

(1) *Location*. All waters in the vicinity of Point Au Roche State Park in Plattsburgh, New York, enclosed by a box starting at latitude 44°46'30"N, longitude 73°23'26"W; thence to latitude 44°46'17"N, longitude 73°23'26"W; thence to latitude 44°46'17"N, longitude 73°23'46"W; thence to latitude 44°46'29"N, longitude 73°23'46"W; thence to the point of beginning.

(2) *Effective Date*. This rule will be enforced from 9 a.m. to 10 a.m. on August 9, 2008.

(d) The following area is a fixed safety zone for the "Sprucewold Cabbage Island Swim":

(1) *Location*. All waters in the vicinity of Linekin Bay between Cabbage Island and Sprucewold Beach in Boothbay Harbor, Maine enclosed by a box starting at latitude 43°50'37"N, longitude 69°36'23"W; thence to latitude 43°50'37"N, longitude 69°36'59"W; thence to latitude 43°50'16"N, longitude 69°36'46"W; thence to latitude 43°50'22"N, longitude 69°36'21"W; thence to the point of beginning.

(2) *Effective Date*. This rule will be enforced from 3 p.m. to 4 p.m. on August 9, 2008.

(e) The following area is a fixed safety zone for the "Rockland Breakwater Swim":

(1) *Location*. All waters in the vicinity of Rockland Breakwater in Rockland Harbor, Maine enclosed by a box starting at latitude 44°06'16"N, longitude 69°04'39"W; thence to latitude 44°06'14"N, longitude 69°04'36"W; thence to latitude 44°06'13"N, longitude 69°04'41"W; thence to latitude 44°06'16"N, longitude 69°04'42"W; thence to latitude 44°06'16"N, longitude 69°04'40"W.

(2) *Effective Date*. This rule will be enforced from 10 a.m. to 12 p.m. on August 23, 2008.

(f) *Definition*: As used in this section, designated representative means any Coast Guard commissioned, warrant, or petty officer, or any federal, state, or local law enforcement officer authorized to enforce this regulation on behalf of the Coast Guard Captain of the Port (COTP).

(g) *Regulations*. (1) In accordance with the general regulations in 165.23 of this part, entry into or movement within this zone by any person or vessel is prohibited unless authorized by the COTP Sector Northern New England or the COTP's designated representative.

(2) Vessel operators desiring to enter or operate within the safety zones may contact the COTP or the COTP's designated representative for permission at telephone number 207-767-0303, on VHF Channel 13 (156.7 MHz), or VHF channel 16 (156.8 MHz). If permission

is granted, all persons and vessels must comply with the instructions provided by the COTP or the COTP's designated representative.

Dated: July 16, 2008.

**J.B. McPherson,**

*Captain, U.S. Coast Guard, Captain of the Port, Sector Northern New England.*

[FR Doc. E8-17292 Filed 7-28-08; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2006-0806, FRL-8683-5]

#### Approval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Administrative Rules of Montana—Air Quality, Incinerators

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is approving revisions to the State Implementation Plan (SIP) submitted by the Governor of Montana on December 8, 1997, May 28, 2003, and August 25, 2004. The December 8, 1997 submittal revised the Administrative Rules of Montana (ARM) chapter 8, subchapter 3, section 17.8.316 (Incinerators) by adding subsection (6). ARM 17.8.316(6) excludes incinerators from having to comply with the other provisions of ARM 17.8.316, including the particulate matter emissions standard of 0.10 grains per cubic foot and the 10% opacity standard, if these sources have been issued a Montana air quality permit under 75-2-215, Montana Code Annotated (MCA), and ARM 17.8.770, which pertain to permitting of solid or hazardous waste incinerators. The August 25, 2004 submittal made a minor editorial revision to ARM 17.8.316(5). The May 28, 2003 submittal made minor editorial revisions to ARM 17.8.316(6). In a December 12, 2007 Notice of Proposed Rulemaking (72 FR 70540), we proposed to approve these revisions to the Montana State Implementation Plan (SIP). This action is being taken under section 110 of the Clean Air Act (CAA). **DATES:** *Effective Date:* This final rule is effective August 28, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2006-0806. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available,

e.g., Confidential Business Information (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 either electronically through <http://www.regulations.gov> or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. 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 a.m. to 4 p.m., excluding Federal holidays.

#### FOR FURTHER INFORMATION CONTACT:

Kathy Dolan, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129, 303-312-6142, [dolan.kathy@epa.gov](mailto:dolan.kathy@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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- I. Summary of SIP Revision
- II. Final Action
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##### Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* or *Montana* mean the State of Montana, unless the context indicates otherwise.

#### I. Summary of SIP Revision

On December 8, 1997, the State of Montana submitted a SIP revision for EPA's approval. The revision added subsection (6) to section 17.8.316 (Incinerators) of the Administrative Rules of Montana (ARM), chapter 8 (Air Quality), subchapter 3 (Emission Standards). Subsection (6) exempts incinerators from the requirements of ARM 17.8.316, including the particulate matter emissions standard of 0.10 grains per cubic foot and the 10% opacity standard, if these sources have been issued a Montana air quality permit

under 75–2–215, MCA, and ARM 17.8.706(5).<sup>1 2</sup>

The revision also included wording changes to ARM 17.8.316. Most are minor editorial or technical corrections and do not change the substance of the rule. One of the changes was to substitute the words “solid and hazardous waste” for the word “refuse” in the rule. The effect of this change was to extend the rule requirements to incinerators burning solid or hazardous waste, not just refuse. The full text of the changes can be found in our Technical Support Document (TSD), which is contained in the Docket for this action.

We interpret ARM 17.8.316(6) to allow terms of a permit to override a requirement that has been approved as part of the SIP (i.e., the provisions in ARM 17.8.316(1)–(5)). Therefore, an analysis was needed to show that this new rule would not interfere with compliance with the National Ambient Air Quality Standards (NAAQS) or Prevention of Significant Deterioration (PSD) increments. Section 110(l) of the CAA states that EPA cannot approve a SIP revision that would interfere with any applicable requirement concerning attainment or reasonable further progress, as defined in section 171 of the CAA, or any other applicable requirements of the CAA. Montana did not provide any demonstration in its December 8, 1997 submittal that ARM 17.8.316(6) meets these criteria. Subsequent to the State’s submittal, we requested information from the Montana Department of Environmental Quality (DEQ) in order to conduct our own analysis on the impact of ARM 17.8.316(6) on the attainment and maintenance of the NAAQS for particulate matter with an aerodynamic diameter less than or equal to 10 and 2.5 micrometers (PM–10 and PM–2.5) and compliance with the PSD PM–10 increments. Based on this analysis, we have determined that this specific change to a SIP requirement will not adversely impact the attainment and maintenance of the PM–10 and PM–2.5 NAAQS, or compliance with the PM–10 increments, in Montana. Our analysis of this revision’s impact is contained in the TSD for this action. In addition, the

TSD discusses our verification that ARM 17.8.316(6) will not impact compliance with, or the ability to enforce, the Federal New Source Performance Standards (NSPS) or Maximum Achievable Control Technology (MACT) regulations. Based on a letter from the Montana DEQ dated October 2, 2007, and our own consideration of the rule change, we have determined that ARM 17.8.316(6) will not interfere with, supersede, or replace any NSPS or MACT requirements for sources, or affect in any way the State’s, EPA’s, or any other person’s ability to enforce such NSPS or MACT requirements. The TSD and the DEQ letter are available for review as part of the Docket for this action.

On August 25, 2004, the State of Montana submitted for our approval a revision to subsection (5) to ARM 17.8.316 (Incinerators). This revision makes a minor change to the third sentence of subsection (5), from: “Testing shall be conducted in accordance with ARM 17.8.106 and the Montana Source Testing Protocol and Procedures Manual”; to: “Testing shall be conducted in accordance with ARM 17.8.106 and the Montana Source Test Protocol and Procedures Manual.”

On May 28, 2003, the State of Montana submitted for our approval a revision to ARM 17.8.316(6). This revision makes minor changes to subsection (6), from: “This rule does not apply to incinerators for which an air quality preconstruction permit has been issued under 75–2–215, MCA, and ARM 17.8.706(5)”; to: “This rule does not apply to incinerators for which a Montana air quality permit has been issued under 75–2–215, MCA, and ARM 17.8.770.”

## II. Final Action

Our review of the revisions to ARM 17.8.316 indicates that they are consistent with the CAA. Thus, we are approving the revisions to ARM 17.8.316, submitted on December 8, 1997, May 28, 2003, and August 25, 2004, into the Montana SIP.

## III. Statutory and Executive Order Reviews

Under the Clean Air Act, 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, 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 (Pub. L. 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 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

<sup>1</sup> MCA section 75–2–215 is titled “Solid or hazardous waste incineration—Additional permit requirements”.

<sup>2</sup> ARM 17.8.706(5) was recodified to ARM 17.8.770 effective on December 6, 2002. This provision has not been submitted by the State to be incorporated into the federally approved SIP. ARM 17.8.770 (formerly ARM 17.8.706(5)) requires applicants for a preconstruction permit for an incineration facility to submit a human health risk assessment protocol and a human health risk assessment.

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).

#### 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.

Dated: June 5, 2008.

**Carol Rushin,**

*Acting Regional Administrator, Region 8.*

■ 40 CFR part 52 is amended to read as follows:

#### **PART 52—[AMENDED]**

■ 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 by adding paragraph (c)(67) to read as follows:

#### **§ 52.1370 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(67) On December 8, 1997, May 28, 2003, and August 25, 2004, the

Governor of Montana submitted revisions to the Montana State Implementation Plan. The December 8, 1997 submittal adds subsection (6) to Administrative Rules of Montana (ARM) section 17.8.316 (Incinerators); the August 25, 2004 submittal makes a minor revision to ARM 17.8.316(5); and, the May 28, 2003 submittal makes minor editorial revisions to ARM 17.8.316(6).

(i) Incorporation by reference. Administrative Rules of Montana (ARM) section 17.8.316, Incinerators, effective April 9, 2004.

(ii) Additional Material.

(A) October 2, 2007 Letter from MT DEQ to EPA regarding NSPS/MACT compliance.

[FR Doc. E8-17094 Filed 7-28-08; 8:45 am]

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