

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.8.818 and 17.8.820 pertaining to)
review of major stationary sources and)
major modifications--source applicability)
and exemptions and source impact)
analysis)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

(AIR QUALITY)

TO: All Concerned Persons

1. On July 16, 2014, at 2:00 p.m., or at the conclusion of the hearing for MAR Notice No. 17-360, 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 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., July 7, 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 rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

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) the emissions increase of the pollutant from a new stationary source or the net emissions increase of the pollutant from a modification would cause, in any area, air quality impacts less than the following amounts:

(i) and (ii) remain the same.

(iii) PM-2.5: 4 [4 stricken] 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

17.8.820 SOURCE IMPACT ANALYSIS (1) remains the same.

~~(2) For purposes of PM-2.5, the demonstration required in (1) is made if the emissions increase from the new stationary source alone or from the modification~~

alone would cause in all areas, air quality impacts less than the following amounts:

| Pollutant | Averaging time | Class I area | Class II area | Class III area |
|-----------|----------------|-------------------------------|------------------------------|------------------------------|
| PM-2.5 | Annual | 0.06 $\mu\text{g}/\text{m}^3$ | 0.3 $\mu\text{g}/\text{m}^3$ | 0.3 $\mu\text{g}/\text{m}^3$ |
| | 24-hour | 0.07 $\mu\text{g}/\text{m}^3$ | 1.2 $\mu\text{g}/\text{m}^3$ | 1.2 $\mu\text{g}/\text{m}^3$ |

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

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

REASON: On December 17, 2010, the Sierra Club petitioned the United States Court of Appeals for the District of Columbia Circuit (Court) to review the 2010 PM-2.5 significant impact levels (SILs) and significant monitoring concentration (SMC) final rule.

On January 22, 2013, the Court granted a request from the U.S. Environmental Protection Agency (EPA) to vacate and remand to the EPA portions of the New Source Review-Prevention of Significant Deterioration (NSR-PSD) regulations (40 CFR 51.166(k)(2) and 52.21(k)(2)) establishing the SILs for PM-2.5 so that the EPA could reconcile the inconsistency between the regulatory text and certain statements in the preamble to the 2010 final rule. The Court further vacated the portions of the NSR-PSD regulations (40 CFR 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c)) establishing a PM-2.5 SMC, finding that the EPA lacked legal authority to adopt and use the PM-2.5 SMC to exempt permit applicants from the statutory requirement to compile and submit ambient monitoring data. Rather than eliminating, the EPA revised the SMC for PM-2.5 from four micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to 0 $\mu\text{g}/\text{m}^3$, indicating that there is no air quality impact level below which a reviewing authority has the discretion to exempt a source from the PM-2.5 monitoring requirements.

The board is proposing to amend ARM 17.8.818(7)(a)(iii), which concerns the SMC for particulate matter with a diameter of less than 2.5 microns (PM-2.5), from four $\mu\text{g}/\text{m}^3$ to 0 $\mu\text{g}/\text{m}^3$. In *Sierra Club v. EPA*, 705 F.3d 458, 403 U.S. App. D.C. 318 (2013), the United States Court of Appeals for the District of Columbia Circuit (Court) vacated the portions of the NSR-PSD regulations establishing a PM-2.5 SMC, finding that the EPA lacked legal authority to adopt and use the PM-2.5 SMC to exempt permit applicants from a statutory requirement to compile and submit ambient monitoring data. In response to that decision, EPA adopted a final rule that did not eliminate SMC completely, but rather revised the SMC for PM-2.5 from 4 $\mu\text{g}/\text{m}^3$ to 0 $\mu\text{g}/\text{m}^3$, indicating that there is no air quality impact level below which a reviewing authority has the discretion to exempt a source from the PM-2.5 monitoring requirements. See *Prevention of Significant Deterioration for PM-2.5--SILs and SMCs: Removal of Vacated Elements*, Final Rule, 78 Fed.Reg. 73698 (December 9, 2013). The proposed amendment would make the board's rule consistent with and as stringent as the EPA regulation. This would ensure Montana's ongoing NSR-PSD program primacy and authority.

The board is proposing to delete ARM 17.8.820(2), which includes a table. Section (2) concerns PM-2.5 SILs, which are screening tools that have been applied in NSR-PSD permitting to demonstrate that the proposed source's allowable

emissions will not cause or contribute to a violation of the National Ambient Air Quality Standards (NAAQS) or increment. In the *Sierra Club v. EPA* case cited above, the Court granted a request from EPA to vacate and remand to EPA portions of the NSR-PSD regulations establishing the SILs for PM-2.5 so that the EPA could reconcile the inconsistency between the regulatory text and certain statements in the preamble to the 2010 final rule. To accomplish this, EPA adopted the final rule cited above. The proposed deletion would make the board's rule consistent with and as stringent as the EPA regulation. This would ensure Montana's ongoing NSR-PSD program primacy and authority.

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., July 24, 2014. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. The 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 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, June 16, 2014.