

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.8.101, 17.8.102, 17.8.103, 17.8.302,)
17.8.340, 17.8.767, 17.8.801, 17.8.802,)
17.8.818, 17.8.902, 17.8.1002,)
17.8.1202, and 17.8.1502 pertaining to)
incorporation by reference of current)
federal regulations and other materials)
into air quality rules)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 11, 2006 at 10:30 a.m. the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m., May 1, 2006, to advise us of the nature of the accommodation that you need. Please contact the board secretary at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or e-mail ber@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.8.101 DEFINITIONS As used in this chapter, unless indicated otherwise in a specific subchapter, the following definitions apply:

- (1) "Administrator" means the administrator of the U.S. Environmental Protection Agency or his the administrator's designee.
- (2) through (13) remain the same.
- (14) "EPA" means the U.S. Environmental Protection Agency.
- (15) through (42) remain the same.

AUTH: 75-2-111, MCA
IMP: Title 75, chapter 2, MCA

17.8.102 INCORPORATION BY REFERENCE--PUBLICATION DATES

- (1) Unless expressly provided otherwise, in this chapter where the board has:
 - (a) adopted a federal regulation by reference, the reference is to the July 1, ~~2004~~ 2005, edition of the Code of Federal Regulations (CFR);
 - (b) adopted a section of the United States Code (USC) by reference, the reference is to the 2000 edition of the USC and Supplement I ~~(2004 2003)~~;
 - (c) referred to a section of the Montana Code Annotated (MCA), the

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reference is to the ~~2003~~ 2005 edition of the MCA;

(d) adopted another rule of the department or of another agency of the state of Montana by reference, the reference is to the December 31, ~~2004~~ 2005, edition of the Administrative Rules of Montana (ARM).

AUTH: 75-2-111, MCA

IMP: Title 75, chapter 2, MCA

17.8.103 INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED DOCUMENTS (1) For the purposes of this subchapter, the board ~~hereby~~ adopts and incorporates by reference the following:

(a) through (g) remain the same.

(h) 40 CFR Part 60, Appendix B, pertaining to EPA performance specification and test procedures for continuous emission monitoring systems, except for the revisions to Appendix B, as set forth in the final rule published at 70 FR 28606 on May 18, 2005, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the Clean Air Mercury Rule (CAMR));

(i) through (4) remain the same.

AUTH: 75-2-111, MCA

IMP: Title 75, chapter 2, MCA

17.8.302 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board ~~hereby~~ adopts and incorporates by reference the following:

(a) 40 CFR Part 60, pertaining to standards of performance for new stationary sources and modifications, with the following exceptions:

(i) 40 CFR 60.1500 through 1940 and tables 1 through 8 (subpart BBBB), emission guidelines for existing small municipal waste combustion units, are not incorporated by reference; and

(ii) the revisions to 40 CFR 60.17, 21, 24, 41a, 45-46a, 48-52a, 4101-4176 (new subpart HHHH), and Appendix B, as set forth in the final rule published at 70 FR 28606 on May 18, 2005, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the Clean Air Mercury Rule (CAMR)) are not incorporated by reference;

(b) through (4) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, MCA

17.8.340 STANDARD OF PERFORMANCE FOR NEW STATIONARY SOURCES AND EMISSION GUIDELINES FOR EXISTING SOURCES (1) through (5)(e) remain the same.

~~(6) Existing small municipal waste combustion units, as defined in 40 CFR 60.1550(a), and that are not exempt under 40 CFR 60.1555, must:~~

~~(a) comply with the applicable requirements in 40 CFR 60, subpart BBBB;~~

~~(b) achieve final compliance with the Montana small municipal waste combustion unit plan (state plan) or cease operation as expeditiously as practicable but not later than the earlier of the following two dates:~~

~~(i) December 6, 2005; or
(ii) three years after the effective date of state plan approval by EPA; and
(c) for Class I units, as defined in 40 CFR 60.1040, for which construction was commenced after June 26, 1987, comply with the dioxins/furans and mercury limits specified in Tables 2 and 3 of 40 CFR 60, subpart BBBB, by the later of the following two dates:~~

~~(i) one year after the effective date of state plan approval; or
(ii) one year following the issuance of a revised construction or operation permit, if a permit modification is required.~~

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-203, MCA

17.8.767 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference:

(a) through (c) remain the same.

(d) 40 CFR Part 60, specifying standards of performance for new stationary sources, except for the revisions to 40 CFR 60.17.21, 24, 41a, 45-46a, 48-52a, 4101-4176 (new subpart HHHH), and Appendix B, as set forth in the final rule published at 70 FR 28606 on May 18, 2005, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the Clean Air Mercury Rule (CAMR));

(e) through (4) remain the same.

AUTH: 75-2-111, 75-2-204, MCA
IMP: 75-2-211, 75-2-215, MCA

17.8.801 DEFINITIONS In this subchapter, the following definitions apply:

(1) through (26) remain the same.

(27) The following apply to the definition of the term "significant":

(a) "significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)
Nitrogen oxides: 40 tpy
Sulfur dioxide: 40 tpy
Particulate matter: 25 tpy of particulate matter emissions
15 tpy of PM-10 emissions
Ozone: 40 tpy of volatile organic compounds
Lead: 0.6 tpy
Fluorides: 3 tpy
Sulfuric acid mist: 7 tpy

Hydrogen sulfide (H₂S): 10 tpy

Total reduced sulfur (including H₂S): 10 tpy

Reduced sulfur compounds (including H₂S): 10 tpy

Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): $3.2 * 10^{-6}$ megagrams per year ($3.5 * 10^{-6}$ tpy)

Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tpy)

Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tpy)

(b) through (29) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.802 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference the following:

(a) through (c) remain the same.

(d) 40 CFR Part 60, pertaining to standards of performance for new stationary sources, except for the revisions to 40 CFR 60.17, 21, 24, 41a, 45-46a, 48-52a, 4101-4176 (new subpart HHHH), and Appendix B, as set forth in the final rule published at 70 FR 28606 on May 18, 2005, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the Clean Air Mercury Rule (CAMR));

(e) through (5) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.818 REVIEW OF MAJOR STATIONARY SOURCES AND MAJOR MODIFICATIONS--SOURCE APPLICABILITY AND EXEMPTIONS (1) through (6) remain the same.

(7) The department may exempt a proposed major stationary source or major modification from the requirements of ARM 17.8.822, with respect to monitoring for a particular pollutant, if:

(a) the emissions increase of the pollutant from a new stationary source or the net emissions increase of the pollutant from a modification would cause, in any area, air quality impacts less than the following amounts:

(i) through (viii) remain the same.

(ix) hydrogen sulfide--0.2 $\mu\text{g}/\text{m}^3$, one-hour average;

(ix) remains the same, but is renumbered (x).

(b) and (c) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.902 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference the following:

(a) 40 CFR Part 60, pertaining to standards of performance for new stationary sources, except for the revisions to 40 CFR 60.17, 21, 24, 41a, 45-46a, 48-52a, 4101-4176 (new subpart HHHH), and Appendix B, as set forth in the final rule published at 70 FR 28606 on May 18, 2005, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the Clean Air Mercury Rule (CAMR));

(b) through (5) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.1002 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference the following:

(a) 40 CFR Part 60, pertaining to standards of performance for new stationary sources, except for the revisions to 40 CFR 60.17, 21, 24, 41a, 45-46a, 48-52a, 4101-4176 (new subpart HHHH), and Appendix B, as set forth in the final rule published at 70 FR 28606 on May 18, 2005, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the Clean Air Mercury Rule (CAMR));

(b) through (5) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.1202 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board adopts and incorporates by reference the following:

(a) remains the same.

(b) 40 CFR Part 72, pertaining to the operating permit requirements for acid rain sources subject to Title IV of the FCAA, except for the revisions to 40 CFR 72.2, as set forth in the final rule published at 70 FR 28606 on May 18, 2005, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the Clean Air Mercury Rule (CAMR));

(c) 40 CFR Part 75, pertaining to the continuous emission monitoring requirements for acid rain sources subject to Title IV of the FCAA, except for the revisions to 40 CFR 75.2, 6, 10, 15, 20-22, 24, 31-33, 38-39, 53, 57-59, 80-84, and Appendices A, B, F, and K, as set forth in the final rule published at 70 FR 28606 on May 18, 2005, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the Clean Air Mercury Rule (CAMR));

(d) through (5) remain the same.

AUTH: 75-2-217, MCA

IMP: 75-2-217, 75-2-218, MCA

17.8.1502 INCORPORATION BY REFERENCE (1) For purposes of this subchapter, the board hereby adopts and incorporates by reference the following:

(a) ~~(d)~~ 40 CFR part 72.2, which contains the definition of utility unit, except for the revisions to 40 CFR 72.2, as set forth in the final rule published at 70 FR 28606 on May 18, 2005, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the Clean Air Mercury Rule (CAMR));

~~(b)~~ ~~(e)~~ 40 CFR part 75, which describes the continuous emission monitoring requirements for acid rain sources subject to Title IV of the FCAA, except for the revisions to 40 CFR 75.2, 6, 10, 15, 20-22, 24, 31-33, 38-39, 53, 57-59, 80-84, and Appendices A, B, F, and K, as set forth in the final rule published at 70 FR 28606 on May 18, 2005, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the Clean Air Mercury Rule (CAMR));

(c) remains the same, but is renumbered (a).

~~(d)~~ ~~(b)~~ 40 CFR part 60.13 and 40 CFR Part 60, Appendix B, which set forth EPA performance specification and test procedures for continuous emission monitoring systems for new stationary sources, except for the revisions to 40 CFR Part 60, Appendix B, as set forth in the final rule published at 70 FR 28606 on May 18, 2005, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the Clean Air Mercury Rule (CAMR));

(e) remains the same, but is renumbered (c).

(f) through (4) remain the same.

AUTH: 75-2-217, 75-2-218, MCA

IMP: 75-2-217, 75-2-218, MCA

REASON: The board is proposing to amend the air quality rules to adopt the current editions of federal regulations, federal statutes, state statutes, and state rules that are incorporated by reference. This is necessary to maintain primacy from the U.S. Environmental Protection Agency (EPA) over air quality regulation in the state.

The board is proposing amendments to ARM 17.8.101 to update grammar and punctuation. The board is also proposing amendments to ARM 17.8.1502 to renumber sections listing CFR incorporations by reference so they will be in numerical order and consistent with the numbering style in other subchapters of ARM Title 17, chapter 8. These editorial amendments are not intended to change the meaning of the rules.

The board is proposing to amend ARM 17.8.102 to adopt revisions to federal regulations published in the Federal Register (FR) between July 1, 2004, and June 30, 2005, that are included in the July 1, 2005, edition of the Code of Federal Regulations (CFR). Revisions include changes to the definitions of volatile organic compounds; removal of ethylene glycol monobutyl ether (EGBE) from the list of hazardous air pollutants; promulgation of national emission standards for hazardous air pollutants (NESHAPs) for plywood and composite wood products and for industrial, commercial and institutional boilers and process heaters; technical amendments to the NESHAPs for secondary aluminum production, catalytic cracking and reforming units at petroleum refineries, solvent extraction for vegetable oil production, stationary combustion turbines, and asphalt processing; and addition of references to certain PM-2.5 precursors to the transportation conformity rule.

The board is proposing to amend ARM 17.8.103(1), 17.8.302(1), 17.8.767(1), 17.8.802(1), 17.8.902(1), 17.8.1002(1), 17.8.1202(1), and 17.8.1502(1) to exclude from incorporating by reference the Federal Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units (the Clean Air Mercury Rule (CAMR)). The board is proposing to exclude incorporation of CAMR, because the board intends to propose a Montana mercury rule which may incorporate certain sections of CAMR. If the board does not adopt a Montana mercury rule, the board may consider incorporation by reference of all or part of CAMR at a later date.

The board is proposing to amend ARM 17.8.302(1)(a)(i) and to delete ARM 17.8.340(6) to repeal references to small municipal waste combustion units (SMWCU). On December 6, 2000 (65 FR 76378), the EPA issued a regulation that re-established air pollutant emission guidelines for existing SMWCU, to be codified in 40 CFR Part 60, subpart BBBB. Under 40 CFR 60.1505(b), the state was required to either submit to the EPA a State Plan containing enforceable mechanisms for implementing the admission guidelines in 40 CFR Part 60, subpart BBBB, or to submit a negative declaration letter in place of a State Plan if there were no existing SMWCU in the state. At the time of the issuance of the EPA's regulation, Montana had one existing SMWCU, the Park County incinerator. The state submitted the Montana Small Municipal Waste Combustion Unit Plan to the EPA on October 26, 2001. Amendments to ARM 17.8.302(1)(a), which at that time was designated as 17.8.302(1)(b), and 17.8.340(6) that had been approved by the board on September 21, 2001, provided the enforceable mechanisms for the State Plan. Because the State Plan was never approved by the EPA, the Park County incinerator was subject to federal implementation of the requirements contained in 40 CFR Part 62, subpart JJJ. As of May 2005, the Park County incinerator had been removed, and the facility was being used as a transfer station. Because there are no other SMWCU in the state, a State Plan is not required. Montana submitted a request to the EPA on June 27, 2005, that the EPA withdraw Montana's State Plan. The EPA then requested that the state amend ARM 17.8.302(1)(a) to exclude incorporating 40 CFR 60.1500 through 1940 and tables 1 through 8 (subpart BBBB), pertaining to the emission guidelines and compliance times for SMWCU and to delete ARM 17.8.340(6) so there will be no future conflict with the EPA's regulatory authority if Montana has any SMWCU in the future.

The board is proposing to amend ARM 17.8.801(27) to make the language consistent with 40 CFR 51.166(b)(23)(i), by adding a significance level for hydrogen sulfide (H₂S), and to amend ARM 17.8.818(7)(a), by adding a net emissions increase level for H₂S, to make the language consistent with 40 CFR 51.166(i)(5)(i).

The board will also take testimony on submission of the proposed amendments to the EPA as proposed revisions to the State Implementation Plan (SIP).

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to the board secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or e-mailed to ber@mt.gov, no later than 5:00 p.m., May 18, 2006. To be

guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Katherine Orr, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to the board secretary at ber@mt.gov or may be made by completing a request form at any rules hearing held by the board.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

BOARD OF ENVIRONMENTAL REVIEW

By: /s/ Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.,
Chairperson

Reviewed by:

/s/ David Rusoff
DAVID RUSOFF, Rule Reviewer

Certified to the Secretary of State, March 27, 2006.