



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2019-0326; FRL-9995-94-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to Administrative Rules of Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Montana on February 23, 2017. The revisions are to the Administrative Rules of Montana (ARM) open burning and permitting regulations to align the ARM with the current Montana Code Annotated (MCA) procedures for appealing a permit and requesting a hearing. The EPA is taking this action pursuant to the Clean Air Act (CAA).

DATES: Written comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2019-0326, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is

considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI 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 in www.regulations.gov or in hard copy at the Air and Radiation Division, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. The EPA requests that if at all possible, 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: Jaslyn Dobrahner, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-QP, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6252, dobrahner.jaslyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On February 23, 2017, the State of Montana submitted a SIP revision containing amendments to open burning and permitting regulations in the ARM at 17.8.610, *Major Open*

Burning Source Restrictions; 17.8.612, *Conditional Air Quality Open Burning Permits*; 17.8.613, *Christmas Tree Waste Open Burning Permits*; 17.8.614, *Commercial Film Production Open Burning Permits*; 17.8.615, *Firefighter Training*; and 17.8.749, *Conditions for Issuance or Denial of Permit*.¹ The amendments: (1) add references to sections 75-2-211, *Permits for Construction, Installation, Alteration, or Use* and 75-2-213, *Energy Development Project – Hearing and Procedures* of the MCA pertaining to the process for appealing air quality permits, including requesting a hearing; (2) remove duplicative language in the ARM; and (3) and make minor editorial changes. The Montana Board of Environmental Review adopted the amendments on June 3, 2016 (effective July 9, 2016).

II. Analysis of State Submittal

We evaluated Montana’s February 23, 2017, submittal regarding amendments to the State’s ARM. The amendments to ARM 17.8.610(3), 17.8.612(10) and (11), 17.8.613(8) and (9), 17.8.614(8) and (9), and 17.8.615(6) and (7) incorporate by reference section 75-2-211 of the MCA pertaining to the permit appeals process, including requesting a hearing. These statutes provide as follows:

- that a person who is directly and adversely affected by the issuance or denial of a permit may request a hearing within 15 days after the state renders a decision;
- that a request for hearing does not stay the state’s decision on an application unless the board orders a stay; and

¹ The February 23, 2017, submittal also included revisions to 17.8.1210, *General Requirements for Air Quality Operating Permit Content*. However, the state does not want us to act on 17.8.1210, because it is not part of the federal SIP. (Memorandum from State of Montana to the EPA (June 26, 2019)).

- an affidavit supporting the request for hearing must be filed within 30 days after the issuance or denial of a permit.

The revisions also remove corresponding duplicative language between the ARM and MCA and make editorial changes.

The language in the revisions to 17.8.610, 17.8.612, 17.8.613, 17.8.614, and 17.8.615 referencing 75-2-211, MCA, is equivalent to the language being removed from these sections of the ARM except for 17.8.610. According to the State,² 17.8.610 had not been updated during the last State revision in 2011, whereas 17.8.612, 17.8.613, 17.8.614, and 17.8.615 had been amended by the State and subsequently approved into the SIP on August 20, 2015.³ The revisions to 17.8.610 in the February 23, 2017, submittal are identical to the revisions we approved in our August 20, 2015 rulemaking to 17.8.612, 17.8.613, 17.8.614, and 17.8.615 in that they require a hearing request affidavit to be filed within 30 days after the department renders a decision, remove an automatic stay of the department's decision to issue a permit upon a permit appeal, and add conditions and procedures for when the board may order a stay.

We are proposing to approve the revisions in ARM 17.8.610(3), 17.8.612(10) and (11), 17.8.613(8) and (9), 17.8.614(8) and (9), and 17.8.615(6) and (7) because these revisions are either equivalent to the current federally-approved SIP (for 17.8.612, 17.8.613, 17.8.614, 17.8.615) or have been previously approved into the SIP in similar sections (for 17.8.610). In both instances, we previously determined that the revisions do not conflict with the CAA.⁴

² Email from State of Montana to the EPA (September 30, 2016).

³ 80 FR 50582 (August 20, 2015).

⁴ 80 FR 30987 (June 1, 2015).

The amendments to ARM 17.8.749(7) incorporate by reference section 75-2-213 of the MCA pertaining to the hearing and appeals procedures for permit applicants of energy development projects. The permit appeals procedures in 75-2-213 pertain to air quality permit decisions on energy development projects that differ from the general procedures described in 75-2-211, MCA. Specifically, the statutes proposed for approval within 75-2-213, MCA allow a permit applicant the following hearing procedures:

- the applicant may request a hearing within 30 days after the department renders a decision;
- a request for hearing must be limited to those issues presented to the state during the public comment period unless the issue is related to a material change in federal or state law made during the public comment period, to a judicial decision issued after the comment period, or to a material change to the draft permit finalized after an opportunity for comment;
- an affidavit supporting the request must be filed with the request for a hearing; and
- the applicant may, by filing a written election to the board within 15 days of receipt of request for hearing, elect a hearing before the board or have the matter submitted directly to the district court for judicial review.

The revisions also make a minor editorial change.

An important consideration before the EPA approves programs under the CAA is that the state must provide the same opportunity for judicial review of the air permitting actions in state court as would be available in federal court. The proposed revisions to 17.8.749, to incorporate the applicable statutes in 75-2-213, MCA, are in accordance with CAA sections 307(b) and

307(d)(7)(B) which provide for the judicial review of an air quality action and limits objections to an action to those that were raised with reasonable specificity during the public comment period, respectively. Additionally, if the Administrator refuses to convene a proceeding, a person may seek review in the United States court of appeals.⁵ Similarly, 75-2-213, MCA provides permit applicants with the election to have the matter proceed to hearing before the state board or to have the matter submitted directly to the district court for judicial review. We therefore conclude that the revisions do not conflict with CAA requirements for judicial review of air permitting actions and propose to approve the revisions to 17.8.749.

III. The EPA's Proposed Action

In this action, the EPA is proposing to approve SIP amendments to Administrative Rules of Montana, shown in Table 1, submitted by the State of Montana on February 23, 2017.

Table 1 - List of Montana Amendments that the EPA is Proposing to Approve

Amended Sections in the February 23, 2017 Submittal Proposed for Approval
17.8.610(3), 17.8.612(10) and (11), 17.8.613(8) and (9), 17.8.614(8) and (9), 17.8.615(6) and (7), 17.8.749(7)

IV. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in a final EPA rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the amendments described in section III. The EPA has made, and will continue to make, these materials generally available through

⁵ CAA 307(d)(7)(B).

www.regulations.gov 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).

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 choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting federal requirements and 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 an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted 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 CAA; 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 is not approved to 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 proposed 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).

List of Subjects in 40 CFR Part 52

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

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

Dated: ___ June 28, 2019.

Gregory Sopkin,
Regional Administrator,
EPA Region 8.

[FR Doc. 2019-14243 Filed: 7/5/2019 8:45 am; Publication Date: 7/8/2019]