

Scenario 2: One system after a merger under current Copyright Office regulations with one partially distant signal. Former system 1 above now pays for two additional permitted signals (B and C) in the merged system that it did not previously carry. Former system 2 above now pays for an additional permitted signal (A) in the merged system that it did not previously carry.

System gross receipts = \$2,900,000.00

Minimum fee = \$29,377.00

For purposes of calculating the base rate fee, the merged system has two subgroups because of the partially distant signal (A) which is local in Group I.

Group I

Gross receipts = \$550,000.00

2 distant independent permitted signals (B & C)

Base rate fee = \$9,245.50

ROYALTY FEE = \$64,447.00

Group II

Gross receipts = \$2,350,000.00

3 distant independent permitted signals (A, B, C)

Base rate = \$55,201.50

Table 3b: One system after a merger under current Copyright Office regulations with a partially-distant signal.

Scenario 3: One system after a merger under NCTA's subscriber group proposal to reflect the carriage of a partially distant signal (A). There would apparently be three subscriber groups rather than two subgroups based on the partially-distant scenario involved above in scenario 2. Signal A is local in Group I, distant in Group II, and not carried in Group III. Signals B and C are not carried in Groups I and II.

SYSTEM GROSS RECEIPTS = \$2,900,000.00

Minimum Fee = \$29,377.00

Group I

\$550,000.00 gross receipts

Group II

\$550,000.00 gross receipts

1 distant indep. permitted signal (A)

Base Rate = \$5,571.50

Group III

\$1,800,000.00 gross rec.

2 distant indep. permitted signals (B and C)

Base Rate = \$30,258.00

ROYALTY FEE = \$35,829.50

Table 3c: One system after a merger under NCTA's subscriber group proposal to reflect the carriage of a partially-distant signal.

Similar to the scenarios illustrated in Sets 1 and 2, the above royalty fee under the NCTA's subscriber group proposal in Table 3c is less than under the Copyright Office's current methodology.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2006-0806; FRL-8504-6]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Administrative Rules of Montana—Air Quality, Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to the State

Implementation Plan (SIP) submitted by the Governor of Montana on December 8, 1997, May 28, 2003, and August 25, 2004. The December 8, 1997 submittal revised the Administrative Rules of Montana (ARM) Chapter 8, Subchapter 3, Section 17.8.316 (Incinerators) by adding Subsection (6). ARM 17.8.316(6) excludes incinerators from having to comply with the other provisions of ARM 17.8.316, including the particulate matter emissions standard of 0.10 grains per cubic foot and the 10% opacity standard, if these sources have been issued a Montana air quality permit under 75-2-215, Montana Code Annotated (MCA), and ARM 17.8.770, which pertain to permitting of solid or hazardous waste incinerators. The August 25, 2004 submittal made a minor editorial revision to ARM 17.8.316(5). The May 28, 2003 submittal made minor editorial revisions to ARM 17.8.316(6). This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: Comments must be received on or before January 11, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2006-0806, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *E-mail:* daly.carl@epa.gov.

- *Fax:* (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

- *Mail:* Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

- *Hand Delivery:* Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R08-OAR-2006-0806. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. 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 and Radiation Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, 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 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Carl Daly, Air and Radiation Program, U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202, (303) 312-6416, daly.carl@epa.gov.

SUPPLEMENTARY INFORMATION:

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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 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. General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. Summary of SIP Revision

On December 8, 1997, the State of Montana submitted to EPA a SIP revision request. The revision added Subsection (6) to Section 17.8.316 (Incinerators) of the Administrative Rules of Montana (ARM), Chapter 8 (Air Quality), Subchapter 3 (Emission Standards). Subsection (6) exempts incinerators from the requirements of ARM 17.8.316, including the particulate matter emissions standard of 0.10 grains per cubic foot and the 10% opacity standard, if these sources have been issued a Montana air quality permit under 75-2-215, MCA, and ARM 17.8.706(5).^{1 2}

The revision also included wording changes to ARM 17.8.316. Most are minor editorial or technical corrections and do not change the substance of the rule. One of the changes was to substitute the words "solid and hazardous waste" for the word "refuse" in the rule. The effect of this change was to extend the rule requirements to incinerators burning solid or hazardous waste, not just refuse. The full text of the changes can be found in our Technical Support Document (TSD), which is contained in the Docket for this action.

We interpret ARM 17.8.316(6) to allow terms of a permit to override a requirement that has been approved as part of the SIP (i.e., the provisions in ARM 17.8.316(1)-(5)). Therefore, this revision requires an analysis showing that this new rule will not interfere with

¹ Montana Code Annotated (MCA) 75-2-215 (Solid or hazardous waste incineration—Additional permit requirements)

² ARM 17.8.706(5) was recodified to ARM 17.8.770 effective on December 6, 2002. This provision has not been submitted by the State to be incorporated into the federally approved SIP. ARM 17.8.770 (ARM 17.8.706(5)) requires applicants for a preconstruction permit for an incineration facility to submit a human health risk assessment protocol and a human health risk assessment.

compliance with the National Ambient Air Quality Standards (NAAQS) or Prevention of Significant Deterioration (PSD) increments. Section 110(l) of the CAA states that EPA cannot approve a SIP revision that would interfere with any applicable requirement concerning attainment or reasonable further progress, as defined in Section 171 of the CAA, or any other applicable requirements of the CAA. Montana did not provide any demonstration in its December 8, 1997 SIP revision submittal that ARM 17.8.316(6) meets these criteria. Subsequent to the State's submittal, EPA requested information from the Montana Department of Environmental Quality (DEQ) in order to conduct its own analysis on the impact of ARM 17.8.316(6) on the attainment and maintenance of the NAAQS for particulate matter with an aerodynamic diameter less than or equal to 10 and 2.5 micrometers (PM-10 and PM-2.5) and compliance with the PSD PM-10 increments. Based on this analysis, EPA has determined that this specific change to a SIP requirement will not adversely impact the attainment and maintenance of the PM-10 and PM-2.5 NAAQS, or compliance with the PM-10 increments, in Montana. EPA's analysis of this revision's impact is contained in the TSD for this action. In addition, the TSD discusses EPA's verification that ARM 17.8.316(6) will not impact compliance with, or the ability to enforce, the federal New Source Performance Standards (NSPS) or Maximum Achievable Control Technology (MACT) regulations. Based on a letter from the Montana DEQ dated October 2, 2007, and its own consideration of the rule change, EPA has determined that ARM 17.8.316(6) will not interfere with, supersede, or replace any NSPS or MACT requirements for sources, or affect in any way the State's, EPA's, or any other person's ability to enforce such NSPS or MACT requirements. The TSD and the DEQ letter are available for review as part of the Docket for this action.

On August 25, 2004, the State of Montana submitted to EPA a SIP revision request that, in part, revised Subsection (5) to ARM 17.8.316 (Incinerators). This revision makes a minor change to the third sentence of Subsection (5) from: "Testing shall be conducted in accordance with ARM 17.8.106 and the Montana Source Testing Protocol and Procedures Manual"; to: "Testing shall be conducted in accordance with ARM 17.8.106 and the Montana Source Test Protocol and Procedures Manual."

On May 28, 2003, the State of Montana submitted to EPA a SIP

revision request that, in part, revised ARM 17.8.316(6). This revision makes minor changes to Subsection (6) from: "This rule does not apply to incinerators for which an air quality preconstruction permit has been issued under 75-2-215, MCA, and ARM 17.8.706(5)"; to: "This rule does not apply to incinerators for which a Montana air quality permit has been issued under 75-2-215, MCA, and ARM 17.8.770."

EPA's review of the revisions to ARM 17.8.316 indicates that they are consistent with the CAA, and we are proposing to approve the revisions to ARM 17.8.316 into the Montana SIP. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

III. Proposed Action

EPA is proposing to approve the revisions to ARM 17.8.316, submitted on December 8, 1997, May 28, 2003, and August 25, 2004, into the Montana SIP.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and, therefore, is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or

more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, 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: December 4, 2007.

Kerrigan G. Clough,

Acting Regional Administrator, Region 8.

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