

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PROPOSED
17.8.818, pertaining to the averaging)	AMENDMENT
period for the PM-2.5 significant)	
monitoring concentration)	(AIR QUALITY)
)	
)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On August 5, 2016, the Board of Environmental Review proposes to amend the above-stated rule.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Denise Hartman, Administrative Rules Coordinator, no later than 5:00 p.m., May 20, 2016, to advise us of the nature of the accommodation that you need. Denise Hartman can be contacted at the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail dhartman2@mt.gov.

3. The rule proposed to be amended provides as follows with stricken matter interlined:

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) through (a)(ii) remain the same.
- (iii) PM-2.5: 0 µg/m³, ~~24-hour average~~;
- (iv) through (c) remain the same.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-202, 75-2-203, 75-2-204, MCA

REASON: The federal Clean Air Act (CAA) at § 165(e)(2), 42 U.S.C. § 7475(e)(2), requires a proposed major emitting facility to conduct monitoring for, among other emissions, particulate matter with a diameter of less than 2.5 microns (PM_{2.5}) for up to one year before submitting an application for an air quality preconstruction permit. The preconstruction permit is part of the New Source Review-Prevention of Significant Deterioration (NSR-PSD) program, which is

designed to protect the air quality of areas cleaner than the national standards.

On October 20, 2010, the U.S. Environmental Protection Agency (EPA) adopted regulations setting the significant monitoring concentration (SMC) for particulate matter with a diameter of less than 2.5 microns (PM_{2.5}). The SMC was set at 4 ug/m³ averaged over 24 hours. See 40 C.F.R. §§ 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c), adopted in 75 Fed. Reg. 64864. An SMC is used to exempt sources from preconstruction monitoring when modeled impacts from the proposed facility, or the existing air quality level in the area of the proposed source, is less than the SMC.

The board adopted ARM 17.8.818(7), which adopted the same SMC for PM_{2.5} as the federal regulation, effective October 14, 2011. See 2011 MAR p. 2457. Based on a court decision vacating the PM_{2.5} SMC as not allowed by the Clean Air Act (*Sierra Club v. EPA*, 705 F.3d 458, 403 U.S. App. D.C. 318 (2013)), EPA amended its regulations to reduce the SMC to 0 mug/m³ and eliminate the 24-hour averaging period. 78 Fed. Reg. 73698, December 9, 2013.

Because EPA amended its regulations, the department requested the board to amend its rule. However, the department inadvertently failed to recommend that the board remove the averaging period for the PM_{2.5} SMC from the rule. The board amended the rule effective October 10, 2014, without removing the averaging period. See 2014 MAR p. 2457. The department submitted this amended rule to EPA as a revision to the Montana State Implementation Plan (SIP) on April 10, 2015.

EPA has requested Montana to amend ARM 17.8.818(7)(a)(iii) to remove the averaging period for the PM_{2.5} SMC and to submit a revision with that change to the SIP for EPA's review. If Montana does not remove the averaging period from the rule, its rule could be considered less stringent than EPA's regulation. If a Montana rule is less stringent than an EPA regulation, EPA could take steps to withdraw its approval of Montana's regulatory program, and that could result in EPA becoming the primary administrator of air quality regulations in Montana.

This proposed rulemaking would remove the averaging period for PM_{2.5}, making the board's rules consistent with and as stringent as the EPA regulation, and ensure Montana's ongoing NSR-PSD program's primacy and authority.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Denise Hartman at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail dhartman2@mt.gov, no later than June 3, 2016. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Denise Hartman at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail dhartman2@mt.gov, no later than June 3, 2016.

6. If the board receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25, based on the more than 250 persons who potentially could wish to appeal air quality permits and therefore could be affected by this rulemaking.

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, email, 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 Denise Hartman, Administrative Rules Coordinator, 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 dhartman2@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

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 board has determined that the amendment of the above-stated 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/ Joan Miles
JOAN MILES, CHAIRMAN

Certified to the Secretary of State, April 25, 2016.