

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )	NOTICE OF AMENDMENT AND
17.8.101, 17.8.103, 17.8.201, 17.8.202, )	REPEAL
17.8.204, and 17.8.230 pertaining to )	
definitions, incorporation by reference )	(AIR QUALITY)
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 )	

TO: All Concerned Persons

1. On December 24, 2014, the Board of Environmental Review published MAR Notice No. 17-367 regarding a notice of public hearing on the proposed amendment and repeal of the above-stated rules at page 3031, 2014 Montana Administrative Register, Issue Number 24.

2. The board has amended ARM 17.8.101, 17.8.103, 17.8.201, and 17.8.230 and repealed ARM 17.8.206 exactly as proposed and has amended ARM 17.8.202 and 17.8.204 as proposed, but with the following changes, stricken matter interlined, new matter underlined:

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

(a) remains as proposed.

~~(b) EPA Ambient Monitoring Guidelines for Prevention of Significant Deterioration (PSD), EPA-450/4-87-007 (May 1987);~~

(c) through (e) remain as proposed, but are renumbered (b) through (d).

(2) through (4) remain as proposed.

17.8.204 AMBIENT AIR MONITORING (1) through (1)(d) remain as proposed.

(2) 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~~ if the ambient air monitoring is to be performed to comply with subchapter 8 of this chapter, an entity shall also consider the EPA Ambient Monitoring Guidelines for Prevention of Significant Deterioration (PSD), which are adopted by reference in ARM 17.8.202 EPA-450/4-87-007 (May 1987).

(3) through (3)(b) remain as proposed.

(4) The department shall notify the entity in writing of approval, conditional approval, or disapproval within 60 days after receiving a project-specific QAPP required by (3)(b). If the department receives additional information in response to a notice of conditional approval or disapproval, the 60-day review period begins again.

(4) remains as proposed, but is renumbered (5).

3. The following comments were received and appear with the board's responses:

COMMENT NO. 1: Commenter discussed the history of conducting ambient air monitoring in the Billings/Laurel area and reiterated comments previously submitted to the department on the department's 2013 Quality Assurance Project Plan (QAPP), incorporated by reference in this rulemaking, as it related to area designations for the 2010 revised National Ambient Air Quality Standards for sulfur dioxide (SO<sub>2</sub>). In the previously submitted comments on the 2013 QAPP, the commenter discussed the desire that the department use a more rigorous quality assurance/quality control (QA/QC) program than the minimum national standard used by the federal government. However, in the comments submitted on the subject rulemaking, the commenter stated that the commenter understood the decision to maintain the use of the national standard.

RESPONSE: Through this rulemaking, the board is proposing to establish a set of nationally applied, scientifically based QA/QC requirements as the minimum standard for all regulatory ambient air monitoring performed in the state of Montana. The board's adherence to the Environmental Protection Agency's (EPA's) national standard will promote consistency and eliminate bias and subjectivity. Data collected consistent with this standard have been upheld by the department and by the EPA regional office and national headquarters. Therefore, no changes are being made to the rule in response to this comment.

COMMENT NO. 2: Commenter noted that the board's reference, in the explanation of proposed amendments to ARM 17.8.103(1), to documents being incorporated by reference in ARM Title 17, chapter 8, subchapter 1, was inaccurate. In the discussion of the reason for the amendments to ARM 17.8.103, the board referred to the incorporation by reference of 40 CFR Part 58 in ARM Title 17, chapter 8, subchapter 1. That particular regulation is not incorporated by reference in subchapter 1, but is incorporated in subchapter 2. The commenter suggested that the board might have meant to refer instead to subchapter 2 and asked for clarification.

RESPONSE: The reference to subchapter 1 was indeed a mistake and the board intended to refer instead to the incorporation by reference in ARM 17.8.202. Because the text of the proposed rule was correct, no change to the rule is necessary.

COMMENT NO. 3: Commenter stated that the proposed language in ARM 17.8.202(1)(a) is unclear and asked for clarification of whether the phrase "pertain only to the department's monitoring program" applies to the department's QAPP as a whole or only to the "transmittal requirements."

RESPONSE: The phrase in question applies to all of the requirements listed, including "ambient air sampling and data collection, recording, analysis, and transmittal requirements," and limits the application of those requirements to

monitoring conducted by the department. The board believes that no change to the rule is necessary.

COMMENT NO. 4: Commenter expressed concern that incorporation by reference of the "EPA Ambient Monitoring Guidelines for Prevention of Significant Deterioration (PSD)" in ARM 17.8.202(1)(b) will convert those Guidelines from guidance to rule, which is not appropriate.

RESPONSE: The board agrees with the commenter's concern that the PSD Guidelines were not intended to be mandatory. The board has not adopted the Guidelines through incorporation by reference in ARM 17.8.202. In response to this comment, the board has amended ARM 17.8.204(2), as shown above, to require an entity performing monitoring to comply with PSD requirements to consider the Guidelines; the use of the guidelines would not be mandatory.

COMMENT NO. 5: Commenter expressed concern that the incorporation by reference of the PSD Guidelines in ARM 17.8.202(1)(b) will require all ambient air monitoring, not just PSD monitoring, to comply with the PSD Guidelines. The commenter asked for clarification of the board's intent in this regard.

RESPONSE: As described in the Response to Comment No. 4, the board has not adopted the PSD Guidelines in ARM 17.8.202. The board has adopted wording for ARM 17.8.204(2) that makes it clear that only an entity performing ambient air monitoring to comply with PSD requirements is required to consider the PSD Guidelines.

COMMENT NO. 6: Commenter noted that the proposed amendments require that the department approve a QAPP before monitoring may begin, but the rule does not provide a timeline by which approval or disapproval must occur. The commenter stated that quick turnaround of a QAPP document is critical to project development and noted that the department has historically responded to such submittals in a timely fashion. The commenter suggested adding language to ARM 17.8.204(3)(b) requiring the department to approve, conditionally approve, or disapprove a QAPP within 15 days of its submittal.

RESPONSE: The board recognizes that the department has historically acted in good faith and in a timely manner and sees no reason why such behavior should not continue into the future. In the past, the department has worked with entities to review QAPP documents as expeditiously as possible to meet project timelines. This has often included significant coordination and discussion in advance of an entity submitting a document for approval. In light of the comment, the board agrees that a reasonable time limit would provide needed definition for those entities attempting to establish project planning timelines in the efficient conduct of their business. The board notes that time limits are applied to the submission and review of various required information and that the approval of a QAPP document should be treated in a similar manner. However, the 15-day limit suggested by the commenter would be impracticable given the length and complexity of such documents and the lack of any requirement that an entity confer with the department about its contents in advance of submittal. The board believes

a 60-day review period is reasonable. The board has amended ARM 17.8.204, as shown above, in response to this comment.

COMMENT NO. 7: Commenter supports the board's efforts to amend the ambient air monitoring quality assurance rules and believes the proposed rules provide a clear template for nondepartmental quality assurance requirements.

RESPONSE: The board acknowledges the comment.

4. No other comments or testimony were received.

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, April 6, 2015.