



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

#### **[EPA-R08-OAR-2017-0634; FRL-9975-63-Region 8]**

### **Approval and Promulgation of Air Quality Implementation Plans; State of Montana; Revisions to East Helena Lead SIP**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve State Implementation Plan (SIP) revisions submitted by the state of Montana on September 11, 2013. The submittal revises the portions of the State Implementation Plan (SIP) that pertain to the East Helena Lead SIP. This action is being taken under section 110 of the Clean Air Act (CAA) (Act).

**DATES:** This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** The EPA has established a docket for this action under Docket Identification Number EPA-R08-OAR-2017-0634. All documents in the docket are listed on the <http://www.regulations.gov> index. Although listed in the index, some information may not be publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air Program, Environmental

Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado, 80202-1129. The EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kevin Leone, Air Program, U.S.

Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129, (303) 312-6227, leone.kevin@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The EPA is taking final action pertaining to SIP revisions that stem from a June 10, 2013, Montana Board of Environmental Review Order (Board Order) which removes a stipulated condition in an August 4, 1995 Board Order. The condition limited the allowable concentration of lead in raw feed material at the American Chemet Corporation's East Helena facility. Specifically, American Chemet requested a change to the 1995 Board Order which would eliminate Exhibit A, Section 3, Subsection B. This subsection reads:

*“Feed Material into the plant shall have a quarterly average lead content of less than 0.15%, and an average annual lead content of less than 0.10%.”*

All other East Helena Lead SIP provisions, including direct numerical limits on lead emissions from American Chemet Corporation's East Helena facility, would remain unchanged.

On January 12, 2018, the EPA published a proposed rulemaking for this action (83 FR 1602). The proposed rulemaking discussed the history of the East Helena lead SIP, including the

lead in feed limits that were created in the 1995 Board Order in order to address the area's nonattainment status for the 1978 lead National Ambient Air Quality Standard (NAAQS). The principal target for curtailing lead emissions was the American Smelting and Refining Company (ASARCO) facility, which was a lead smelter located adjacent to American Chemet's East Helena facility. In addition to shutting down its operations in 2001, ASARCO demolished its stacks in 2009. The EPA subsequently promulgated a new, more stringent, lead NAAQS standard ( $0.15 \text{ ug/m}^3$ ). The final lead NAAQS rulemaking was published on November 12, 2008 (73 FR 66964) and effective December 31, 2011. The entire state of Montana, including the East Helena area, was designated as "Unclassifiable/Attainment" for the 2008 lead NAAQS.

In response to the DEQ's request for the EPA's guidance concerning modifying the 1995 Board order to eliminate Exhibit A, Section 3, Subsection B, the EPA sent a letter dated December 18, 2009 (see docket) which outlined conditions which the state of Montana must meet in order for Exhibit A, Section 3, Subsection B to be removed from the East Helena lead SIP and, as outlined in 83 FR 1602, those conditions have been met. For details, please see the January 12, 2018 notice proposing approval of the revision.

## **II. Response to Comments**

The EPA received two public comments on our proposed action to approve Montana's September 11, 2013 SIP submittal. One comment was submitted by Neal Blossom, Director of Global Environmental and Regulatory Affairs for American Chemet Corporation. The other comment was submitted anonymously. Below is a summary of the comments and the EPA's responses.

**Comment:** American Chemet Corporation supports the EPA's approval of the SIP revisions submitted by the state of Montana on September 11, 2013, because the air quality in the area will remain in compliance with the NAAQS standard, as demonstrated by the modeling analysis submitted.

**Response:** The EPA agrees that final approval of the revisions submitted by the state of Montana on September 11, 2013, will maintain compliance with the lead NAAQS standard, as demonstrated by the modeling analysis submitted.

**Comment:** The anonymous commenter made various statements about the Endangered Species Act, the National Environmental Policy Act, and cost-benefit analysis in general. The commenter also alleged unspecified impacts of unspecified regulations.

**Response:** After reviewing the comments, the EPA has determined that the comments are outside the scope of our proposed action or fail to identify any material issue necessitating a response.

### **III. Final Action**

The EPA is taking final action to approve the revisions to Montana's 1995 Board Order to remove Exhibit A, Section 3, Subsection B.

Section 110(l) of the CAA prohibits the EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the CAA. For the reasons explained in our January 12, 2018 proposed rulemaking notice, the removal of Exhibit A, Section 3, Subsection B satisfies the conditions set forth in section 110(l).

Section 193 of the CAA, which only applies to nonattainment areas, prohibits the

modification of a SIP-approved control requirement in effect before November 15, 1990, unless the modification insures equivalent or greater emissions reductions of such air pollutant. CAA section 193 does not apply to this revision because the American Chemet limits were approved into the SIP after November 15, 1990.

#### **IV. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of a revised State of Montana Board Order as described in section III of this preamble. The EPA has made, and will continue to make, these materials generally available through and at the EPA Region 8 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the state implementation plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA’s approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.<sup>1</sup>

#### **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state actions, provided that they meet the criteria of the CAA. Accordingly, this action merely approves some

---

<sup>1</sup> 62 Fed. Reg. 27968 (May 22, 1997).

state law provisions as meeting federal requirements; this action does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, the SIP does not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER

OFFICE: insert date 60 days from date of publication of this document in the Federal Register].

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

(See CAA section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: March 22, 2018.

\_\_\_\_\_  
Douglas H. Benevento,  
Regional Administrator,  
Region 8.

40 CFR part 52 is amended to read as follows:

**PART 52 -- APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 et seq.

**Subpart BB – Montana**

2. Section 52.1370 is amended in the table in paragraph (d) under the centered heading “(4) Lewis and Clark County” by revising the entry for “Lead NAAQS – Board Orders, Stipulations, Exhibits, and Attachments, Exhibit A – American Chemet Emissions Limitations and Conditions, American Chemet Corporation, East Helena, Montana” to read as follows:

**§52.1370 Identification of plan.**

\* \* \* \* \*

(d) \* \* \*

| <b>Title/subject</b>  | <b>State effective date</b> | <b>Notice of final rule date</b>                              | <b>NFR citation</b>                       |
|---|-----------------------------|---|---|
| * * * * *   |                             |   |   |
| <b>(4) Lewis and Clark County</b>   |                             |   |   |
| * * * * *   |                             |   |   |
| Lead NAAQS – Board Orders, Stipulations, Exhibits, and Attachments, Exhibit A – American Chemet Emissions Limitations and Conditions, American Chemet Corporation, East Helena, Montana | 06/10/2013                  | [insert date of publication in the <b>Federal Register</b> ], | [insert <b>Federal Register</b> citation] |
| * * * * *   |                             |   |   |