

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the repeal of ARM)	NOTICE OF PROPOSED REPEAL
17.8.334, 17.8.335, and 17.8.772 pertaining)	
to emission standards for existing aluminum)	(AIR QUALITY)
plants--startup and shutdown, maintenance)	
of air pollution control equipment for)	NO PUBLIC HEARING
existing aluminum plants, and mercury)	CONTEMPLATED
allowance allocations under cap and trade)	
budget)	

TO: All Concerned Persons

1. On February 5, 2016, the Board of Environmental Review proposes to repeal the above-stated rules.

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 Elois Johnson, Paralegal, no later than 5:00 p.m., November 9, 2015, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson 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 ejohnson@mt.gov.

3. The rules proposed for repeal are as follows:

17.8.334 EMISSION STANDARDS FOR EXISTING ALUMINUM PLANTS--STARTUP AND SHUTDOWN (AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203, MCA), located at page 17-334, Administrative Rules of Montana.

17.8.335 MAINTENANCE OF AIR POLLUTION CONTROL EQUIPMENT FOR EXISTING ALUMINUM PLANTS (AUTH: 75-2-111, MCA; IMP: 75-2-203, MCA), located at page 17-335, Administrative Rules of Montana.

17.8.772 MERCURY ALLOWANCE ALLOCATIONS UNDER CAP AND TRADE BUDGET (AUTH: 75-2-203, 75-2-204, 75-2-211, MCA; IMP: 75-2-211, MCA), located at page 17-469, Administrative Rules of Montana.

REASON: ARM 17.8.334, adopted by the board on February 26, 1982, established emission standards during startup and shutdown for existing aluminum reduction plants. Any plant not yet constructed and operating on that date is not "existing" and is not subject to this rule. The Columbia Falls Aluminum Company (CFAC) plant in Columbia Falls was the only existing aluminum reduction plant in Montana; it discontinued operations in 2009. Because there are now no existing aluminum reduction plants in Montana, no source is now or ever will be subject to ARM 17.8.334. Because there are no longer any existing aluminum reduction plants

in Montana, and no new plant will be subject to this rule, this rule is no longer necessary and should be repealed. If a new aluminum reduction plant is constructed in Montana, it will be subject to regulation under the federal new source performance standards in 40 CFR Part 60, subpart S, which is incorporated by reference in ARM 17.8.302(1)(a) and Montana's air quality permitting programs.

In addition, the federal Environmental Protection Agency (EPA) has determined that the provisions contained in this rule are impermissible because they interfere with enforcement of the federal Clean Air Act by providing an automatic exemption from applicable emission limitations during start-up, shutdown, and/or malfunction (SSM) events. To address this issue, on May 22, 2015, the EPA promulgated a State Implementation Plan (SIP) Call, finding that this rule makes Montana's SIP substantially inadequate to protect the National Ambient Air Quality Standards at all times, including during SSM events. The SIP Call requires Montana to correct or remove the specific provision from the SIP within 18 months after the SIP Call, which is by November 22, 2016. If the board repeals this rule, the Department of Environmental Quality (department) would then address the SIP Call by proposing to submit a proposal to the EPA to withdraw the rule from the SIP.

ARM 17.8.335, which also regulates existing primary aluminum reduction plants only, also applied only to the plant operated by CFAC, because it was the only existing such plant in Montana when the rule was adopted by the board on August 16, 2002. This rule allows exceedances of emission limits during necessary scheduled maintenance of air pollution control equipment at existing primary aluminum reduction plants. Before this rule was adopted, CFAC was required to apply to the board for a variance from rules governing emissions of air pollutants so the plant could continue to operate during maintenance of its control equipment. For the same reasons provided above for the repeal of ARM 17.8.334, this rule is no longer necessary or appropriate and should be repealed.

ARM 17.8.772 concerns the regulation of mercury-emitting electrical generating units through the creation and trading of mercury emissions allowances under a "cap-and-trade" program. The rule was adopted effective October 27, 2006, in response to the federal Clean Air Mercury Rule (CAMR). Promulgated in May 2005, CAMR established a federal mercury emissions trading budget and allowed states to adopt cap-and-trade rules modeled after EPA regulations. Montana's cap-and-trade allocations, described in ARM 17.8.772, anticipated legal challenges to CAMR. Due to litigation that began before adoption of the rule, ARM 17.8.772(4) states, "The department is not required to submit mercury allowance allocations if the federal Clean Air Mercury Rule (CAMR), adopted in 70 Fed. Reg. 28606 (May 18, 2005), is invalidated by a court of competent jurisdiction." Indeed, on February 8, 2008, the federal D.C. Circuit Court of Appeals vacated CAMR. As a result of that vacatur, there is no mercury trading budget in the federal regulations and no requirement for states to submit mercury allowance allocations under that budget. Under ARM 17.8.772(4), because the federal regulation was invalidated, Montana is not required to submit such allocations. Because there is no federal trading budget and there are no state allocations, the department has not been using or submitting such allocations and it will not do so in the future. As a result, the board is proposing to repeal the rule. The department will continue to regulate emissions from mercury-emitting electrical generating units under ARM 17.8.771.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to 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, no later than November 27, 2015. 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 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, no later than November 27, 2015.

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 1 based on no persons 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, 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 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 department has determined that the repeal of the above-referenced rules will not significantly and directly impact small businesses.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ John F. North

JOHN F. NORTH

Rule Reviewer

BY: /s/ Joan Miles

JOAN MILES, CHAIRMAN

Certified to the Secretary of State, October 19, 2015.