

EXHIBIT 10  
DATE 1.24.05  
NO. 303

## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8  
899 18<sup>TH</sup> STREET - SUITE 300  
DENVER, CO 80202-2456  
<http://www.epa.gov/region08>

## MEMORANDUM

March 11, 2003

Ref: 8P-AR

Jan Sensibaugh, Director  
Montana Department of Environmental Quality  
P.O. Box 200901  
Helena, MT 59620-0901

Dear Ms. Sensibaugh:

I am writing to indicate that legislation pending in the 2003 Montana Legislature is of potential concern to the U.S. Environmental Protection Agency (EPA). [House Bill No. 437, House Bill No. 700, and Senate Bill No. 410.] EPA is very reluctant to become involved with the actions of a State's legislature. However, this pending legislation has the potential of raising concerns about whether important parts of the State's Federally approved environmental programs meet the minimum Federal requirements for EPA approval. In the spirit of partnership we offer the following for your consideration, particularly in light of EPA's experience with similar legislative actions and court decisions in the states of Virginia and Oregon.

I have been advised by EPA's attorneys that the Montana proposed legislation may create major impediments to the public's ability to challenge air permits in State court as required by the Clean Air Act. As you know, an important consideration before EPA approves programs under the Clean Air Act is that the State must provide the same opportunity for judicial review of air permitting actions in State court as would be available in Federal court.

If our reading of the proposed legislation is correct, these bills contain provisions which require citizens and organizations to file for a preliminary injunction and then post a bond if such injunction is granted. The appealing party's bond must cover the permittee's costs of delay. Another provision requires the person challenging the permit to indemnify the permittee for the same items covered in the bond. The noted bond requirements could be impediments which deter or discourage individuals and organizations from appealing permit decisions by the MDEQ. This, in turn, may result in significant impacts to the State's program approvals.

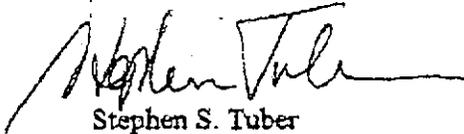
Montana's implementation of the Federal environmental laws is of mutual interest to us both. To that end I would like to suggest that we work together to carefully consider the



2

ramifications of the proposed legislation. As a first step, it may be helpful for MDEQ's Legal Counsel to discuss the issue with Bob Ward, Regional Counsel, EPA Region 8. Bob may be reached at (303) 312-7100. Please do not hesitate to call John Wardell at (406) 457-5001 or me (303) 312-6241.

Sincerely yours,



Stephen S. Tuber  
Acting Assistant Regional Administrator  
Office of Partnerships and Regulatory Assistance