



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

EPA-R08-OAR-2012-0846; FRL-9817-4

**Approval and Promulgation of Air Quality Implementation Plans;
Montana; Revisions to the Administrative Rules of Montana – Air Quality, Subchapter 7,
Subchapter 16 and Subchapter 17**

AGENCY: Environmental Protection Agency (EPA)

ACTION: Final rule

SUMMARY: EPA is taking final action to approve new rules as submitted by the State of Montana on September 23, 2011. Montana adopted these rules on December 2, 2005 and March 23, 2006. These new rules meet the requirements of the Clean Air Act (CAA) and EPA's minor new source review (NSR) regulations. In this action, EPA is approving these rules as they are consistent with the CAA. This action is being taken under section 110 of the CAA.

DATES: This final rule is effective [insert date 30 days after publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2012-0846. All documents in the docket are listed in the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Program,

Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kevin Leone, Air Program, Mailcode 8P-AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6227, or leone.kevin@epa.gov.

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Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context

indicates otherwise.

(ii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.

(iii) The words Minor NSR mean NSR established under section 110 of the Act and 40 CFR 51.160.

(iv) The initials NSR mean new source review, a phrase intended to encompass the stationary source regulatory programs that regulate the construction and modification of stationary sources as provided under CAA section 110(a)(2)(C), CAA Title I, parts C and D, and 40 CFR 51.160 through 51.166.

(v) The initials SIP mean or refer to State Implementation Plan.

(iv) The words State or Montana mean the State of Montana, unless the context indicates otherwise.

I. What Action is EPA Taking?

A. Summary of Final Action

EPA is taking final action to approve the Montana State Implementation Plan (SIP) and rules submitted to EPA on September 23, 2011. This submission contained revisions to ARM 17.8.744, and new rules I – VI, codified as ARM 17.8.1601, 17.8.1602, 17.8.1603, 17.8.1604, 17.8.1605, and 17.8.1606, pertaining to the regulation of oil and gas well facilities. The Montana Board of Environmental Review (Board) adopted these revisions to existing SIP revisions and new rules on December 2, 2005 and they became effective on January 1, 2006. This submission also contains new rules I – IX, codified as ARM 17.8.1701, 17.8.1702, 17.8.1703, 17.8.1704, 17.8.1705, 17.8.1710, 17.8.1711, 17.8.1712 and 17.8.1713 pertaining to the regulation of oil and

gas well facilities. The Board adopted these revisions to existing SIP revisions and new rules on March 23, 2006 and they became effective on April 7, 2006. The new rules and revisions meet the requirements of the Act and EPA's minor NSR regulations.

EPA proposed action for the above SIP revision submittals on November 13, 2012 (77 FR 67596). We accepted comments from the public on this proposal from November 14, 2012, until December 13, 2012. A summary of the comments received and our evaluation thereof is discussed in section III below. In the proposed rule, we described our basis for the actions identified above. The reader should refer to the proposed rule, and sections IV and V of this preamble, for additional information regarding this final action.

EPA reviews a SIP revision submission for its compliance with the Act and EPA regulations. CAA 110(k)(3). We evaluated the submitted new and revised rules based upon the regulations and associated record that have been submitted and are currently before EPA. In order for EPA to ensure that Montana has a program that meets the requirements of the CAA, the State must demonstrate the program is as stringent as the Act and the implementing regulations discussed in this notice. For example, EPA must have sufficient information to make a finding that the new program will ensure protection of the NAAQS, and noninterference with the Montana SIP control strategies, as required by section 110(l) of the Act. The provisions in these submittals were not submitted to meet a mandatory requirement of the Act.

II. What is the Background?

A. Brief Discussion of Statutory and Regulatory Requirements

The CAA (section 110(a)(2)(C)) and 40 CFR 51.160 require states to have legally enforceable procedures to prevent construction or modification of a source if it would violate any

SIP control strategies or interfere with attainment or maintenance of the National Ambient Air Quality Standards (NAAQS). Such minor NSR programs are for pollutants from stationary sources that do not require [Prevention of Significant Deterioration \(PSD\)](#) or [nonattainment NSR](#) permits. States may customize the requirements of the minor NSR program as long as their program meets minimum requirements.

Section 110(l) of the CAA states: “[e]ach revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this chapter.”

The States' obligation to comply with each of the NAAQS is considered as “any applicable requirement(s) concerning attainment.” A demonstration is necessary to show that this SIP revision will not interfere with attainment or maintenance of the NAAQS, including those for ozone, particulate matter, carbon monoxide (CO), sulfur dioxide (SO₂), lead, nitrogen oxides (NO_x) or any other requirement of the Act. Montana’s demonstration of noninterference (see docket), as submitted to EPA on September 23, 2011, provides sufficient basis that the inclusion of the new rules and revisions, as described in section I of this preamble, will not interfere with attainment, reasonable further progress (RFP), or any other applicable requirement of the CAA. Further details are provided in sections IV and V of this action.

B. Summary of the Submittal Addressed in this Final Action

The final action to approve the new and revised rules as described in section I of this preamble, hereafter referred to as “the program”, would establish a registration system for certain

facilities that presently require a minor NSR air quality permit under the SIP regulations. The new and revised rules would establish a general registration system for oil and gas well facilities and would allow the owner or operator of an oil or gas well facility to register with the Montana Department of Environmental Quality (MDEQ) in lieu of submitting a permit application and obtaining a permit to construct or modify the source. Currently, with specific exemptions, the administrative rules adopted under the Clean Air Act of Montana and approved by the EPA into the SIP, require the owner or operator of sources of air pollution to obtain a permit prior to construction or modification.

Montana originally submitted these rules on October 16, 2006, and November 1, 2006 to EPA for inclusion into the SIP. EPA proposed action on these submittals on January 6, 2011 (76 FR 758). EPA had several concerns with the Program, as was explained in 76 FR 758. Montana withdrew the October 16, 2006, and November 1, 2006, submittals in March of 2011 and resubmitted the Program on September 23, 2011. The September 23, 2011, submittal contained a 110(l) demonstration, as well as other supplemental data, which addressed EPA's concerns that were raised in 76 FR 758.

III. Response to Comments

In response to our November 13, 2012 proposal, we received comments from the following: Montana Petroleum Association, Inc. (MPA); True Oil LLC; and the Montana Department of Environmental Quality (MDEQ).

A. MPA

Comment : Commenter states MPA has reviewed the proposed approval found at 77 FR 67596 and agrees with EPA's proposal to approve the program as submitted on September 23,

2011. MPA encourages EPA to promptly incorporate the new and revised rules, as outlined in 77 FR 67596, into the Montana SIP. MPA notes that the new and revised rules provide a workable alternative to the Montana air quality permitting program and that the program meets the requirements of CAA section 110(l) of the Federal Clean Air Act and other applicable requirements. MPA outlined specific federal requirements and demonstrations from 77 FR 67596 in which they agree with EPA's proposed conclusions. For those reasons, MPA concurs with EPA's proposed action.

MPA further notes they had previously submitted comments to EPA in regard to the incorporation of Subchapters 16 and 17 into the Montana SIP. Those comments and analysis are contained in the Docket ID: EPA-R08-OAR-2007-0662, which were in response to our January 6, 2011, proposed action. MPA notes that their analysis is similar to that submitted by MDEQ; MPA's analysis also reviewed ambient air quality data around the state and compared this data to data collected near oil and gas sites. MPA wishes to incorporate by reference their previous comments and analysis as contained in EPA-R08-OAR-2007-0662 into their comments for this rulemaking.

Response: We acknowledge receipt of these comments and the support for our proposal for approval. We also acknowledge receipt of the comments submitted by MPA which are contained in *EPA-R08-OAR-2007-0662* and hereby incorporate those comments by reference into MPA's comments for this rulemaking.

B. True Oil, LLC

Comment : *Commenter states that they support EPA's proposed rule found in 77 FR 67596 to approve the inclusion of Montana's Subchapters 16 and 17 into the Montana SIP. The*

commenter states they fully concur with EPA's review of those rules and that they meet all obligations under the Federal Clean Air Act for incorporation into a state SIP.

Response: We acknowledge receipt of these comments and the support for our proposal for approval.

C. MDEQ

Comment : Commenter states that they support EPA's proposed rule found in 77 FR 67596 to approve the inclusion of Montana's Subchapters 16 and 17 into the Montana SIP. The commenter states that Montana's Oil and Gas Registration program represents advanced regulatory ideas for stewardship and sustainability and that the program is an innovative, efficient method for ensuring sources install and operate emission control equipment that protects and improves air quality. The commenter also states they appreciate the time EPA invested in reviewing and studying the issues around Montana's Oil and Gas Registration program.

Response: We acknowledge receipt of these comments and the support for our proposal for approval. EPA recognizes that approval of an oil and gas registration program is a priority for the State; EPA also indicates its support for registration / permit-by-rule programs as they provide efficiencies and environmental benefits. EPA commends MDEQ for periodically revising their SIP in order to adapt to environmental, economic and social changes, and recognizing the need for a more collaborative, flexible, and performance based regulatory strategy to meet the regulatory challenge posed by Montana's oil and gas industry. EPA also commends Montana's work in developing an approvable program that is consistent with CAA and regulatory requirements.

IV. What are the Grounds for this Approval Action?

EPA evaluated the new rules and revisions, as described in section I of this preamble, using the following:

1) The statutory requirements under CAA section 110(a)(2)(c), which requires states to include a minor NSR program in their SIP to regulate modifications and new construction of stationary sources within the area as necessary to assure the NAAQS are achieved;

2) The regulatory requirements under 40 CFR 51.160, including section 51.160(a), which require that the SIP include legally enforceable procedures that enable a state or local agency to determine whether construction or modification of a facility, building, structure or installation, or combination of these will result in a violation of applicable portions of the control strategy; or interference with attainment or maintenance of a national standard in the state in which the proposed source (or modification) is located or in a neighboring state; section 51.160(b), which requires states to have legally enforceable procedures to prevent construction or modification of a source if it would violate any SIP control strategies or interfere with attainment or maintenance of the NAAQS; and

3) The statutory requirements under CAA section 110(l), which provides that EPA cannot approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and RFP, or any other applicable requirement of the CAA. Therefore, EPA will approve a SIP revision only after a state has demonstrated that such a revision will not interfere (“noninterference”) with attainment of the NAAQS, RFP or any other applicable requirement of the CAA. In this instance, EPA asked the State to submit an analysis showing that the new rules and revisions, as described in section I of this preamble, would not violate section

110(l) of the CAA (see docket); this is also referred to as a “demonstration of noninterference” with attainment and maintenance under CAA section 110(l). The scope and rigor of the demonstration of noninterference conducted in support of this notice is appropriate given the air quality status of the State, and the potential impact of the revision on air quality and the pollutants affected.

As EPA described in this preamble and in the proposed notice (77 FR 67596), the new rules and revisions we are taking final action to approve meet the requirements of CAA section 110(a)(2)(c) and 40 CFR 51.160. In addition, the State’s September 23, 2011, demonstration of noninterference indicates that incorporating the new rules and revisions, as described in section I of this preamble, will not interfere with attainment of the NAAQS, RFP, or any other applicable requirement of the CAA.

V. Final Action

EPA is taking final action to approve the new and revised rules as submitted by Montana on September 23, 2011, based upon three criteria. First, the State provided sufficient information to determine that the requested revision to add the new oil and gas registration program to the Montana Minor NSR SIP will not interfere with any applicable requirement concerning attainment and RFP as required by CAA section 110(l), or any other requirement of the Act; Second, the new rules comply with CAA section 110(a)(2)(C), which requires states to include a minor NSR program in their SIP to regulate modifications and new construction of stationary sources within the area as necessary to assure the NAAQS are achieved; Third, the new rules comply with 40 CFR 51.160.

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this final action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL

REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq*

Dated: April 26, 2013

Howard M. Cantor
Acting Regional Administrator
Region 8

40 CFR part 52 is amended as follows:

PART 52 APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart BB - Montana

2. Section 52.1370 is amended by adding paragraph (c)(73) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(73) On September 23, 2011, the State of Montana submitted new rules to the Administrative Rules of Montana (ARM). The submittal included new rules to ARM Chapter 17. The incorporation by reference in paragraphs (i)(A) and (i)(B) reflect the new rules.

(i) Incorporation by reference.

(A) Administrative Rules of Montana: 17.8.1601, Definitions; 17.8.1602, Applicability and Coordination with Montana Air Quality Permit Rules; 17.8.1603, Emission Control Requirements; 17.8.1604, Inspection and Repair Requirements; 17.8.1605, Recordkeeping Requirements; 17.8.1606, Delayed Effective Date; effective January 1, 2006.

(B) Administrative Rules of Montana: 17.8.1701, Definitions; 17.8.1702, Applicability; 17.8.1703, Registration Process and Information; 17.8.1704, Registration Fee; 17.8.1705, Operating Requirements: Facility-wide; 17.8.1710, Oil or Gas Well Facilities General Requirements; 17.8.1711, Oil or Gas Well Facilities Emission Control Requirements; 17.8.1712,

Oil or Gas Well Facilities Inspection and Repair Requirements; 17.8.1713, Oil or Gas Well Facilities Recordkeeping and Reporting Requirements; effective April 7, 2006.

[FR Doc. 2013-27555 Filed 11/18/2013 at 8:45 am; Publication Date: 11/19/2013]