require a permitting program for minor sources. The Oil & Gas Registration Program utilizes an unfamiliar regulatory structure; but the concept of registration is clearly a viable alternative to the resource-consuming burden of issuing and maintaining permits for this industry.

Federal law does not require NSR or permitting for the oil and gas well facilities subject to Montana's Oil & Gas Registration Program except to the extent that, based on potential emissions, they constitute major stationary sources. Montana's Oil & Gas Registration Program specifically excludes oil or gas well facilities with potential emissions at or above federal permit program thresholds from registration eligibility (see ARM 17.8.1702(2)).

The Department finds that imposing appropriate emission controls consistent with the unique features of the oil and gas industry activity is critical. The MAQP program is an inappropriate way to meet the regulatory demands of the oil and gas industry. An MAQP is generally the end of a stationary source planning process that begins long before an MAQP application is filed with the Department. The owners/operators of typical

stationary sources anticipate financing, construction coordination, land use planning, and other factors in a fairly predictable sequence of events leading to MAQP application. The Department and Board developed MAQP rules with this business development model in mind.

Oil and gas industry activities, in contrast, are more exploratory and uncertain. In fact, the industry sometimes takes significant financial and logistical risks regarding the eventual success of a well by drilling oil or gas wells in territory not known to be productive. Requiring an MAQP for an oil or gas well in this instance would likely be a waste of time and resources.

During the rule development process, the Department also found these sources, while numerous, are virtually identical in function and design and rarely, if ever, are subject to major source requirements. ARM Title 17, Chapter 8, subchapter 16 and ARM Title 17, Chapter 8, subchapter 17 are appropriate regulatory tools for source categories such as Montana's oil and gas industry where individual permitting would confer no discernable air quality benefits. The State of Montana, unable to devote resources it didn't have to processing individual permit applications for each and every oil and gas well drilling activity, and the industry, apprehensive about potential excessive and lengthy permit application processes, were challenged to develop a method of regulation that met needs for sensible resource allocation and the protection of air quality in a manner equivalent to the emission controls associated with MAQPs. The requirements that would have been incorporated into the MAQPs for these facilities were instead converted into the rules adopted for Montana's Oil & Gas Registration Program (i.e., ARM Title 17, Chapter 8, subchapter 17). In some ways, the Oil & Gas Registration Program has its roots in the general permit approach that has been successfully implemented elsewhere. In the Oil & Gas Registration Program, instead of a operating pursuant to the general permit, an oil or gas well facility operates pursuant to the registration rules.

EPA itself administers a successful plan for controlling wastewater discharges under a generally applicable program. The National Pollutant Discharge Elimination System (NPDES) general permit for stormwater discharges from construction activities shares fundamental regulatory strategies with the Oil & Gas Registration Program. Construction operators (the NPDES regulated community) self-identify and file a notice of intent to be covered under a construction general permit. These persons are then authorized to discharge wastewater according to virtually identical requirements of the general permit provisions. The NPDES program does not call for individually-evaluated situations followed by the issuing of unique permits. Persons receiving permits are required to install and implement control measures and to inspect and modify controls in accord with effluent limitations and conditions in the general permit.

In another progressive enterprise, EPA relies on a general permit approach to register minor sources in Indian Country. In its recently-issued federal implementation plan, EPA states, "[A] general permit may be written to address a single emissions unit, a group of the same type of emissions units or an entire minor source. We believe that general permits offer a cost-effective means of issuing permits and provide a quicker and simpler alternative mechanism for permitting minor sources than the site-specific permitting process . . ." The rationale underlying the Indian Country minor source registry is the same as Montana's: "The purpose of a general permit is to simplify the permit issuance process for similar facilities so that a reviewing authority's limited resources need not be expended for site-specific permit development for such facilities."

In fact, other states have adopted general permit-type rules for controlling emissions from minor sources. The cost-benefit of these types of programs cannot be underestimated. Wyoming, South Dakota, and Arizona, for instance, all utilize some version of a general permitting scheme in order to control emissions from identical sources for which best performing controls do not vary.

The Oil & Gas Registration Program conserves Department resources

Prior to implementing the registration program, the Department issued approximately 30 MAQPs to oil and gas well facilities. An additional 660 MAQP applications for oil and gas well facilities were received and the Department was unable to meet its statutory timeframes for issuing MAQPs. The emission limitations and controls and monitoring, reporting, and recordkeeping requirements in these MAQPs the Department had issued formed the basis of the registration program rules contained in Oil and Gas Registration Program. After the Board adopted ARM Title 17, Chapter 8, subchapter 17, the Department brought the "backlog" of oil and gas well facilities into compliance because of the oil and gas registration program. The MAQPs and the oil and gas registration program impose more stringent emission limitations and controls and monitoring, reporting, and recordkeeping requirements on oil and gas well facilities.

Regulation of the oil and gas well industry represents a significant increase in workload for the Department. Since registering the 660 backlogged MAQP applications for oil and gas well facilities, the Department has received and processed approximately 425 registrations for new oil and gas well facilities. In addition, the Department received and processed approximately 1,025 registration updates that would have resulted in amending, modifying, or revoking MAQPs. These registered facilities are generally located in eastern Montana. See Attachment 11.

Processing an MAQP application from source submission to final issuance involves substantial resource expenditure and the continued administration of that permit requires ongoing permitting maintenance. The Department uses resources efficiently and deliberately to meet increases in baseload work and fluctuating, contingent, and indirect demands. The Department actively practices management by objectives; balancing and prioritizing competing demands and available resources to achieve the greatest air quality benefit.

When faced with the precipitous increase in MAQP applications from the oil and gas industry in 2005, the Department, in conjunction with outside stakeholders, developed a program that would reduce the administrative burden while protecting the Department's ability to control emissions. The Department then devoted specific resources to develop and administer the new Oil & Gas Registration Program, which now regulates approximately 970 registered oil and gas well facilities. The Oil & Gas Registration Program provides at least MAQP-equivalent protection of air quality and allows the Department to focus its resources on ensuring that industry is complying with the regulations.

The Oil & Gas Registration Program reduces emissions

Understanding the nature of the obligation a registered oil or gas well facility accepts is integral to understanding how the Oil & Gas Registration Program works. The requirements are immutable and rigid and cannot be tailored to specific sources or circumstances on an individual basis. Oil and gas well facilities are, in effect, signing a

pledge to rigorously adhere to a prescribed set of demands to achieve a predetermined outcome. That outcome usually results in requirements more stringent than requirements imposed under an MAQP. Some sources may revoke a permit in favor of registration. However, such a move means a source ultimately faces a set of stringent emission controls from which no variance or excuse exists. Indeed, the possibility exists that individualized circumstances in a BACT analysis could likely lead to less-stringent control requirements than what would be imposed under the Oil & Gas Registration Program.

Further, the agency resource pressure on the front end of an individualized permit application process is decreased as well. Available resources are moved to registered source compliance activity. The Oil & Gas Registration Program represents nothing less than a cultural shift for the industry in Montana. Over time, as sources have become ever more familiar with the requirements of the Oil & Gas Registration Program, the practices have also become more prevalent, ensuring what were formerly externalities are now integrated and normative.

Because registration requirements tend to be more stringent as those imposed pursuant to the SIP-approved Montana permit program (Subchapter 7) requirements, the effect of registered sources is a decrease in emissions. The Oil & Gas Registration Program uses as the basis for its emission control requirements the most stringent Best Available Control Technology (BACT) imposed pursuant to a MAQP for oil and gas well facilities. A source choosing to propose some other control strategy than required in Subchapter 17 would be required to undergo an individual BACT analysis while applying for a permit according to Montana's MAQP rules. The MAQP rules will not impose more stringent controls on sources opting for MAQP. In reality, a facility operating under the Oil & Gas Registration Program and required to control VOC emissions from an emitting unit must do so with a 95% or greater control efficiency. The BACT imposed pursuant to a MAQP for some oil and gas well facilities might very likely allow for a control efficiency of less than 95%.

<u>The Oil & Gas Registration Program monitoring, recordkeeping and reporting requirements protect air quality</u>

The Oil & Gas Registration Program includes sufficient monitoring, recordkeeping and reporting (MRR) requirements. The MRR requirements of a registered facility are more stringent than the requirements an oil and gas well facility would have if operating under an MAQP. Interestingly, the SIP-approved MAQP rules contain no MRR requirements. Instead, a permitted facility is given MRR requirements through the actual permit. The form of a condition is not particularly relevant and a permit confers no additional warrant under the law. The permit document itself is not what determines whether or not facility performance is tracked and emissions controlled. The individual permit mandate is no more or less the law than a requirement in the Oil & Gas Registration Program. Both are equally valid in terms of enforceability. In MAQP regulation, the MRR requirements are specified in the facility permit because the document memorializes it pursuant to case-by-case BACT analysis (performed for each individual source pursuant to MAQP rules), rather than uniform, stringent, formulaic rule conditions as set forth in the Oil & Gas Registration Program.

The Department issued approximately 30 MAQPs to oil and gas well facilities prior to implementing the Oil & Gas Registration Program. The table below compares the MRR requirements found within these MAQPs to the requirements imposed on facilities

regulated under the Oil & Gas Registration Program. As stated elsewhere in this document, it is imperative to consider all of the rules applicable to either MAQP or registered sources. Those rules include: Subchapter 1 general requirements; Subchapter 3 emission standards; and major new source review rules in Subchapters 8 through 12. Table 2 shows that a registered facility's MRR requirements are as stringent as the requirements that would be imposed on a permitted oil and gas well facility pursuant to an MAQP.

Table 2 – MRR Comparison between MAQP and Oil & Gas Registration

MAQP Requirement	Registration Requirement
"Each calendar month, all fugitive piping components (valves, flanges, pump seals, open-ended lines) shall be inspected for leaks. For purposes of this requirement, detection methods incorporating sight, sound, or smell are acceptable."	ARM 17.8.1712(1) requires the owner/operator of a registered facility to "inspect all VOC piping components for leaks each calendar month. Leak detection methods may incorporate the use of sight, sound, or smell."
Owner/operators "shall supply the Department with annual production information for all emission points, as required by the Department in the annual emission inventory request. The request will include, but is not limited to all sources of emissions identified in the emission inventory contained in the permit analysis and sources identified in…the permit analysis." "Production information shall be gathered on a calendar-year basis and submitted to the Department by the date required in the emission inventory request. Information shall be in the units required by the Department."	ARM 17.8.1705(2) states that the owner/operator "of a registered facility shall monitor and record annual production information for all emission points, as required by the department in the annual emission inventory request. The request will include, but is not limited to, all emissions associated with emitting units registered to operate at the facility. Production information must be gathered on a calendar year basis and submitted to the department by the date required in the emission inventory request. Information must be in the units required by the department."

MAQP Requirement	Registration Requirement
The owner/operator "shall document, by month, the oil production of the facility. By the 25th day of each month" the owner/operator "shall calculate the oil production of the facility for the previous month. The monthly information will be used to verify compliance with the rolling 12-month limitation…" The owner/operator "shall document, by month, the natural gas production of the facility. By the 25th day of each month," the owner/operator "shall calculate the natural gas production of the facility for the previous month. The monthly information will be used to verify compliance with the rolling 12-month limitation …"	ARM 17.8.1705(3) states that the owner/operator "of a registered facility shall maintain onsite records showing daily hours of operation and daily production rates and corresponding emission levels for the previous 12 months. The records compiled in accordance with this subchapter must be maintained by the owner or operator for at least five years following the date of the measurement, must be available at the plant site, unless otherwise specified in this subchapter, for inspection by the department, and must be submitted to the department upon request." A rolling 12-month limitation is unnecessary because the facility registers using the maximum oil and gas production rates observed at the facility. Notwithstanding any such observation, the Department requests and reviews the production records as part of compliance inspection. Moreover, owner/operators are required to submit monthly production rates to other regulatory agencies (i.e., Department of Natural Resources and Conservation). Consequently, the Department can obtain and review monthly production data at any time*.
For a permitted facility, a "record of each monthly leak inspection…shall be kept on file" with the owner/operator. "Inspection records shall include, at a minimum, the following information: a. Date of inspection; b. Findings (may indicate no leaks discovered or location, nature, and severity of each leak); c. Leak determination method; d. Corrective action (date each leak repaired and reasons for any repair interval in excess of 15 calendar days); and e. Inspector's name and signature."	ARM 17.8.1713(1) states that the owner/operator "of an oil or gas well facility shall record, and maintain onsite or at a central field office, a record of each monthly inspection required by ARM 17.8.1712." ARM 17.8.1713(2) states that the inspection records "must include, at a minimum, the following information: (a) the date of the inspection; (b) the findings of the inspection; (c) the leak determination method used; (d) any corrective action taken; and (e) the inspector's name and signature.

MAQP Requirement	Registration Requirement
For a permitted facility, all "records compiled in accordance with this permit must be maintained by" the owner/operator "as a permanent business record for at least five years following the date of the measurement, must be available for inspection by the Department, and must be submitted to the Department upon request."	ARM 17.8.1713(3) states that all "records of inspection and repair must be kept as a permanent business record for at least five years, be available for department inspections, and be submitted to the department upon request."

As the above table shows, the Oil & Gas Registration (i.e., Subchapter 16 and Subchapter 17) contains specific monitoring, recordkeeping, and reporting (MRR) requirements to which a registered oil or gas well facility is subject.

The rules also reference the use of sight, sound, and smell in detecting leaks. EPA's emission standards for hazardous air pollutants provide an equivalent analog to show the acceptability of this method of leak detection in another setting. In the requirements for equipment leak inspections for bulk gasoline terminals, bulk plants, pipeline breakout stations, and pipeline pumping stations (40 CFR 63, Subpart BBBBBB), EPA finds adequate the use of sight, sound, and smell for leak detection. However, neither 40 CFR 63, Subpart BBBBBB, nor the Oil & Gas Registration Program foreclose the use of other methods.

It is important to stress the Oil & Gas Registration Program does not rely on human senses to measure concentrations or amounts of gases in the air. The focus of the rule is detection, not estimating concentrations or emissions. Spotting a sweaty pipe, hearing a hiss in a closed valve, or smelling an odor is all preludes to action. Human olfaction is adept at sensing very low concentrations of odiferous gases. The detectable odor of H_2S, for example, occurs at levels below which public health is protected, making the distinctive, pungent odor of H_2S a reliable indicator of a potential emissions problem. In the Oil & Gas Registration Program, the smell of H_2S alone does not constitute analysis; it appropriately triggers the initiation of an emissions analysis.

<u>Oil and gas well facilities comply with requirements prior to registration</u>

In 2005, the Montana Legislature passed Senate Bill 95 allowing owners and operators of oil and gas well facilities to complete and operate a facility for up to 60 days before submitting an application for a Montana Air Quality Permit (MAQP). The Board, recognizing that without additional rules air quality would be unprotected during this 60 day period, adopted ARM Title 17, Chapter 8, subchapter 16. These rules contain the emission control, inspection and repair, and recordkeeping requirements that an oil or gas well facility is obligated to operate under until the Department decision on the permit application is final or the facility is registered.

The Oil & Gas Registration Program focuses on an acceptable outcome (captured emissions) rather than a mandate describing an acceptable method. Recognizing the need for strict emission controls during the period of time between the initial well completion date and the Department's final decision on issuing an MAQP or registering the facility, the Board set forth emission control requirements in ARM 17.8.1603(1). The requirements ensure produced gas and oil and condensate tank emissions (the primary

sources of VOCs) are captured and routed to a pipeline or another emissions control technology. Effective emissions-minimizing technologies may include resource recovery activities such as fueling onsite equipment. Other emissions-minimizing technologies utilize combustion devices or vapor recovery units. The Oil & Gas Registration Program requires the complete capture and routing of emissions to a pipeline. The rules are not prescriptive by design and do not limit a facility's choice of control technology, avoiding the need to conduct rulemaking whenever a technology becomes obsolete and a new emissions control technology becomes standard practice.

Like ARM Title 17, Chapter 8, subchapter 17, the requirements of the Oil & Gas Registration Program are functionally equivalent to requirements to which the oil and gas well facility would be subject through the MAQP process. ARM Title 17, Chapter 8, subchapter 16 ensures sufficient and consistent protection of air quality because it requires the owner or operator of an oil and gas well facility to operate the necessary air pollution control equipment and comply with the necessary air pollution control practices from the initial well completion date (ARM 17.8.1603(2)). Requiring oil and gas well facilities to apply for MAQP would not ensure emissions would be controlled prior to completion. Whether a facility pursues registration or MAQP, prior to the initial well completion date, it still remains subject to ARM 17.8.1603(2) and any other requirements (e.g., Montana Board of Oil and Gas Conservation rules at ARM Title 36, Chapter 22).

Effects of Oil & Gas Registration Program on NAAQS compliance

The effect of oil and gas well emissions and the potential impacts of those emissions on the NAAQS when compared to the possible impacts of these sources had they been regulated under MAQPs shows the Oil & Gas Registration Program does not interfere with any applicable requirement concerning attainment and reasonable further progress (RFP).

Montana has implemented the Oil & Gas Registration Program for five years and there is no evidence that the Oil & Gas Registration Program interferes with any requirement NAAQS attainment or maintenance or RFP. The control requirements for registered sources are more stringent than MAQP provisions for Best Available Control Technology (BACT) and 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 instead.

While the owner or operator of an oil or gas well source is eligible to apply for an MAQP, the availability of an option for registration provides source owners/operators no advantage regarding the effects of their point source emissions on ambient pollution levels. A violation of the NAAQS in an area necessarily changes the regulatory terrain by requiring development of a control plan. Control plan development activities generally target point sources and attribute to those subject sources a contribution to ambient air pollution levels. Point sources operating in nonattainment areas are subject to increased emission control measures or other restrictive and enforceable regulations. The Department has a long and established record of responding affirmatively and appropriately to control emissions from all contributing sources within an area violating the NAAQS.

In eastern Montana, where the vast majority of the oil and gas industry is located, the Department conducts air quality monitoring near Sidney, Birney, and Broadus. The Sidney site, specifically, provides data indicating the influence of oil and gas development in eastern Montana. Neither the Sidney site nor any other monitoring site in proximity of

oil and gas development has recorded a violation of a NAAQS that was a result of emissions from oil or gas well facilities. Nothing implicates a registered oil or gas well as interfering with any applicable requirement concerning attainment or RFP. Montana's NAAQS attainment status and the impact of the Oil & Gas Registration Program are summarized below:

CO NAAQS

Montana submitted CO maintenance plans for three former nonattainment areas for inclusion into the SIP. None of the maintenance plans rely on the Oil & Gas Registration Program to maintain the NAAQS; therefore, the existence or implementation of the Oil & Gas Registration Program is of no consequence with regard to CO nonattainment. CO levels in all three maintenance areas have fallen precipitously over the years. See Fig. 1. Therefore, Montana has no indication the Oil & Gas Registration Program would interfere with any contingency measure in nonattainment area control plans.

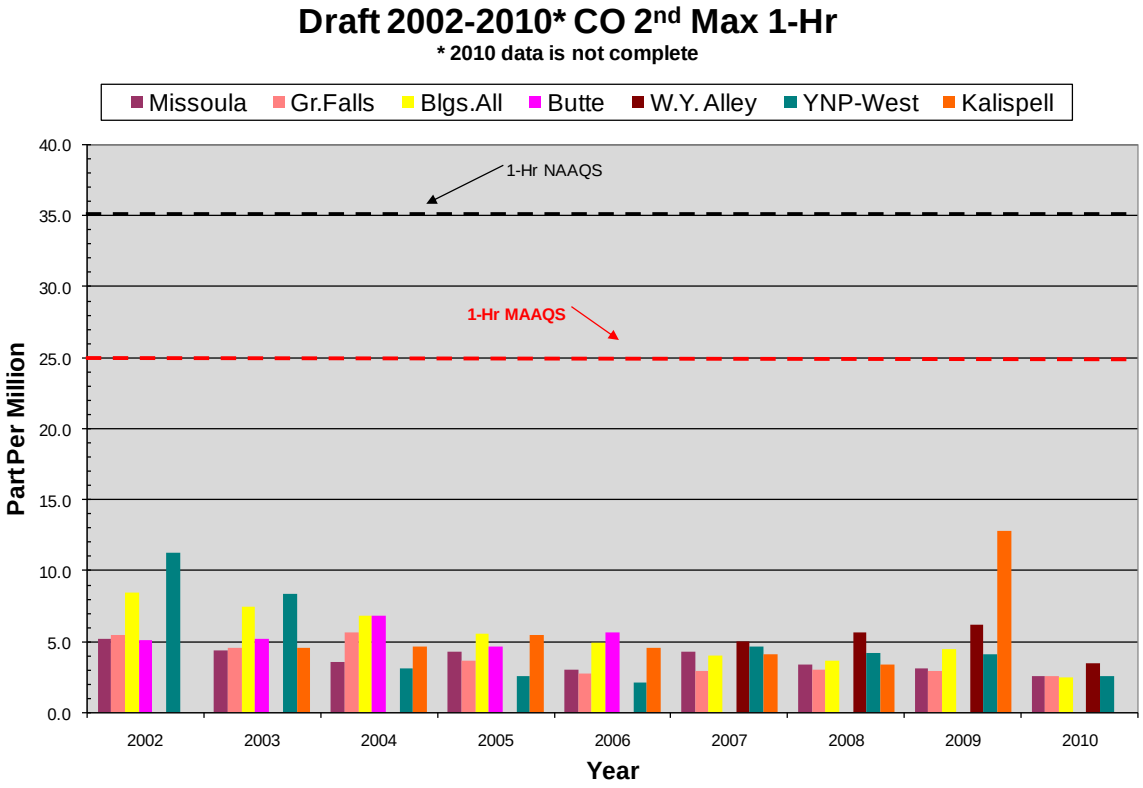

Figure 1

PM-10 NAAQS

Montana conducts PM-10 sampling in eastern Montana. The 2009 PM-10 data from the ambient air sampler located near Sidney, Montana shows a 1st maximum of the 24 hour NAAQS to be 105 µ/m^3. For available data in 2010, the 1st max of the 24 hour NAAQS was 93 µ/m^3. These values are not significant for purposes of implicating a source impact. The Department intends to continue operating a PM-10 ambient air sampler near Sidney, but does not expect values to vary in any significant way as a result of oil and gas well activity subject to permitting or registration requirements. Available data in 2010

for the monitor at Broadus indicated a first max of 85 µ/m3. Unfortunately, a number of challenges at the Birney sampler resulted in deleted data in 2010. Validated data collected to date demonstrate ambient concentrations well within the NAAQS for all monitored pollutants. These numbers are well below the level of the NAAQS and do not indicate the Oil & Gas Registration Program interferes with any applicable requirement concerning attainment or RFP.

Montana submitted PM-10 control plans for seven nonattainment areas for inclusion into the SIP. None of the control plans rely on measures for sources that would be subject to either MAQP or Oil & Gas Registration Program requirements to attain and maintain the NAAQS. The Oil & Gas Registration Program itself is not available for modifications to sources that would cause or contribute to a violation of the PM-10 NAAQS. Therefore, the existence or implementation of the Oil & Gas Registration Program is of no consequence with regard to PM-10 nonattainment.

Montana experienced no violations of the PM-10 NAAQS from 2006 to the present while the Oil & Gas Registration Program was in effect. Oil and gas registration is not a factor in either point or area source contribution in PM-10 nonattainment areas. Therefore, Montana has no indication the Oil & Gas Registration Program would interfere with any measure in nonattainment area control plans.

PM-2.5 NAAQS

Montana is currently in attainment for the PM-2.5 NAAQS. Libby, Lincoln County, is Montana's sole administratively designated PM-2.5 nonattainment area (currently attaining the standard), having violated the 1997 annual standard. The violations of the annual standard in Libby were caused by combustion emissions from sources not eligible for registration under the Oil & Gas Registration Program. A source apportionment study of PM-2.5 in the Libby area found the largest source of PM-2.5 was residential wood combustion (wood stoves), contributing 82% of the measured PM-2.5 concentrations. The study's conclusions also found the next largest source of PM-2.5 was automobiles (7%), followed by ammonium nitrate (5%), diesel exhaust (4%), and secondary sulfate (2%). Sources that would be eligible for registration under the Oil & Gas Registration Program were not found to contribute to ambient PM-2.5 concentrations in the Libby area.

The Lincoln County Air Pollution Control Plan (Libby Plan) for the Libby area features enforceable rules to control residential woodstove installation and operation and open burning in order to limit PM-2.5 emissions from these sources. The Board adopted the Libby Plan on March 23, 2006, and the Governor submitted the Libby Plan to EPA for inclusion into the SIP on June 26, 2006. The Libby Plan does not rely on rules in the MAQP program to attain and maintain the NAAQS. See Attachment 6. This does not indicate that this SIP revision would interfere with Montana's ability to attain the PM-2.5 NAAQS for this nonattainment area.

One may also assume any PM-2.5 combustion emissions from oil and gas well facilities will include only fossil-fuel emissions. During the winter of 2006-2007, the Department analyzed carbon from ambient air filter samples to test the contribution of fossil-fuel combustion activity (as opposed to wood-fuel combustion activity) to ambient PM-2.5 concentrations in several western Montana communities. The strategy exploited the decay of naturally occurring isotopes of carbon (C) atoms.

Naturally occurring radiocarbon is produced as a result of the sun's rays in the upper atmosphere. Plants (trees that ultimately provide fuel) transpire to take in atmospheric carbon. The ratio of normal carbon (carbon-12) to carbon-14 in the air and in all living things at any given time is nearly constant. Carbon-12 is stable, but carbon-14 decays to nitrogen-14 on a predictable timetable. After a tree is cut down for firewood, it stops taking in new carbon and the nitrogen decay clock starts.

After the tree is felled, carbon-14 continues to decay without being replaced. To measure the amount of radiocarbon left in a chunk of fuel, radiation counters are used to detect the electrons given off by decaying C-14 (from ambient air filter samples in this case) as it turns into nitrogen. The amount of C-14 is compared to the amount of C-12 (the stable form of carbon) to determine how much the radiocarbon has decayed, thereby dating the artifact (fuel). The emissions from a wood source ("new" fuel) are going to have a very different ratio of C-14 to C-12 than fossil fuels ("old" fuels).

C-14 analysis of the ambient air in several Montana communities reveals fossil fuel combustion to be an insignificant source of PM-2.5. In Missoula, which is conservatively representative of the communities subject to this analysis, an average of 62% of the measured PM-2.5 came from "new" carbon; one may safely conclude sources are wood combustion. Other communities showed even greater percentage contributions of new carbon as a constituent of total ambient PM-2.5 concentrations.

Montana conducts PM-2.5 sampling in eastern Montana. The 2008 PM-2.5 data from the ambient air sampler located near Sidney, Montana shows the 24 hour average to be10.5 μ/m^3; in 2009 the average was 12.4 μ/m^3, and for available data in 2010, the average was 11.9 μ/m^3. Similarly, the available 2010 sampler data from Broadus shows the PM 2.5 24 hour average to be 13.5 μ/m^3.

The data show ambient concentrations well within the NAAQS for all monitored pollutants. See Figure 2. These values are not significant for purposes of implicating a source impact. The Department intends to continue operating PM-2.5 ambient air samplers near Sidney, Broadus, and Birney, but does not expect values to vary in any significant way as a result of oil and gas well activity subject to permitting or registration requirements. This SIP revision will not interfere with any applicable requirement for PM-2.5 attainment or reasonable further progress in the State of Montana.

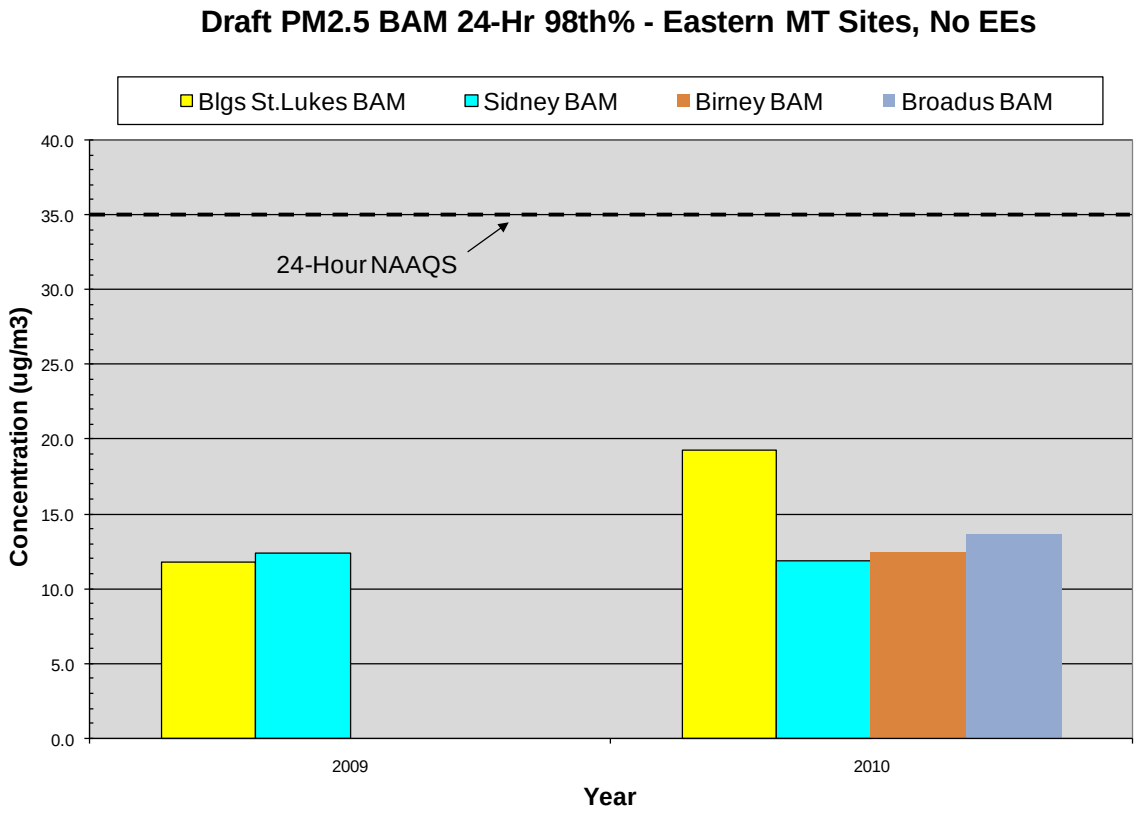

Figure 2

Lead NAAQS

Circumstances in Montana's sole lead nonattainment area (1978 NAAQS), East Helena, Lewis and Clark County, have altered dramatically. The ASARCO lead smelter, formerly the cause of lead NAAQS nonattainment in East Helena, is entirely defunct; its structures have been razed and stacks felled. In fact, ASARCO revoked its permit.

The Governor recently submitted a designation that declares all Montana counties to be in attainment or unclassifiable for the revised 2008 lead NAAQS. The technical demonstration accompanying the lead designation letter shows the precipitous decline in ambient lead levels in East Helena. EPA recently proposed to designate all areas of Montana as unclassifiable/attainment for lead. See Attachment 7. The Department has no reason to believe the Oil & Gas Registration Program will interfere with any applicable requirement concerning attainment and RFP.

SO_2 NAAQS

EPA dispersion modeling conducted in 1991 and 1993 predicted the Billings area was not attaining the NAAQS for SO2. EPA directed Montana to modify its SIP to control source emissions. Montana submitted revisions consistent with EPA direction but EPA found certain inadequacies. On April 21, 2008, EPA issued a federal implementation plan (FIP) for those SIP provisions it deemed inadequate. 77 FR 21417.

The SO2 Control Plan submitted into the SIP for the Billings/Laurel area includes stipulations between the Department and sources of SO_2 and Board orders for sources of SO_2. Implementation of Montana's SIP for the Billings/Laurel area resulted in

significantly reduced emissions of SO_2 from the subject sources. In addition, the FIP and the SO_2 Control Plan requirements remain independently valid and enforceable, regardless of the existence of the Oil & Gas Registration Program. The Department monitors SO2 levels in the Billings/Laurel area, submits data into AQS, and stations compliance officers in Billings to maintain close scrutiny of sources in the Billings/Laurel area.

During 2010, monitoring emission reports in the Billings area included several suspect data inconsistencies that coincided with certain SO2 monitoring values recorded. The inconsistencies are circumstances amenable to clarification. Montana designated one area in Billings attainment/unclassifiable as a result of the circumstances in order to gather more data to substantiate a hypothesis regarding the data inconsistencies and form a more reliable representative status of Billings air quality. Analysis shows ambient SO2 readings peaking beyond the NAAQS after a source swapped out a catalyst pursuant to an EPA consent decree provision and experienced a sharp and significant increase in SO2 emissions. Montana reasonably deduced the catalyst swap caused or significantly contributed to the subsequent ambient concentrations. However, Montana did not find any indication that any oil or gas well facility was contributing in any way to ambient SO2 concentrations in the Billings area. See Attachment 8.

Aside from the increased SO2 emissions as a result of the incident described above, emissions from SO2 sources in the Billings/Laurel area have decreased significantly over the last several years as a result of SIP controls and EPA's Refinery Consent Decree requirements.

In addition, because ambient levels of SO2 in the Billings area are a localized phenomenon, extrapolating a conclusion about ambient air quality in areas around oil and gas development based on Billings area ambient air quality data is inappropriate. No oil and gas well sources eligible for registration and requiring registration or permitting exist in Yellowstone County. The closest such source is approximately 56 miles north of Billings in Musselshell County. Following the effective date of the Oil & Gas Registration Program, the Department engaged in due diligence regarding compliance. On two separate occasions in 2008 and 2009, the Department conducted a thorough search and investigation of every producing oil/gas well it could find in the state. The Department directed the owners/operators of these sources to submit applications for registration or permit (as applicable) or provide reasons why they would not be subject to regulation. The Department was unable to find registration- or permit-subject sources in the Billings area.

This background regarding SO2 in Montana may be academically interesting, but the Oil & Gas Registration Program has no nexus to ambient SO2 concentrations in the Billings/Laurel area. Additionally, the FIP and the SO2 Control Plan requirements remain independently valid and enforceable, regardless of the existence of the Oil & Gas Registration Program.

The Department located a sampler in Sidney for monitoring ambient pollutant concentrations from eastern Montana sources, including the majority of oil and gas wells. Data from this monitor show a one-hour 99th percentile average at Sidney of 2 ppb. These are exceedingly low levels of SO2 which would not implicate the Oil & Gas Registration Program as interfering with any applicable requirement concerning attainment and RFP.

Ozone NAAQS

Montana currently has no ozone nonattainment areas and, consequently, no nonattainment area control plans with respect to ozone. On April 15, 2004, EPA designated all areas of Montana in attainment for the 1997 8-hour ozone NAAQS. On December 22, Montana submitted a letter confirming SIP adequacy with regard to the 1997 ozone NAAQS, confirming the status of all Montana counties as attainment/unclassifiable. See Attachment 9.

Data from Montana's past monitoring in the Billings area (the area in which conditions conducive to ozone formation are most likely to occur, therefore, the most sensitive indicator) does not show a violation of the revised 2008 NAAQS. EPA's analysis, as set forth in an April 11, 2008, presentation, indicated Montana is not a state likely to violate the 2008 ozone NAAQS.

DEQ currently operates three ozone monitoring sites located at Sidney, Broadus, and Birney. In 2009, Sidney's 4th maximum 8-hour average was 0.059 ppm; in 2010, it was 0.058 ppm. For 2010, Broadus showed 0.056. The data at these sites indicate ambient concentrations well within the NAAQS for all monitored pollutants. The Department has no reason to believe the Oil & Gas Registration Program will interfere with any applicable requirement concerning attainment and RFP.

NO_2 NAAQS

Montana currently has no NO_2 nonattainment areas and, consequently, no nonattainment area control plans with respect to NO_2. On December 8, 2010, Montana designated all areas in Montana as attainment following a February 9, 2010, revision to the NO_2 NAAQS. EPA notified Montana in a letter dated June 29, 2011, that all areas of Montana are designated "unclassifiable/attainment." See Attachment 10. Montana has no roadways with traffic counts that might indicate any conceivable concern about NO_2 and the Oil & Gas Registration Program. Past monitoring of ambient NO_2 reveals a history of exceedingly low concentrations. No discernable trend was observed during the monitoring period.

The Department installed and is currently operating monitoring equipment, including NO_2 monitors, in response to the increase in oil and gas development in the eastern part of the state. This is an example of a typical Department response to demographic or population changes, industry practices (such as oil and gas development), and economic growth that may directly or indirectly affect air quality, including potential sources of NO_2.

Additionally, the Northern Cheyenne Tribe operates NO_2 monitors in southeastern Montana. This data is entered into EPA's AIRS database. If the NO_2 NAAQS had been violated, EPA would have notified the Tribe and the Department about such violations. These types of occurrences are factors in informing Department responses to NAAQS violations. However, the Department has no reason to believe the Oil & Gas Registration Program would interfere with any applicable requirement concerning attainment and RFP.

<u>Contingency Measures</u>

There is no evidence that sources registered under the Oil & Gas Registration Program would interfere with any contingency measure in any nonattainment area control plan.

No contingency measure relies on or would otherwise be affected by emission controls from oil and gas well facilities.

New Source Review

The Oil & Gas Registration Program neither governs nor supersedes requirements for major stationary source permitting requirements. NSR refers to the federal permitting requirements that establish preconstruction evaluation of a proposed source or modification to ensure new major sources and modifications to these sources do not interfere with attainment and maintenance of the NAAQS or cause air quality degradation in excess of prescribed increments in attainment areas.

The Oil & Gas Registration Program may not be used as a mechanism to cause or contribute to a violation of the NAAQS or increments. Under the express terms of the rules, major new sources and existing sources that are modified and become major sources as a result of the modification are not registration-eligible facilities. Such facilities would be subject to Montana's Title V and/or NSR permit programs.

Oil or gas well facility PTE is directly dependent on the composition and quantity of oil and gas produced. Consequently, an oil or gas well facility that is required to determine its PTE prior to construction must estimate the resulting production, with respect to both composition and quantity. Owners and operators of registered oil or gas well facilities, like owners and operators of permitted facilities, make informed regulatory decisions based on expected performance and production in order to comply with applicable law.

Historically, owners and operators of oil and gas well facilities applying for construction permits calculated emissions based on the production rates that could be achieved without exceeding major source threshold levels. The regular use of this estimation method produces extremely conservative emission calculations. The risk of an oil or gas well facility constructing pursuant to Montana's Oil & Gas Registration Program and finding PTE is above major source levels is not different than an oil or gas well facility estimating PTE prior to construction in order to obtain an MAQP and determining after construction that PTE is above major source levels. In either case, the oil or gas well facility is required to cease operation and immediately apply for the appropriate permits. In both cases, these sources would be subject to enforcement.

The Department ensures a facility's PTE remains below major source thresholds when regulated under the Oil & Gas Registration Program. No facility may use the Oil & Gas Registration Program to escape major source permitting if criteria for major source applicability are met. However, emissions from registered facilities are sufficiently assessed throughout the registration process to ensure major source thresholds are not exceeded.

The owner/operator of an oil and gas well facility is required by rule to use the maximum oil and gas production rates observed at the facility to determine if the facility is registration-eligible. This requirement is based on the major source definition of PTE. When the owner/operator submits a registration form to the Department, the Department ensures that the facility's PTE is below major source thresholds. At this point, if the Department determined the PTE exceeded major source thresholds, the facility would be required to cease operations until the appropriate permit(s) were issued. In addition, the owner/operator would face potential enforcement.

Annually, an owner/operator of a registered facility is required by rule (ARM 17.8.1705(2)) to submit the annual production information for all emission points. In addition, the owner/operator of a registered facility is required to maintain onsite records showing daily hours of operation and production rates and corresponding emission levels (ARM 17.8.1705(3)). The Department requests and reviews these records as part of the full compliance inspection of the facility. When submitted, the Department reviews this information to ensure production rates are at or below the rates at which the facility registered. Such a facility remains eligible for registration and the Department is assured the facility has a PTE below major source thresholds. If during this review the Department determined a facility was a major source, the Department would compel the facility to halt operations and, if appropriate, submit an application for a permit(s). In addition, the Department would document the violation and initiate enforcement procedures.

Owner/operators of registered facilities also are required to submit monthly production rates to other regulatory agencies (e.g., Department of Natural Resources and Conservation). Data obtained by other agencies is also available to the Department and used to ensure compliance. The Department reviews production data from the DNRC Board of Oil & Gas online database to cross-reference production rates of newly-registered sources and ensure their validity. The Department also uses this data as part of its compliance inspections to track production rates and ensure they are at or below the registered production rate. This data provides further evidence regarding possible exceedance of major source thresholds.

The Oil & Gas Registration Program requires the owner/operator of a registered facility to notify the department of *any* change(s) to the registration information (ARM 17.8.1703(4)). The Department reviews the impacts of any change to ensure the facility PTE remains below major source thresholds. A facility exceeding the major source thresholds would no longer be registration-eligible, would be required to cease operations until the necessary permits were issued, and would be subject to enforcement.

The Department uses the Oil & Gas Registration Program to ensure registered facility emissions remain below major source thresholds. Moreover, should a registered facility exceed major source emissions thresholds, the Oil & Gas Registration Program would not interfere with the Department's authority to take the necessary actions to bring the facility into compliance. This SIP revision will not interfere with any applicable requirement for attainment or reasonable further progress in the State of Montana.

Air Quality Related Values

Pursuant to 42 USC §7475(d), Montana transmits to EPA a copy of each Prevention of Significant Deterioration (PSD) permit application received. The CAA charges federal land managers (FLM) with the affirmative duty to protect Air Quality Related Values (AQRVs). For the years 1999-2009, the Department received a single FLM notice regarding a potential source impact on AQRV for a PSD permit application. The notice, submitted in 2002, was later withdrawn. If emissions from a PSD source were a concern in the future, the FLMs would act and Montana would be duly notified. An FLM notice of impact on an AQRV does not directly require denial of a permit or emission reductions but may lead to responsive measures during the course of the PSD permitting process. If the state agrees with the FLM, the state may not issue the permit. Implementation of the Oil & Gas Registration Program would not interfere with this process.

Increment Consumption

The Department does not allow the consumption of increment beyond levels established in ARM Title 17, Chapter 8, subchapter 8, Prevention of Significant Deterioration of Air Quality. Any new or modified major source subject to PSD, located in an area near a registered or permitted oil and gas well facility would need to include the emissions from those minor sources in their increment analysis, as required by subchapter 8. Therefore, the implementation of the Oil & Gas Registration Program would not interfere with this requirement.

Federal Standards

New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), and Maximum Achievable Control Technology (MACT) are federal standards adopted by EPA to regulate emissions of criteria air pollutants in many categories of industrial facilities. NSPS, NESHAP, and MACT promote the use of the best air pollution control technologies.

Montana's Registration Program does not exempt sources that are subject to an NSPS, NESHAP, and/or MACT from complying with the appropriate requirements. NSPS, NESHAP, and MACT requirements are periodically incorporated by reference into ARM Title 17, Chapter 8, subchapter 3 – Emission Standards. As previously discussed, the Oil & Gas Registration Program is not a stand-alone program within Montana's air quality program. A registered facility is subject to all applicable state and federal rules. The Oil & Gas Registration Program would not interfere with the imposition of an emission limit under NSPS, NESHAP, and/or MACT for any source.

Title V

Title V is a part of the CAA not relevant to this proposed action as the Department submitted the Oil & Gas Registration Program as part of the SIP. Notwithstanding the fact that Title V is a federally-enforceable set of regulations separate from regulations promulgated to attain and maintain the NAAQS, Montana administers an EPA-delegated Title V operating permit program to improve enforcement by issuing each major source a single permit that consolidates all of the applicable CAA requirements into a single, federally-enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine the CAA requirements that apply and how compliance with those requirements is determined.

Owners and operators of major sources are required to obtain an operating permit under this program. Major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or PM10; those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs. The Oil & Gas Registration Program does not supersede Title V permitting requirements.

The registration rules (i.e., ARM 17.8.1702) specifically state that any oil and gas well facility subject to Title V operating permit requirements is not eligible for registration. Consequently, the Oil & Gas Registration Program would not interfere with Montana's administration and enforcement of sources in its Title V operating permit program.

SIP Adequacy Demonstrations and Interstate transport

Montana responds affirmatively to SIP evaluations and submissions following any revision of a NAAQS. In more recent years, EPA has revised the particulate matter, CO, NO_2 and SO_2 NAAQS. Montana submitted designations of areas for each revised NAAQS and made demonstrations of adequacy and declarations regarding interstate transport consistent with EPA's requests for the same. Indeed, Montana is currently conducting rulemaking to make Montana's major source permitting programs consistent with revisions to the PM-2.5 and Ozone NAAQS.

Montana and EPA continue to process submissions made in response to NAAQS revisions. There is no evidence that the Oil & Gas Registration Program would interfere with Montana's administration of its SIP so as to interfere with provisions of its own or another state's SIP.

Overview of roles and obligations of EPA and States with respect to SIP revisions

The State Implementation Plan (SIP) submissions for the regulation of oil and gas well facilities are part of Montana's minor stationary source program. Under the CAA, states have considerable flexibility in developing programs for minor source regulation. Montana developed a general minor stationary source permitting program that EPA approved as part of the state's SIP. The EPA-approved program does not include any requirements specific to oil and gas well facilities. The proposed SIP revisions constitute specific emission control and registration requirements for oil and gas well facilities in lieu of general permitting requirements. These revisions capitalize on the real-world differences between most stationary sources and the industry of exploring for oil and gas and form an appropriate regulatory scheme for those facilities. The emission control requirements of the Oil & Gas Registration Program are equivalent to the requirements that would be placed in permits for those facilities, and it is nearly certain EPA would have approved such a program if the state had developed and submitted it initially with its general minor stationary source permitting program.

Montana has administered its Oil and Gas Registration Program successfully for five years without any evidence of interference with attainment of the NAAQS or any other applicable requirement of the CAA. Rather, the program resulted in registration, control, and inspection of hundreds of facilities that previously had not been issued Montana air quality permits and that, practically, could not be required to obtain individual air quality permits, given the Department's resource constraints.

The roles of EPA and the States are clearly set forth in 42 USC §§7401, *et seq*. (CAA). EPA establishes national standards for levels of air pollutants. States arrive at a mix of measures to meet those standards. Congress clearly intended states to exercise discretion in determining the requirements of their individual air quality programs. 42 USC §7407(a):

> "Each state shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State by submitting an implementation plan for such State which will specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in such State."

42 USC §7410(a)(2)(H)(i) requires, in relevant part, that each SIP provide for revision of the plan "from time to time as may be necessary to take account of . . . improved or more expeditious methods of attaining such standard . . . ." 42 USC §7410(l) provides that EPA may not approve a SIP revision "if the revision would interfere with any . . . applicable requirement of this chapter."

Section 110(a)(2)(A) through (K), of the CAA, provide the criteria for EPA approval of a SIP submission. The criteria for EPA approval of a SIP revision are the same criteria applicable to EPA approval of a SIP. *Public Service Company of Indiana, Inc. v. EPA*, 682 F.2d 626, 628 (7th Cir. 1982). In that case, the court ruled: "[t]he function of the Administrator's approval power over the original SIPs and their revisions is identical: to ensure that the state's SIPs comply with the minimum requirements of 42 U.S.C. § 7410(a)(2)(A)-(K)." *Id*., at 632. Pursuant to Section 110(k)(3), of the CAA, EPA is required to approve a SIP submission if it meets all applicable requirements of the CAA. *Public Service Company of Indiana*, 682 F.2d at 628 (EPA "must approve" a SIP "if the plan satisfies the criteria in 42 U.S.C. § 7410(a)(2)(A)-(K) . . . ."). See, also, *Ohio Environmental Council v. EPA*, 593 F.2d 24, 29 (6th Cir. 1979) ("It is mandatory that U.S. EPA approve an SIP or a revision to an SIP if it is adopted after reasonable notice and public hearings and if it meets the eleven substantive requirements set forth in section 110(a)(2)(A) through (K) of the Act, 42 U.S.C. § 7410(a)(2)(A)(K).")

The applicable requirement at issue is the requirement that, in addition to the major source permitting programs required under the CAA, a state have a "program to provide for . . . regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved . . . ." 42 USC 7410(a)(2)(c). Montana's Oil & Gas Registration Program is a component of just such a program, and it regulates oil and gas well facilities as necessary to assure that the NAAQS are protected.

The fact that Montana chose, as its minor stationary source program, a general minor source permitting program, and the fact that Montana chose particular elements for that program do not indicate that a permitting program for oil and gas well facilities is necessary to assure that the NAAQS are achieved in the state. If it did, EPA would be required to disapprove a proposed SIP revision to substitute a permitting program for a registration program, merely because the registration program was adopted by the state and approved by EPA into the SIP first.

42 USC §7515 states that a control requirement in effect before November 15, 1990, in any area which is a nonattainment area, may not be modified unless the modification ensures equivalent or greater emission reductions. Montana had no control requirements specific to oil and gas well facilities in nonattainment areas prior to November 15, 1990; the registration program is Montana's first set of control requirements specific to oil and gas well facilities, no oil and gas well facilities are located in a nonattainment area in Montana, and the registration program rules expressly do not apply to any facilities that would be located in a nonattainment area. Further, even if this provision of the CAA applied, the registration program ensures emission reductions equivalent to or greater than Montana's minor source permitting program, and allows permitting resources to be applied to facilities that pose a greater risk to air quality in the state, thereby protecting and enhancing air quality in the state.

The seminal case concerning EPA's SIP review responsibility is *Train v. NRDC*, 421 U.S. 60 (1975). *Hall v. EPA*, 273 F.3d 1146, 1157 (9th Cir. 2001). In *Train*, the U.S. Supreme Court ruled that a state may adopt "whatever mix of emission limitations it deems best suited to its particular situation," as long as the state's choice results in compliance with the NAAQS. 421 U.S. 60, 79. Even more relevant to EPA's review in the present case is the Court's ruling that: "This discretion includes the continuing authority to revise choices about the mix of emission limitations." Id., at 87. The Court reached this ruling based on its finding that Congress "left to the States considerable latitude in determining specifically how the standards would be met, as demonstrated in 42 USC §7407(a) of the FCAA, which states that "[e]ach State shall have the primary responsibility of assuring air quality" within that state. The Court ruled further in *Train* that: "Far from evincing congressional intent that the Agency [EPA] assume control of a State's emission limitations mix once its initial plan is approved, the revision section is to all appearances the mechanism by which the States may obtain approval of their developing policy choices as to the most practicable and desirable methods of restricting total emissions to a level which is consistent with the national ambient air standards." Id., at 80.

The Clean Air Act Amendments of 1990 did not substantively change the standard for EPA's approval of SIP submissions. *Commonwealth of Virginia v. EPA*, 108 F.3d 1397, 1409-1410 (D.C. Cir. 1997). It still is mandatory that EPA approve a proposed SIP revision unless the revision would interfere with an applicable requirement of the CAA. The inquiry for EPA, when evaluating a proposed SIP revision, is "whether the proposed change interferes with attainment." *Navistar International Transportation Corp. v. EPA*, 941 F.2d 1339, 1342(6th Cir. 1991).

EPA authority to approve

As stated previously, EPA's authority is framed by the directives of the CAA. Under the CAA, EPA is authorized to promulgate rules to provide for the implementation and enforcement of statutory directives. Congress set up the CAA regulatory framework defined by roles and obligations between states and EPA. EPA establishes NAAQS. States submit plans (SIPs) to achieve attainment and maintenance of the NAAQS. "It is to the states that the [CAA] assigns initial and primary responsibility for deciding what emissions reduction will be required from which sources." *Whitman v. Am. Trucking Ass'ns,* 531 US 457, 121 S.Ct. 903, 149 L.Ed. 2d. 1 (2001).

Montana's Oil & Gas Registration Program is an integral part of a whole plan of emission control for minor sources in the state. Neither the MAQP nor the Oil & Gas Registration Program interferes with any applicable requirement concerning attainment and RFP. EPA's authority under the CAA to disapprove a proposed SIP revision is limited to revisions that "would interfere with any applicable requirement concerning attainment and reasonable further progress . . . or any other applicable requirement of this chapter." 42 U.S.C. § 7410(l). EPA cannot disapprove a proposed SIP revision without making this demonstration, and there is no evidence that demonstrates that the Oil & Gas Registration Program would interfere with any applicable requirement of the CAA.

Congress included 42 USC §7410(l) with the 1990 Amendments, not because it wished to foreclose SIP revisions, but because an unacceptable number of areas in the country failed repeatedly to meet the NAAQS, even as deadlines were extended in 1977, 1982, and in 1990. As some states continued to ignore statutory deadlines (indeed, even submitting SIP revisions before attaining the NAAQS in nonattainment areas) Congress

acted decisively to compel timely attainment. "The "applicable requirement[s] concerning attainment and reasonable further progress [pursuant to 42 USC 7410(l)] *include the current attainment deadlines* . . ." *Hall, infra*. Emphasis added. For purposes of reviewing a revision to the SIP, Congress focused on attaining the NAAQS by statutory deadlines in areas that failed to meet the NAAQS. In contrast, Montana's SIP submissions stand as a record of commitment to and achievement of timely NAAQS attainment.

As discussed in this document, the restriction in 42 USC §7515 on modifying control requirements does not apply for the Oil & Gas Registration Program, but even if it did, the program ensures equivalent or greater emission reductions for oil and gas well facilities. EPA's policy against what it refers to as "relaxation" or "backsliding" is not based on the CAA, but rather, is based on EPA policy not contained in the CAA. These terms are subjective and variable characterizations not found in the CAA. Notwithstanding the absence of the terms in the CAA, Montana's Oil & Gas Registration Program does not constitute "backsliding." Montana's Oil & Gas Registration Program is, rather, an improvement in regulation of Oil & Gas well facilities in the state, with emission control requirements and other operating requirements at least equivalent to the requirements that would be included in MAQPs.

Conclusion:

The preceding analyses demonstrate that this proposed revision to the current SIP does not interfere with requirements to attain the NAAQS or demonstrate reasonable further progress in Montana. The Department successfully implemented the state-approved Oil & Gas Registration Program for more than five years without interfering with any applicable requirement concerning attainment and RFP. Implementation of the Oil & Gas Registration Program has not resulted in a violation of the NAAQS and the program continues to provide benefits in efficiency and effectiveness. At the same time ambient levels of regulated air pollutants have been on a steady, statewide decline.

The State simply does not have the resources to permit every oil or gas well in the state. But, even if it did, devoting resources to permitted facilities that are more appropriately managed under a registration/general permit simply takes resources away from other valuable air quality regulatory program activities. A registration/general permit-style process is not any more likely to interfere with a requirement to attain and maintain the NAAQS or any other requirement of the CAA.

The Oil & Gas Registration Program is a functional and satisfactory alternative to resource-intensive and time-consuming permitting processes, which would result in no increased air quality benefit in the case of oil and gas well facilities. The Oil & Gas Registration Program affords the Department, the public, and the regulated community the opportunity to utilize resources for determining compliance with federal and state air quality requirements where necessary, rather than embarking on the wholly unattainable task of writing thousands of MAQPs with identical requirements for no additional air quality benefit.

As a matter that directly affects air quality in a real and immediate way, the requirements and process of the Oil & Gas Registration Program produce greater regulatory coverage of these sources than would have occurred had Montana chosen to devote all available resources to issuing MAQPs. Absent a significant infusion of new resources, engaging in the MAQP process alone would have ensured the regulation of only some fraction of the subject sources and the virtual abandonment of the remainder of the MAQP-subject

source world. Practicality is a highly desirable quality of a regulatory program and Montana devised a means of subjecting a minor source category to particularized control requirements. Controlling emissions of air pollutants should not rely to its detriment on a resource-intensive process that renders the goal unachievable "as a practical matter."

At the same time, with few exceptions not attributable to oil and gas sources, ambient levels of regulated air pollutants have been on a steady, statewide decline, and there have been no violations of NAAQS attributed to oil and gas facilities in or near the areas where these sources are registered.

Additionally, EPA recently stated ". . .it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns . . ." EPA made the identical statement in several recent promulgations for states across the nation. For examples, see 76 FR 29680, 76 FR 14611, 76 FR 14606, 76 FR 17585, and 76 FR 28934. As a whole organization, EPA is clearly interested in increasing state experimentation and discretion regarding the design of state-specific emission control plans for NAAQS attainment and maintenance. As a state that has consistently and seriously pursued minor source emission control, Montana applauds this shift in EPA's approach. The progressive program elements will surely be a model for other situations requiring effective, reflexive strategies to achieve results-driven policy.