



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2019-0163; FRL-10000-98-Region 8]

### Approval and Promulgation of Implementation Plans; State of Montana; State Implementation Plan Revisions for Open Burning

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Montana on May 24, 2018. The revision would remove a prohibition on the open burning of asbestos and asbestos-containing materials located in the SIP-approved Administrative Rules of Montana (ARM) Title 17, chapter 8, subchapter 6 and the similar provision in the SIP-approved Lincoln County Air Pollution Control Program. The revision would also remove a corresponding cross-reference located in SIP-approved ARM Title 17, chapter 8, subchapter 3 (concerning wood-waste burners). The EPA is taking this action pursuant to section 110 of 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-2019-0163, 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](https://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](http://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](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 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:** Crystal Ostigaard, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-QP, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, (303) 312-6602, [ostigaard.crystal@epa.gov](mailto:ostigaard.crystal@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

## **I. Background**

ARM Title 17, chapter 8, subchapter 6 contains Montana's open burning provisions, which make up the Montana smoke management plan. The smoke management plan regulates open burning across the state in order to limit smoke impacts on the National Ambient Air Quality Standards (NAAQS). The plan separates open burning into "major" and "minor" categories: open burning that emits more than 500 tons per year (tpy) of carbon monoxide or 50 tpy of any other pollutant is major. *See* ARM 17.8.601. Major open burning sources must obtain a permit from Montana's Department of Environmental Quality (DEQ), ARM 17.8.610; minor open burning sources must comply with seasonal and regional restrictions, ARM 17.8.606. In both cases, open burning sources must apply best available control technology (BACT) as defined in ARM 17.8.601. Furthermore, the plan prohibits the open burning of certain materials, including asbestos and asbestos-containing materials, ARM 17.8.604(1)(w).

ARM 17.8.320 regulates wood-waste burners and generally prohibits the burning or disposal of certain products and materials in wood-waste burners, including asbestos and asbestos-containing materials, ARM 17.8.320(9) (cross-referencing other prohibited materials specified in ARM 17.8.604(1), including (1)(w)).

On August 13, 2001 (66 FR 42427), the EPA initially approved Montana's ARM 17.8.604 – Open Burning (formerly ARM 16.8.1302), and Montana's ARM 17.8.320 – Wood-Waste Burners. On August 20, 2015 (80 FR 50584), the EPA approved revisions to ARM 17.8.604, and on February 26, 2008 (73 FR 10150), the EPA approved revisions to ARM 17.8.320.

The Libby, Montana area was designated nonattainment for coarse particulate matter (PM<sub>10</sub>) by operation of law on November 15, 1990 (56 FR 56694, 56794, November 6, 1991),

under CAA section 107(d)(4)(B) and was classified as ‘Moderate.’ The PM<sub>10</sub> attainment plan and Lincoln County Air Pollution Control Program were approved by EPA on August 30, 1994 (59 FR 44627). Additionally, on September 30, 1996 (61 FR 51014), the EPA approved revisions to the Libby, Montana PM<sub>10</sub> SIP and Lincoln County Air Pollution Control Program, which included the analogous prohibition on the open burning of asbestos and asbestos-containing materials. Subsequently, portions of Lincoln County, including the town of Libby, were designated nonattainment for the 1997 fine particulate matter (PM<sub>2.5</sub>) annual standard (74 FR 944, Jan. 5, 2005). On March 17, 2011 (76 FR 14584), the EPA approved the PM<sub>2.5</sub> attainment plan, including the Lincoln County prohibition on open burning of asbestos and asbestos-containing materials, and on July 14, 2015 (80 FR 40911), the EPA determined that the area attained the 1997 annual standard by the applicable attainment date. In its May 24, 2018 submittal, Montana states that the prohibitions on the burning of asbestos and asbestos-containing material were not necessary to include in the SIP. Although Montana’s smoke management plan generally ensures attainment and maintenance of the NAAQS, the specific prohibition on the burning of asbestos and asbestos-containing materials in ARM 17.8.604(1)(w) and elsewhere are not related to protection of the NAAQS. According to the State, the provisions related to asbestos and asbestos-containing materials “should never have been included in the SIP.”<sup>1</sup> Instead, Montana intends that such provisions remain as state-only regulations, where they will continue to protect public health and welfare.<sup>2</sup> In accordance with CAA section 110(l), the State provided a demonstration that the SIP revision (i.e., removal of the prohibition in ARM 17.8.604(1)(w) and in Lincoln County regulation 75.1.405(2)(w)) would not interfere with maintenance of the NAAQS, specifically the PM<sub>2.5</sub> and PM<sub>10</sub> NAAQS.

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<sup>1</sup> May 24, 2018 State of Montana SIP revision submittal; 110(l) Demonstration.

<sup>2</sup> Ibid.

## **II. The State's Submittal and the EPA's Evaluation**

Section 110(k) of the CAA addresses the EPA's actions on submissions of revisions to a SIP. The CAA requires states to observe certain procedural requirements in developing SIP revisions for submittal to the EPA. Section 110(l) of the CAA requires that each SIP revision submitted by a state be adopted after reasonable notice and public hearing. Additionally, the EPA cannot approve a SIP revision if the revision would interfere with any applicable requirements concerning attainment and reasonable further progress (RFP) toward attainment of the NAAQS, or any other applicable requirement of the Act.

Montana's May 24, 2018 submittal explains that some rules or provisions that are not specifically NAAQS-protective had been submitted and approved into the SIP. For example, while Montana's smoke management plan generally protects the NAAQS from smoke impacts, the list of prohibited materials in ARM 17.8.604 itself does not specifically address criteria pollutants. In other words, the regulation of open burning in general is intended to mitigate smoke impacts, not to specifically prohibit burning of asbestos or asbestos-containing materials. Accordingly, Montana requests that the prohibition be removed from the SIP although it would remain as a state and local regulation.

Montana's submittal provides an air quality analysis to show that removal of the prohibition in ARM 17.8.604(1)(w) and Lincoln County Ordinance 75.1.405(2)(w) would not interfere with the NAAQS, specifically for PM<sub>10</sub> and PM<sub>2.5</sub>.<sup>3</sup> The submittal first discusses the

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<sup>3</sup> While the submittal identifies other areas that are or previously were designated nonattainment for the carbon monoxide (CO), sulfur dioxide (SO<sub>2</sub>), and lead (Pb) NAAQS, Montana notes that particulate matter is the criteria pollutant most directly related to burning, or, more specifically, to the smoke that results from combustion. Accordingly, the State's analysis focuses on attainment and maintenance of the particulate matter NAAQS across Montana.

State areas that are or previously were designated nonattainment for PM<sub>10</sub> and PM<sub>2.5</sub>. These are provided in Table 1 below.

**Table 1 – Montana Nonattainment Areas for PM<sub>10</sub> and PM<sub>2.5</sub> with EPA Final Attainment Plan Approval and Current Determinations of Attainment.**

Nonattainment Area	Standard Violated	Designation	Final Plan Approval	Determination of Attainment
Butte	PM <sub>10</sub> (1987)	11/15/90	3/22/95, 60 FR 15056	
Columbia Falls	PM <sub>10</sub> (1987)	11/15/90	3/19/96, 61 FR 11153	1/31/11, 76 FR 5280
Kalispell	PM <sub>10</sub> (1987)	11/15/90	3/19/96, 61 FR 11153	
Libby	PM <sub>10</sub> (1987)	11/15/90	9/30/96, 61 FR 51014	1/31/11, 76 FR 5280
Libby	PM <sub>2.5</sub> (1997)	4/5/05	3/17/11, 76 FR 14584	7/14/15, 80 FR 40911*
Missoula	PM <sub>10</sub> (1987)	11/15/90	8/30/95, 60 FR 45051	5/24/19, 84 FR 24037**
Thompson Falls	PM <sub>10</sub> (1987)	1/20/94	1/22/04, 69 FR 3011*	11/1/01, 66 FR 55102
Whitefish	PM <sub>10</sub> (1987)	10/19/93	4/24/08, 73 FR 22057*	11/1/01, 66 FR 55102

\* Included a clean data determination.

\*\* The Missoula area was redesignated to attainment after Montana submitted the May 24, 2018 revision.

As further support, the State examined recent ambient air quality data for 2016 in the areas that historically have had PM<sub>10</sub> and/or PM<sub>2.5</sub> issues. The State provided design values for the period 2014-2016 as shown in Table 2 below.<sup>4</sup>

**Table 2. 2016 Design Values for PM<sub>10</sub> and PM<sub>2.5</sub> Nonattainment Areas in the State of Montana [µg/m<sup>3</sup>].**

Nonattainment Area	Standard Violated	Current Standard	2016 Design Values		Designation
			*	**	
Butte	PM <sub>10</sub> (1987)	150 24-hour	52, 51	52, 45	11/15/90
Columbia Falls	PM <sub>10</sub> (1987)	150 24-hour	45, 44	45, 44	11/15/90
Kalispell	PM <sub>10</sub> (1987)	150 24-hour	87, 84	87, 84	11/15/90

<sup>4</sup> State of Montana's CAA §110(l) Anti-Backsliding Demonstration.

Libby	PM <sub>10</sub> (1987)	150 24-hour	58, 57	45, 45	11/15/90
Libby	PM <sub>2.5</sub> (1997)	12 annual	9.8		4/5/05
Missoula	PM <sub>10</sub> (1987)	150 24-hour	74, 65	74, 65	11/15/90
Thompson Falls	PM <sub>10</sub> (1987)	150 24-hour	135, 97	97, 89	1/20/94
Whitefish	PM <sub>10</sub> (1987)	150 24-hour	106, 98	106, 98	10/19/93

\* First high, second high including all flagged events.

\*\* First high, second high excluding flagged events over 150 µg/m<sup>3</sup>.

Montana asserts that all of the State's particulate matter nonattainment areas are currently attaining the standard for which they were designated, and most (as identified in Table 1) have received a determination of attainment from the EPA. The EPA will work with DEQ to redesignate the nonattainment areas that are attaining; however, the EPA will not reach any final conclusions until the State of Montana provides a formal submittal for a redesignation request for PM<sub>10</sub> and PM<sub>2.5</sub> nonattainment areas and after we conduct our own notice and comment rulemaking.

Montana's submittal then notes that in the areas that have been designated nonattainment for PM<sub>10</sub> and PM<sub>2.5</sub>, the approved attainment plans did not identify open burning as a major contributor to nonattainment. For example, in the Missoula PM<sub>10</sub> attainment plan, the State identified re-entrained road dust and residential wood combustion as the primary contributors of PM<sub>10</sub>. *See* 58 FR 48342. For Montana's only PM<sub>2.5</sub> nonattainment area, Libby, the State identified residential wood combustion as the primary contributor of PM<sub>2.5</sub>, followed by re-entrained road dust and locomotive emissions. *See* 75 FR 55717.

The submittal also notes that open burning continues to be controlled generally under Montana's smoke management plan. The program generally requires open burning to be controlled using BACT; a number of techniques are listed that may be included in BACT, see

ARM 17.8.601. Another feature of the program is DEQ's evaluation of meteorological conditions during the winter months. Depending on those conditions, even minor open burning in areas such as mountain valleys may be prohibited if it may risk increasing PM<sub>2.5</sub> concentrations above the NAAQS. The submittal concludes that the open burning program, as revised by removal of the prohibition on burning asbestos, is adequate to protect the NAAQS at the same level of stringency as the current SIP. For details of Montana's analysis, please see the submittal in the docket for this action.

The EPA has reviewed the State's submission and proposes to approve the SIP revision. The Agency agrees that removing the prohibition on burning asbestos or asbestos-containing materials from Montana's SIP will not interfere with any applicable requirement concerning attainment and RFP, or any other applicable requirement of the CAA.

First, the EPA notes that the disposal of asbestos-containing waste material is regulated under the National Emission Standards for Hazardous Air Pollutants (NESHAP). *See* 40 CFR part 61, subpart M. For material subject to the asbestos NESHAP, open burning is not allowed. The removal of the prohibition on burning asbestos or asbestos-containing materials from Montana's SIP in no way impacts or modifies the asbestos NESHAP or the existing delegation of authority to Montana to implement and enforce the NESHAP.<sup>5</sup> Accordingly, full compliance with the asbestos NESHAP is required and will not be impacted by this SIP revision.

Second, the EPA proposes to conclude that removal of the prohibition will not interfere with any applicable requirement concerning attainment and RFP. The State's submittal explains that Montana's open burning program, as revised by removal of the prohibition, is adequate to

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<sup>5</sup> <https://www.epa.gov/region8/delegations-authority-nsps-and-neshap-standards-states-and-tribes-region-8>.

protect the NAAQS at the same level of stringency as the current SIP. Open burning is generally controlled under ARM 17.8, subchapter 6.

The State recognizes, nonetheless, that the prohibition in ARM 17.8.604(1)(w) may have had a secondary result of “essentially banning open burning of any wood” from asbestos-contaminated forests in the Libby nonattainment area. Thus, the EPA is mindful that removing the prohibition could increase the total acreage of land that may be subjected to prescribed burns in the State. However, the Libby nonattainment area includes the city of Libby and other developed areas (i.e., not just forest land). Furthermore, as the State explained, any prescribed burns would be controlled under ARM 17.8, subchapter 6, including the application of BACT (e.g., scheduling of burning during periods and seasons of good dispersion; minimizing smoke impacts; limiting the amount of burning to be performed during any one time; selecting sites that will minimize smoke impacts, etc.). Thus, the slight increase in acreage available to burn is not reasonably expected to result in a material increase in prescribed burning or a material increase of emissions that would interfere with attainment or maintenance of the NAAQS.

As noted above, Montana’s submittal included an air quality analysis the State believes would demonstrate that the revised SIP will be adequate to maintain the NAAQS. In particular, Montana’s analysis excludes certain monitor days flagged by the State as potentially impacted by activities that are atypical or not expected to occur again in the future. At this time, however, the State has not prepared any demonstrations and EPA has not made any determination regarding whether the flagged data should be excluded from the Air Quality System database or any future regulatory determinations. While we take no position on the flagged data at this time, for the reasons discussed above, we agree that removing the prohibition in ARM 17.8.604(1)(w) will not interfere with any applicable requirements concerning attainment and RFP toward attainment of

the NAAQS, or any other applicable requirement of the Act. With respect to the removal of the corresponding provision for Lincoln County, we note that we fully approved the PM<sub>10</sub> and PM<sub>2.5</sub> attainment plans for Lincoln County, and determined that the area attained by the applicable attainment date for both standards. Thus, there are currently not any attainment-related planning obligations for Lincoln County with which the revision might interfere.

As discussed above, PM<sub>10</sub> and PM<sub>2.5</sub> impacts in Lincoln County are not believed to be attributable to open burning. Indeed, emission inventories and chemical mass balance studies linked PM<sub>10</sub> impacts with dust and, to a smaller degree, residential wood combustion. Similar analyses for PM<sub>2.5</sub> tied impacts primarily to residential wood combustion. Further, open burning is subject to open burning regulations, including the application of BACT. Thus, removal of the Lincoln County provision that prohibits the burning of asbestos and asbestos-containing materials will not interfere with any applicable CAA requirement, including attainment and RFP.

Finally, section 110(l) requires that each revision to the SIP submitted by a state shall be adopted by the state after reasonable notice and opportunity for public hearing. The DEQ held a public comment period from October 18, 2017, to November 17, 2017, on the proposed revision and received no public comments or requests for a public hearing.

### **III. Proposed Action**

We are proposing to approve the following revisions to the Montana SIP that were submitted on May 24, 2018: removal of ARM 17.8.604(1)(w), removal of the reference to ARM 17.8.604(1)(w) in ARM 17.8.320(9), and removal of 75.1.405(2)(w) in the Lincoln County Air Pollution Control Program.

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

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to remove ARM 17.8.604(1)(w), including the reference to ARM 17.8.604(1)(w) in ARM 17.8.320(9), and 75.1.405(2)(w) in the Lincoln County Air Pollution Control Program from the Montana SIP. The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://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 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 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, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: October 4, 2019.

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Gregory Sopkin,  
Regional Administrator,  
EPA Region 8.

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