

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.8.101, 17.8.103, 17.8.201, 17.8.202,)
17.8.204, and 17.8.230 pertaining to)
definitions, incorporation by reference)
and availability of referenced)
documents, definitions, incorporation by)
reference, ambient air monitoring, and)
fluoride in forage and the repeal of ARM)
17.8.206 pertaining to methods and data)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
REPEAL

(AIR QUALITY)

TO: All Concerned Persons

1. On January 15, 2015, at 9:30 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 and repeal 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 Elois Johnson, Paralegal, no later than 5:00 p.m., January 5, 2015, 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 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) through (7) remain the same.

(8) "Board" means the Board of Environmental Review as provided for in 2-15-3502, MCA.

(8) through (11) remain the same, but are renumbered (9) through (12).

(13) "Department" means the Department of Environmental Quality as provided for in 2-15-3501, MCA.

(12) through (42) remain the same, but are renumbered (14) through (44).

AUTH: 75-2-111, MCA

IMP: Title 75, chapter 2, MCA

REASON: The board is proposing to add the definitions of "board" and "department" to this rule because the terms are used throughout Chapter 8. Rather than define the terms in each subchapter, the board is proposing to define them

once, in this rule, for the entire chapter.

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

(a) through (l) remain the same.

(m) section 112(b)(1) of the Federal Clean Air Act (FCAA), as codified in 42 USC 7412(b)(1), pertaining to substances designated as hazardous air pollutants; and

(n) the Montana Source Test Protocol and Procedures Manual (July 1994 ed.), a department manual pertaining to sampling and data collection, recording, analysis, and transmittal requirements; and

~~(o) the Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I: A Field Guide to Environmental Quality Assurance (EPA-600/R-94/038a, revised April 1994); Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II: Part 1 Ambient Air Quality Monitoring Program Quality System Development (EPA-454/R-98/004, revised August 1998); Quality Assurance Handbook for Air Pollution Measurement Systems, Volume III: Stationary Source Specific Methods (EPA-600/R-94/038c, revised September 1994); and Quality Assurance Handbook for Air Pollution Measurement Systems, Volume IV: Meteorological Methods (EPA-600/R-94/038d, revised March 1995), a federal manual pertaining to sampling and data collection, recording, analysis, and transmittal requirements.~~

(2) through (4) remain the same.

AUTH: 75-2-111, MCA

IMP: Title 75, chapter 2, MCA

REASON: The board is proposing to delete ARM 17.8.103(1)(o) to remove references to Volumes I through IV of the Quality Assurance Handbook for Air Pollution Measurement Systems published by the federal Environmental Protection Agency (EPA). Volumes I, II, and IV are already appropriately referenced in the applicable federal regulations incorporated by reference in ARM Title 17, chapter 8, subchapter 1, and the reference to Volume III was inappropriate, as it did not address ambient monitoring.

17.8.201 DEFINITIONS In this subchapter, the following words and phrases shall have the following meanings:

(1) remains the same.

(2) "Administrator," as used in 40 CFR Part 58, means the department.

(2) through (5) remain the same, but are renumbered (3) through (6).

~~(6) "Department" means the Department of Environmental Quality.~~

(7) through (25) remain the same.

(26) "Regional administrator," as used in 40 CFR Part 58, means the department.

(26) through (33) remain the same, but are renumbered (27) through (34).

AUTH: 75-2-111, 75-2-202, MCA
IMP: 75-2-202, MCA

REASON: The board is proposing to delete the definition of "department" from this subchapter because it is proposing, as discussed above, to define the term in ARM 17.8.101 for the entire chapter. It is unnecessary to define a term in a subchapter when that term is defined for the entire chapter. The board is proposing to add definitions of "administrator" and "regional administrator," as those terms are used in 40 CFR Part 58, which is incorporated by reference in ARM 17.8.202. Those terms would mean the department. This would clarify that the department will be the administrator for that regulation.

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

(a) ~~The Montana Ambient Air Monitoring Program Quality Assurance Project Plan (November 1996 ed. 2013), a Department of Environmental Quality department manual specifying that specifies ambient air sampling and data collection, recording, analysis, and transmittal requirements that pertain only to the department's monitoring program;~~

~~(b) Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I: A Field Guide to Environmental Quality Assurance, (EPA/600/R-94/038a, revised April 1994); Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II: Part 1 Ambient Air Quality Monitoring Program Quality System Development, (EPA/454/R-98-004, revised August 1998); Quality Assurance Handbook for Air Pollution Measurement Systems, Volume III: Stationary Source Specific Methods, (EPA/600/R-94/038c, revised September 1994); and Quality Assurance Handbook for Air Pollution Measurement Systems, Volume IV: Meteorological Methods, (EPA/600/R-94/038d, revised March 1995), a federal manual specifying sampling and data collection, recording, analysis, and transmittal requirements EPA Ambient Monitoring Guidelines for Prevention of Significant Deterioration (PSD), EPA-450/4-87-007 (May 1987);~~

~~(c) Methods of Air Sampling and Analysis, Third Edition (1989), Method No. 204, determination of fluoride content of the atmosphere and plant tissues (semi-automated method), a nationally recognized document specifying field and laboratory analytic procedures;~~

~~(d) and (e) remain the same, but are renumbered (c) and (d).~~

~~(f) (e) 40 CFR Part 58, including Appendices A through G, specifying criteria and requirements for ambient air quality monitoring and reporting.~~

~~(2) through (4) remain the same.~~

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

REASON: The board is proposing to amend ARM 17.8.202(1)(a) to incorporate by reference the updated 2013 version of the Montana Ambient Air Monitoring Program Quality Assurance Project Plan (QAPP) and remove the outdated 1996 version of the QAPP. The major changes in the 2013 version include

monitoring protocols for additional pollutants, substitution of citations to federal regulatory language in place of the actual language in the text, and replacement of references to outdated technologies with references to modern methods. For example, ozone, while a regulated pollutant, was not addressed in the 1996 Montana QAPP and PM_{2.5} was not a regulated pollutant at that time, so was not addressed in the 1996 QAPP. Both pollutants are addressed in the 2013 QAPP. In addition, the 1996 Montana QAPP unnecessarily repeated federal regulatory language and the 2013 version has eliminated that repetition by referencing those requirements instead of repeating them. Numerous other changes address the significant changes in the technologies and methods now used to conduct monitoring compared to those used in 1996. These and other changes are described in Summary of Changes: 1996 to 2013 QAPP. It, and the complete text of the Montana Ambient Air Monitoring Program Quality Assurance Project Plan (2013), are available on the department's web site at <http://deq.mt.gov/airmonitoring/monitoringdocuments.mcp>.

Annually hereafter, or as needed, the board will initiate rulemaking to update the version of the QAPP that is incorporated by reference in the ARM. In addition, the board is proposing to remove from this rule references to Volumes I through IV of the Quality Assurance Handbook for Air Pollution Measurement Systems published by EPA for the same reasons given in the discussion of the proposed amendments to ARM 17.8.103. Finally, the board is proposing to incorporate by reference "EPA Ambient Monitoring Guidelines for Prevention of Significant Deterioration (PSD)" (May 1987). These guidelines are used in ARM 17.8.204 to establish the requirements for monitoring performed by sources subject to subchapter 8, which concerns prevention of significant deterioration of air quality. These guidelines are not adopted in the federal regulations adopted by reference in this chapter, but they provide supplemental information that is important when a company makes PSD monitoring determinations and when the department makes decisions about the quality and acceptability of collected monitoring data. The board is proposing to adopt and require compliance with the guidelines to provide as much consistency and clarity as possible to entities developing a monitoring project. Adoption of these guidelines would conform the rules to match the practices that monitoring entities, other than the department, must already follow to obtain air quality data suitable for use in the PSD review process. The complete text of the guidelines is available at <http://nepis.epa.gov/Exe/ZyPDF.cgi/2000J2Q6.PDF?Dockey=2000J2Q6.PDF>.

17.8.204 AMBIENT AIR MONITORING (1) ~~The requirements of this rule apply to any ambient air monitoring performed by the department or any other entity as required by this chapter, including any ambient air monitoring performed as a result of any condition of any permit issued under subchapters 7 or 8 regardless of the date of issuance, or any other ambient air monitoring by any entity in order to determine compliance with subchapters 2 or 8. that is:~~

- (a) required by this chapter;
- (b) used to demonstrate compliance with this chapter;
- (c) submitted in an application for, or to comply with a condition of, a permit under this chapter; or

(d) used to satisfy any applicable requirement of Title 75, chapter 2, MCA, or the federal Clean Air Act, 42 USC 7401 through 7671g, or implementing regulations, for which the department has oversight.

~~(2) Except as otherwise provided in this chapter, or unless written approval is obtained from the department for an exemption from a specific part of the Montana Quality Assurance Project Plan, all sampling and data collection, recording, analysis, and transmittal including, but not limited to, site selection, precision and accuracy determinations, data validation procedures and criteria, preventive maintenance, equipment repairs, and equipment selection must be performed as specified in the Montana Quality Assurance Project Plan, incorporated by reference in ARM 17.8.202, except when more stringent requirements are determined by the department to be necessary pursuant to the Quality Assurance Handbook for Air Pollution Measurement Systems, or 40 CFR Part 50 including Appendices A through E, Part 53, and Part 58 also incorporated by reference in ARM 17.8.202, at which time the latter two documents shall be adhered to for the specific exception. Any entity performing ambient air monitoring within the state of Montana for a purpose listed in (1) shall perform it according to a Quality Assurance Project Plan (QAPP) prepared to satisfy the applicable requirements of 40 CFR Parts 50, 53, and 58, and, if performed to comply with subchapter 8 of this chapter, the EPA Ambient Monitoring Guidelines for PSD, which are adopted by reference in ARM 17.8.202.~~

(3) If monitoring for a purpose in (1) is performed by:

(a) the department, it must be performed in compliance with the Montana Ambient Air Monitoring Program Quality Assurance Project Plan; or

(b) any other entity, it must be performed in compliance with a project-specific QAPP that has been submitted to and approved by the department.

~~(3) (4) Failure to comply with this rule is grounds to partially or totally invalidate the appropriate ambient air monitoring data which subsequently could result in: The department may invalidate, in whole or in part, ambient air monitoring data that was not obtained in compliance with this rule. Invalidated data may not be used for the purposes listed in (1).~~

~~(a) a violation of the conditions of a permit issued under subchapters 7 or 8; or~~

~~(b) a determination by the department that a permit application submitted under subchapters 7 or 8 is incomplete; or~~

~~(c) a determination that insufficient ambient air quality data is available to determine compliance with any ambient air quality standard contained in subchapter 2 or a prevention of significant deterioration increment contained in ARM 17.8.804.~~

AUTH: 75-2-111, MCA

IMP: 75-2-201, 75-2-202, MCA

REASON: The proposed amendments to (1) would establish a single, uniform standard by which all regulatory-quality ambient air monitoring must be conducted within the state of Montana, whether performed by the department or any other entity. That standard would require ambient air quality monitoring to comply with ARM 17.8.204, if it is: (a) required by the air quality rules in ARM Title 17, chapter 8 (the rules that implement the Montana Clean Air Act); (b) used to

demonstrate compliance with those rules; (c) submitted as part of an air quality permit application or to comply with an air quality permit condition; or (d) used to satisfy any requirement of the Montana Clean Air Act or federal Clean Air Act, or implementing regulations. These amendments are necessary because the requirements in the current rule that ambient monitoring be performed according to a QAPP are limited to ambient monitoring required by an air quality rule or an air quality permit. These requirements would be retained in the proposed amendments. In addition, the proposed amendments to (1)(c) and (1)(d) would require that ambient monitoring data, that may be submitted in a permit application or to satisfy a requirement of the Montana Clean Air Act or the federal Clean Air Act and implementing regulations, must comply with a QAPP approved under ARM 17.8.204.

The proposed amendment to (1)(c), which would require that monitoring data submitted in an air quality permit application must meet the quality assurance and quality control (QA/QC) requirements of this subchapter, is necessary because that requirement is not in the existing rule and the requirement would ensure that the data in a permit application are reliable. For example, a new mine or electrical generating plant may be required by ARM 17.8.822(5) and (6) to monitor for a year to develop data concerning wind direction and speed and baseline levels of air pollutants before applying for an air quality permit. The proposed requirement in (1)(c) for such pre-application monitoring to be performed according to the QA/QC provisions of this subchapter would ensure that, when the data is submitted as part of a permit application, it has been collected according to acceptable national standards.

The proposed new language in (1)(d), which would require that monitoring used to satisfy any requirement of the state or federal Clean Air Acts or implementing regulations must meet the QA/QC requirements of this subchapter, is necessary because it is not in the existing rules. The proposed requirement would ensure that monitoring used, for example, to influence a nonattainment designation is reliable. For example, under 42 USC 7407(d), a provision of the federal Clean Air Act, each state must submit, within one year after a new national ambient air quality standard (NAAQS) is adopted in federal regulation, a designation to EPA of the attainment status of all areas in the state for that NAAQS. Private entities conducting ambient monitoring for the subject criteria pollutant may also submit data to the department in support of a specific designation. Such monitoring might not be required by Montana law or rules, federal law or regulations, or an air quality permit. However, if data generated by that monitoring is submitted to influence an attainment or nonattainment designation by the department, the proposed new language in (1)(d) would require that it satisfy the ambient air quality monitoring requirements in this subchapter to the same extent as data generated by the department.

The amendments to (2) would eliminate the requirement that all ambient monitoring must be performed according to the Montana Quality Assurance Project Plan (Montana QAPP) and instead require that all ambient monitoring be performed in compliance with a QAPP prepared in accordance with the federal quality assurance regulations and guidelines. The reason the existing requirement should be eliminated is that it is inappropriate and must be replaced as described below. The existing rule requires entities, other than the department, that conduct ambient

air quality monitoring to use the same QAPP that the department uses, unless an exemption is granted by the department. This is not appropriate because the QAPP used by the department contains specific processes and procedures required only of regulatory agencies, which are not within the ability or purview of other entities, such as submitting data to federal databases, determining compliance with NAAQS, providing the public with air quality data, and participating in state and federal research efforts. On the other hand, a QAPP to be used for project-specific monitoring must be designed for the specific characteristics of the area, such as appropriate siting, topography, wind direction and speed, and specifics of the project, such as pollutants to be emitted. In addition, project-specific monitoring may include PSD monitoring, which is required of industrial sources and cannot be conducted by the department. The reference to the Montana QAPP in the existing rule is inappropriate and, in practice, entities other than the department, that conduct ambient monitoring for the purposes in (1), have submitted and obtained department approval for project-specific QAPPs.

The proposed new language in (2) would add the requirement that all ambient monitoring used for a purpose in (1) must be performed according to a QAPP prepared to satisfy federal regulations concerning QA/QC for such monitoring. Under the proposed amendment, all monitoring to be used for a purpose in (1) would be required to be performed according to a QAPP satisfying 40 CFR Parts 50, 53, and 58, including quality assurance requirements for state or local air monitoring stations (SLAMS), special purpose monitor stations (SPMs), and prevention of significant deterioration (PSD) air monitoring. The reason for the proposed new language is to ensure that all monitoring used for a purpose in (1) is performed in compliance with a single set of federal QA/QC requirements. It is beneficial to the department and other entities, as described above, that all monitoring that may be used for a regulatory purpose meet a consistent, defined level of QA/QC. The federal regulations concerning QA/QC already provide a suitable, nationally standardized and applicable apparatus by which to ensure the accuracy and reliability of such monitoring data. Under the proposed rule, the QAPPs required to be used by the department and private entities would all be subject to this same set of regulations.

The proposed new language in (3)(a) would require that, if the monitoring is performed by the department, it must comply with the Montana Ambient Air Monitoring Program Quality Assurance Project Plan. This is a QAPP that is based on the federal regulations in 40 CFR Parts 50, 53, and 58 and is designed to address matters relevant to ambient monitoring conducted by the state. A renamed and updated version of that QAPP is being proposed for adoption in ARM 17.8.202(1)(a). This would bring the Montana requirement up-to-date with federal regulations for ambient monitoring of such pollutants as PM_{2.5}, for example, which was not a regulated pollutant when the last version of the Montana QAPP was adopted in 1996.

The proposed new language in (3)(b) would incorporate the requirement from 40 CFR Part 58 that a project-specific QAPP be submitted to and approved by the department before monitoring begins. In practice, the department has worked to approve QAPP documents in a timely manner and anticipates publishing guidance to that end. A project-specific QAPP is necessary for the reasons discussed above.

When an entity other than the department performs ambient monitoring before a permit application is submitted or to comply with a permit condition, it is required by existing federal regulations to perform it according to a QAPP that has been reviewed and approved by the EPA. Under the proposed amendments to ARM 17.8.201(2) and (26) and ARM 17.8.204(2)(b), the department would be the reviewing and approving authority. The department's review and approval of another entity's QAPP for monitoring performed to satisfy other requirements of the state or federal Clean Air Acts or implementing regulations is not required by federal regulations. However, department review and approval of a QAPP is necessary to ensure that the monitoring data collected will be reliable and appropriate to use for such actions as proposing designations of whether areas are attaining the NAAQS. The complete text of 40 CFR Part 58 is available at <http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR&searchPath=Title+40%2FChapter+1%2FSubchapter+C%2FPart+58&oldPath=Title+40%2FChapter+1%2FSubchapter+C%2FPart+58@isCollapsed=true&selectedYearFrom=2013&ycord=1652>.

The proposed amendments to (4) would authorize the department to invalidate data submitted for the regulatory purposes described above in (1), if the data was not obtained in compliance with ARM 17.8.204. If invalidated, the department may not use the data for regulatory purposes. While the proposed amendments maintain the department's existing authority to invalidate data, they also authorize the department to exercise discretion not to invalidate data, even if not obtained in compliance with the rule. This amendment would allow the department to determine whether failure to fully comply with the applicable rules and regulations undermines the quality of the data produced. In some cases, substantial compliance may produce data of appropriate quality to be used for a purpose listed in (1). This is consistent with 40 CFR Part 58, Appendix A, the regulation of the federal EPA that governs QAPPs for ambient monitoring. Section 1(a) of that appendix states: "Each monitoring organization is required to implement a quality system that provides sufficient information to assess the quality of the monitoring data. The quality system must, at a minimum, include the specific requirements described in this appendix of this subpart. Failure to conduct or pass a required check or procedure, or a series of required checks or procedures, does not by itself invalidate data for regulatory decision making. Rather, monitoring agencies and EPA shall use the checks and procedures required in this appendix in combination with other data quality information, reports, and similar documents showing overall compliance with Part 58. Accordingly, EPA and monitoring agencies shall use a 'weight of evidence' approach when determining the suitability of data for regulatory decisions." The proposed amendments would also remove language that is unnecessarily repetitive of ARM 17.8.204(1).

17.8.230 FLUORIDE IN FORAGE (1) remains the same.

(2) The following sampling protocol must be applied:

(a) through (g) remain the same.

(h) The composite sample must be thoroughly mixed prior to any chemical analysis. Replicate aliquots are to be taken using a sample splitter or any other unbiased technique, and analyzed chemically for fluoride using ~~the semi-automated~~

~~a method, as more fully described in Methods of Air Sampling and Analysis, incorporated by reference in ARM 17.8.202, except that the surfaces of the plant material must not be washed, or by an approved equivalent method approved by the department.~~

(i) remains the same.

AUTH: 75-2-111, 75-2-202, MCA

IMP: 75-2-202, MCA

REASON: The board is proposing to remove a reference to the semi-automated method for fluoride monitoring in Methods of Air Sampling and Analysis. That document is also being proposed to be removed from incorporation by reference in ARM 17.8.202, as described above. The reason for the proposed amendment is that the method is no longer commonly used and it is difficult to find an accredited laboratory to perform the post-sampling analysis required by the method. Updated methods are available and the board is proposing that the department will determine, on a case-by-case basis, the appropriate method to be used.

4. The rule proposed to be repealed is as follows:

17.8.206 METHODS AND DATA (AUTH: 75-2-111, 75-2-202, MCA; IMP, 75-2-202, MCA), located at page 17-272, Administrative Rules of Montana. The board is proposing to repeal ARM 17.8.206 because the requirements of that rule are already contained in applicable state rules or federal regulations and are, therefore, redundant. Specifically, the requirements of that rule are contained in the Montana Ambient Air Monitoring Quality Assurance Project Plan, 40 CFR Parts 50, 53, and 58 and EPA's Quality Assurance Handbook for Air Pollution Measurement Systems, all of which are incorporated by reference in ARM 17.8.202.

5. 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., January 22, 2015. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. Ben Reed, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

7. 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.

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

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules 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, December 15, 2014.