

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.8.102 pertaining to incorporation by)
reference--publication dates)
)
NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

(AIR QUALITY)

TO: All Concerned Persons

1. On March 20, 2014, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 40, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

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 Elois Johnson, Paralegal, no later than 5:00 p.m., March 10, 2014, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.8.102 INCORPORATION BY REFERENCE--PUBLICATION DATES

(1) In this chapter where the board has:

(a) adopted a federal regulation by reference, the reference is to the July 1, ~~2010~~ 2013, 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 ~~2006~~ 2012 edition of the USC and Supplement IV ~~(2010)~~ as it exists on December 31, 2013;

(c) adopted ~~another~~ a rule of the department or of another agency of the state of Montana by reference, the reference is to the ~~December 31, 2010, edition from another chapter~~ of the Administrative Rules of Montana (ARM), the reference is to the rule in effect on June 30, 2013.

(2) ~~For purposes of this chapter, the following subparts, or portions thereof, of 40 CFR Part 60, are excluded from incorporation by reference:~~

(a) ~~40 CFR 60, Subpart CCCC, Standards of Performance for Commercial and Industrial Solid Waste Incineration Units for which Construction is Commenced After November 30, 1999, or for which Modification or Reconstruction is Commenced on or After June 1, 2001 (40 CFR 60.2000 through 60.2265, and all associated appendices and tables), as vacated June 8, 2007, by the U.S. Circuit Court of Appeals, D.C. Circuit, ruling; and~~

(b) ~~40 CFR Part 60, Subpart HHHH, Emission Guidelines and Compliance Times for Coal-fired Electric Steam Generating Units.~~

(3) (2) For purposes of this chapter, the following subparts, ~~or portions~~

thereof, of 40 CFR Part 63 are excluded from incorporation by reference:

(a) 40 CFR 63, Subpart JJJJJ, National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing (40 CFR 63.8380 through 63.8515, and all associated appendices and tables), ~~as vacated March 13, 2007, by the U.S. Circuit Court of Appeals, D.C. Circuit; and~~

(b) 40 CFR 63, Subpart KKKKK, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing (40 CFR 63.8530 through 63.8665, and all associated appendices and tables), ~~as vacated March 13, 2007, by the U.S. Circuit Court of Appeals, D.C. Circuit; and~~

(c) ~~40 CFR 63, Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters (40 CFR 63.7480 through 63.7575, and all associated appendices and tables), as vacated June 8, 2007, by the U.S. Circuit Court of Appeals, D.C. Circuit.~~

(3) A copy of materials incorporated by reference in this chapter is available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Avenue, P.O. Box 200901, Helena, MT 59620-0901.

(4) Copies of federal materials also may be obtained from:

(a) National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161; phone: (800) 553-5847 or (703) 504-5000; fax: (703) 504-5900; e-mail: orders@ntis.gov; web: <http://www.ntis.gov>;

(b) National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242-0419; phone: (800) 490-9198 or (513) 489-8190; fax: (513) 489-8595; e-mail: ncepimal@one.net; web: <http://www.epa.gov/ncepimom>;

(c) U.S. Government Printing Office, Information Dissemination (Superintendent of Documents), P.O. Box 371954, Pittsburgh, PA 15250-7954; phone: (866) 512-1800 or (202) 512-2104; e-mail: orders@gpo.gov; web: <http://www.gpoaccess.gov>; and

(d) the EPA regional office libraries listed at <http://www.epa.gov/natlibra/libraries.htm>.

AUTH: 75-2-111, MCA

IMP: Title 75, chapter 2, MCA

REASON: The board is proposing to amend the air quality rules to adopt the current editions of federal and state statutes, regulations, and rules that are incorporated by reference. The board is proposing to amend ARM 17.8.102(1) to adopt revisions to federal laws and regulations published in the 2012 edition of the U.S. Code, as it exists on December 31, 2013; the July 1, 2013, edition of the Code of Federal Regulations (CFR); and revisions to Montana administrative rules in effect on June 30, 2013. The rules in effect on that date will be contained in the Administrative Rules of Montana (ARM) as updated by the replacement pages dated June 30, 2013. The board is also proposing to amend ARM 17.8.102 to remove exceptions from incorporation by reference of certain subparts of federal regulations that were vacated by the courts and removed from the CFR or amended and readopted. The board adopts and incorporates by reference federal regulations to ensure that Montana's air quality rules are at least as stringent as federal air quality

regulations, to maintain primacy and federal delegation of Montana's air quality program, and to implement federal emission standards pursuant to a federal program of emissions control.

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 Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., March 27, 2014. 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, e-mail, 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 supply; 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. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

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

8. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North
JOHN F. NORTH
Rule Reviewer

BY: /s/ Robin Shropshire
ROBIN SHROPSHIRE
Chairman

Certified to the Secretary of State, February 18, 2014.