



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2019-0163; FRL-10003-37-Region 8]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Montana on May 24, 2018. The revisions 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 revisions 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 the Clean Air Act (CAA).

DATES: This 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 ID No. EPA-R08-OAR-2019-0163. All documents in the docket are listed on the <http://www.regulations.gov> website. 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, is not placed on the Internet and will be publicly available only in hard

copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Crystal Ostigaard, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, (303) 312-6602, ostigaard.crystal@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

On October 15, 2019 (84 FR 55104), the EPA proposed to approve revisions to the State of Montana’s SIP that would remove a prohibition on the open burning of asbestos and asbestos-containing materials located in the SIP-approved ARM Title 17, chapter 8, subchapter 6 (ARM located at 17.8.604(1)(w)) and the similar provision in the SIP-approved Lincoln County Air Pollution Control Program (located at 75.1.405(2)(w)). The revision would also remove a corresponding cross-reference located in SIP-approved ARM Title 17, chapter 8, subchapter 3 (concerning wood-waste burners) (reference located at 17.8.320(9)).

We received four comments on our proposed rule. Section II of this final rule provides a summary of the comments that were received and our corresponding responses.

II. Response to Comments

Comment: The first commenter discusses the general physical and chemical characteristics of asbestos and the consequences to human health when inhaled. In addition, the commenter provides a brief discussion on where asbestos has been banned and that only a few developed countries, including the United States, currently have no ban. The commenter briefly

mentions that the EPA has attempted to ban asbestos but has faced lawsuits against this prohibition. Additionally, the commenter provides brief information from a July 1, 2019 Reuters article that claimed that several states filed a lawsuit against the EPA to enact stricter requirements for asbestos. The commenter cites Libby, Montana as a prime example of the consequences of having asbestos in the air and provides a quote from the Asbestos.com website that describes Libby, Montana as “the site of one of America’s worst man-made environmental disasters.” Furthermore, the commenter reiterates that the EPA even declared a Public Health Emergency in 2008 in Libby, Montana, due to the asbestos dust from the mining of vermiculite and only recently (2018) announced a decline in clean-up efforts. The commenter concludes that the EPA should not approve the revisions.

Response: The EPA is concerned about the potential for adverse health effects of asbestos based on established sound scientific data indicating that asbestos is a known human carcinogen. Indeed, the Agency administers several laws and regulations pertaining to asbestos, see <https://www.epa.gov/asbestos/asbestos-laws-and-regulations>, including the CAA. For example, the CAA requires that the EPA establish national emission standards for hazardous air pollutants (NESHAP), including asbestos. To that end, asbestos was one of the first hazardous air pollutants regulated under the air toxics program, currently found at 40 CFR part 61, Subpart M. That regulation has been amended several times, see <https://www.epa.gov/stationary-sources-air-pollution/asbestos-national-emission-standards-hazardous-air-pollutants>. Nevertheless, while the commenter raises concerns with asbestos generally and with asbestos mining in Libby, Montana, specifically, the comment does not identify any material issues pertaining to the EPA’s review of a SIP revision under the National Ambient Air Quality Standards (NAAQS) program. Accordingly, the EPA is finalizing its approval of Montana’s SIP revision. The EPA notes,

nonetheless, that Montana is not removing the burning prohibitions from state law and this action does not exempt any sources from compliance with the national emission standards for asbestos in Subpart M.

Comment: The second commenter discusses the general health effects of asbestos reported from the World Health Organization and that, even though the NESHAP have in place regulations on burning of asbestos materials, the EPA should have as many regulations as possible to discourage burning of this material. Additionally, the commenter discusses that the safety of the City of Libby, neighboring states, and the nation of Canada should have been considered to verify that these populations were protected from harmful asbestos particulates. Furthermore, the commenter mentions that particles from asbestos will not remain as air pollution but could contaminate local water systems (lakes, rivers, reservoirs, and groundwater). The commenter concludes that the EPA should reject the revisions.

Response: As discussed above, asbestos is regulated under several EPA-administered laws and regulations, including the CAA's air toxics program. The NESHAP regulates hazardous air pollutants (HAPs), which are pollutants that are known or suspected to cause cancer or other serious health effects; to that end, EPA has established national emission standards for asbestos and certain asbestos-containing materials in 40 CFR part 61, Subpart M. Nevertheless, the comment does not identify any CAA provisions that the commenter believes either the EPA or the State failed to address with respect to interstate emissions, international emissions, or water pollution, nor does the comment identify any material issues pertaining to the EPA's review of a SIP revision under the NAAQS program. Accordingly, the EPA is finalizing its approval of Montana's SIP revision.

Comment: The third commenter discusses the general consequences to human health when asbestos is inhaled. The commenter also provides information from the World Health Organization and the International Labor Organization about global estimates that 125 million are exposed to asbestos each year and 107,000 workers die every year from occupational exposure to airborne asbestos, respectively. The commenter concludes that the EPA should not approve the revisions.

Response: As discussed above, the EPA is concerned about the potential health risks associated with asbestos and administers several laws and regulations pertaining to asbestos. Nonetheless, the comment does not identify any material issues pertaining to the EPA's review of a SIP revision under the NAAQS program. Accordingly, the EPA is finalizing its approval of Montana's SIP revision.

Comment: The fourth commenter briefly discusses the consequences to human health when asbestos is inhaled and provides a quote from the American Cancer Society that the U.S. Occupational Health and Safety Administration estimates that over a million American employees in construction and general industries face asbestos exposure on the job. Additionally, the commenter provides a quote from an article discussion on mesothelioma settlements that the mass asbestos exposure from the vermiculite mines in Libby resulted in two payouts: (1) 2011, \$43 million settlement covering more than 1,300 miners and their estates; and, (2) 2017, \$25 million settlement to more than 1,000 people. The commenter concludes that the State of Montana and the EPA are not concerned with the dangers of asbestos, nor the consequences on public health; therefore, the EPA should not approve the revisions.

Response: As discussed above, the EPA is concerned about the potential health risks associated with asbestos and administers several laws and regulations pertaining to asbestos.

Nonetheless, the comment does not identify any material issues pertaining to the EPA's review of a SIP revision under the NAAQS program. Accordingly, the EPA is finalizing its approval of Montana's SIP revision.

III. Final Action

We are finalizing our approval of the following revisions to the Montana SIP that were submitted on May 24, 2018: (1) removal of ARM 17.8.604(1)(w); (2) removal of the reference to ARM17.8.604(1)(w) in ARM 17.8.320(9); and (3) 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 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 the SIP amendments described in Section I and III of this preamble. The EPA has made, and will continue to make, these materials generally available through 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). 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 in the next update to the SIP compilation.¹

V. Statutory and Executive Order Reviews

¹ 62 FR 27968 (May 22, 1997).

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 Clean Air Act. Accordingly, this action merely approves 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, 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 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. 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION 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 section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: December 31, 2019.

Debra Thomas,
Acting Regional Administrator,
Region 8.

40 CFR part 52 is amended 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. In §52.1370, the table in paragraph (c) is amended by revising the entries for “17.8.320,” “17.8.604,” and “1660 Resolution.”

The revisions read as follows:

§52.1370 Identification of plan.

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(c) * * *

State citation	Rule title	State effective date	EPA final rule date	Final rule citation	Comments
* * * * *	* * * * *				
17.8.320	Wood-waste Burners		[Insert date of publication in the Federal Register]	[Insert Federal Register citation]	Removed (1)(w)
* * * * *	* * * * *				

17.8.604	Materials Prohibited from Open Burning		[Insert date of publication in the Federal Register]	[Insert Federal Register citation]	Removed cross-reference to ARM17.8.604(1)(w)
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1660 Resolution	Lincoln County Health and Environment Regulations		[Insert date of publication in the Federal Register]	[Insert Federal Register citation]	Removed 75.1.405(2)(w)
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