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July 18, 2019

VIA EMAIL: brooks.richardson@cir.com

Brooks A. Richardson
Assistant General Counsel
and Director – Enterprise Risk
Continental Resources, Inc.
20 North Broadway
Oklahoma City, OK 73102

Re: N.D. Admin. Code § 33.1-15-07-02(1) Rulemaking Petition

Dear Mr. Richardson:

The Department of Environmental Quality is in receipt of your June 12, 2019 letter on behalf of Continental Resources, Inc. ("CLR") petitioning to amend N.D. Admin. Code § 33-15-07-02(1) under N.D.C.C. §§ 23-01-04.1(3) and 28-32-16. Please note that N.D. Admin. Code § 33-15-07-02(1) is no longer effective due to the April 29, 2019 transition of functions from the Department of Health's Environmental Health Section to the Department of Environmental Quality. The Department assumes that CLR instead intends its petition to apply to N.D. Admin. Code § 33.1-15-07-02(1). Similarly, the Department assumes that CLR intends to petition under N.D.C.C. § 23.1-01-04(3) and not the repealed § 23-01-04(3). Please let me know if this is not correct.

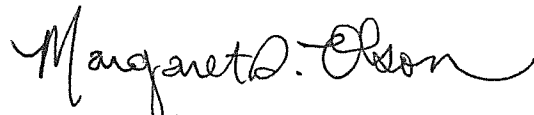
CLR's petition relates to the Department's anticipated adoption of certain federal new source performance standards for crude oil and natural gas, 40 C.F.R. Part 60, Subparts OOOO and OOOOa ("Quad O and Quad Oa"). In order to act on CLR's petition, the Department must conduct a detailed review of the relationship between N.D. Admin. Code § 33.1-15-07-02(1) and Quad O and Quad Oa. This review must be completed by staff with expertise in Quad O and Quad Oa. Funding for the Quad O and Quad Oa programs became available on July 1, 2019. The Department hopes to have two staff members who will work to adopt these programs hired and in place by mid-August, at which point the Department will be able to begin an in-depth review of CLR's petition. After this review begins, the Department can provide CLR with an anticipated timeline.

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Please note that any amendments to N.D. Admin. Code § 33.1-15-07-02(1) must comply with federal requirements for revising state implementation plans. In your letter you stated that EPA approval was not required, but the Department has consulted with EPA and received confirmation that EPA must approve the type of amendment requested in CLR's petition (see enclosed letter).

Please contact me if you have any questions relating to this matter.

Sincerely,

A handwritten signature in black ink that reads "Margaret I. Olson". The signature is fluid and cursive, with a long, sweeping tail on the "n" of "Olson".

Margaret I. Olson
Assistant Attorney General

klr

Enclosure

cc: Dave Glatt, Director, Department of Environmental Quality

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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Denver, CO 80202-1129
Phone 800-227-8917
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JUL 17 2019

Ref: R8-ORC

VIA ELECTRONIC MAIL

Margaret I. Olson
Assistant Attorney General
Civil Litigation Natural Resources and Indian Affairs
Office of Attorney General
500 North 9th Street
Bismark, North Dakota 58501-4509

Re: Inquiry Regarding Amendments to N.D. Admin. Code § 33.1-15-07-02(1)

Dear Ms. Olson:

This responds to your letter dated June 21, 2019, concerning Continental Resources' petition to amend N.D. Admin. Code §33.1-15-07-02(1). Mr. Matthew Leopold asked that I respond on his behalf. In your letter, you state that on June 12, 2019, the North Dakota Department of Environmental Quality (Department) received a petition from Continental Resources, Inc. to amend the aforementioned North Dakota regulation. Your letter requests confirmation as to whether the regulatory amendment would be a revision to North Dakota's State Implementation Plan (SIP), subject to the state and federal public participation and review process in Clean Air Act section 110. 42 U.S.C. § 7410.

EPA's rulemaking procedures for acting on state SIP revisions are governed by the Clean Air Act (42 U.S.C. § 7410) and the Administrative Procedure Act (5 U.S.C. §§ 511-599), which includes public notice and comment. As you know, EPA approved N.D. Admin. Code § 33.1-15-07-02(1) into the State's SIP, N.D. Admin. Code § 33-15-07-02(1).¹ This regulation contains emission control requirements that apply to disposal of organic gas compounds from oil and gas operations. As an EPA-approved regulation, the SIP regulation and revisions were printed in the Federal Register and became enforceable as federal law.

Regarding Continental Resources' assertion that EPA "confirmed" that the proposed rule change would not require a SIP revision, I am unaware of any such communication by the agency. Based on our review, if the proposed changes in the petition were adopted by the Department through its rulemaking process, they would require a formal SIP revision to be submitted to EPA, which the agency would have to act on.² Revisions to a SIP must be approved by the EPA to be effective.³ The Clean Air Act does not

¹ EPA-approved SIP revisions are codified as amendments to the State's SIP in the Code of Federal Regulations. EPA recently approved the State's recodification of this and other amendments to the State's regulations. 84 FR 3108 (February 11, 2019) (final rule); 84 FR 8260 (March 7, 2019) (delay of effective date), codified at 40 CFR 52.1820(a).

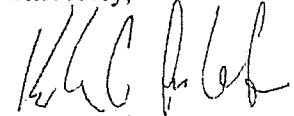
² 42 U.S.C. § 7410(k), 40 C.F.R. § 51.104(b).

³ 40 C.F.R. § 51.105.

allow for a state's removal of a federally enforceable SIP provision without EPA approval.⁴ Finally, the amendments would be subject to other requirements, for example, 42 U.S.C. § 7410(l) and 40 CFR Part 51, including Appendix V.

Thank you for your interest in ensuring North Dakota's compliance with the Clean Air Act. Per your request, please find attached the documents we have found in our initial search, related to the June 4, 2019 letter from Mr. Leopold to Continental Resources. If we locate any other relevant correspondence, we will send it to you. If you have further questions, please feel free to contact me at (303) 312-6843 or Sara Laumann of my staff at (303) 312-6443.

Sincerely,



Kenneth C. Schefski
Regional Counsel

cc: Matthew Z. Leopold, General Counsel
Justin Schwab, Deputy General Counsel
Gregory Sopkin, Regional Administrator, EPA Region 8
Dave Glatt, Director, North Dakota Department of Environment

⁴ *Kentucky Resources Council, Inc. v. EPA*, 304 F. Supp. 2d 920, 926-8 (W.D. Ky. 2006); *Sweat v. Hull*, 200 F. Supp. 2d 1162, 1172 (D. Ariz. 2001). See also *General Motors v. U.S.*, 496 U.S. 530, 540 (1990) (the approved SIP remains the applicable and enforceable program even after a state has submitted a proposed revision).