RA/Briefing in Preparation for FY15 Montana Midyear

(To be held May 27, 2015 in Montana, VTC others 2-4 pm)

State Discussion Topics

1. Recent Legislation

EPA Program Specific Discussion Topics:

1. Billings, Montana 1-Hour SO2 Nonattainment Area
2. Clean Air Act Section 128 State Board Requirements for Infrastructure State Implementation Plan (SIP)
3. Topic 3: CAA Section 111(d) Standards for Existing Power Plants
4. CAA Section 111(b) Standards for New Power Plants
5. Public outreach regarding Columbia Falls Aluminum Site
6. Montanore mine draft ROD issued by Kootenai National Forest
7. Status of Montana nutrient rule
8. Libby Asbestos Superfund Site
9. MT EC/SAR Remand

1. Budget
    a. 2015 Status
    b. 2016
2. Planning
    a. Joint Environmental Priorities
        i. State
        ii. EPAs
    b. New legislation
        i. 2015 Environmental legislations of note
        ii. Planning for any interim committees
3. RAC
4. Multiyear PPA
5. Suggested state directors meetings topics/ speakers
6. Programmatic Issues

Topic: Budget Updates: State & Tribal Assistance Grant (STAG) Funds

FY 2015 Enacted Budget, STAG Appropriation Summary – Agency Level

- STAG level is $3.55B, a $10M *(0.3%)* increase over the FY 2014 Enacted level of $3.54B
- Changes include a $10M *(50%)* increase for both DERA and $10M for Targeted Airshed Grants *(previously $0)*, offset by a $10M *(11%)* decrease in Brownfields Grants
- Categorical Grant funding remained the same for all grants as compared to FY 2014 funding levels; total funding for all categorical grants: $1.05B
- Provides $2.4B in grants to states for local drinking water and sewer construction projects through the Clean Water and Drinking Water State Revolving Funds (*no change from FY 2014 funding levels)*

Status of FY 2015 Region 8 STAG funds

- The Enacted Op Plan for STAG funds was received on February 23, 2015
- Regional STAG funds were issued February 25, 2015
- For FY 2015, Region 8's Enacted Op Plan for STAG is $169.4M, compared to FY 2014 Enacted Operating Plan amount of $169.8M. This is a decrease of $404k *(0.2%)*, due to decreases in Categorical Grants allowances to the Region.
- Categorical Grant funds were decreased by $585.1k *(1.0%)*, from $60.8M in FY 2014 to $60.2M in FY 2015. The largest decrease was in State & Local Air Quality Management grants, a $630k *(6.8%)* decrease.

STAG Outlook for FY 2016 – Agency Level, based on FY 2016 President's Budget*

- $3.6B STAG funding, a $54M *(1.5%)* increase from FY 2015 Enacted
- $1.12B for Clean Water SRF, a $333M *(23%)* decrease from FY 2015 Enacted
- $1.19B Drinking Water SRF, a $279M *(31%)* increase from FY 2015 Enacted
- **Other significant increases from FY 2015 Enacted**: +$40M *(+18%)* for State & Local Air Quality Management; +$30M *(+38%)* for Brownfields; +$31M *(+47%)* for GAP
- **Other significant decreases from FY 2015 Enacted**: -$20M *(-67%)* for DERA; Elimination of Targeted Airsheds (-$10M), and Radon (-$8.1M)

**Agency-level amounts are shown because regional allowances are not determined, for all programs, during President's Budget; allowances are determined for the Enacted Budget.*

Contact: Ben Bielenberg, 312-6771

GRANT	FY15 ENACTED	FY14 ENACTED	FY15 Enacted vs. FY14 Enacted	FY16 Pres Bud	FY16 Pres Bud vs. FY15 Enacted
Air Quality*	$8,571.0	$9,201.0	($630.0)	$0.0	($8,571.0)
Tribal Air Quality*	$1,599.0	$1,599.0	$0.0	$0.0	($1,599.0)
Radon*	$604.0	$604.0	$0.0	$0.0	($604.0)
Water Section 106	$15,254.0	$15,388.0	($134.0)	$16,781.0	$1,527.0
Nonpoint Source	$12,919.0	$12,969.0	($50.0)	$13,387.0	$468.0
Wetlands *	$1,575.9	$1,573.0	$2.9	$0.0	($1,575.9)
Public Water Systems	$7,145.0	$6,983.0	$162.0	$7,731.0	$586.0
Underground Injection	$1,452.0	$1,391.0	$61.0	$1,421.0	($31.0)
Haz. Waste Financial Asst.	$3,188.0	$3,123.0	$65.0	$3,188.0	$0.0
Brownfields	$200.0	$190.0	$10.0	$200.0	$0.0
Pesticides Implementation	$1,178.0	$1,178.0	$0.0	$1,178.0	$0.0
Lead	$697.0	$697.0	$0.0	$697.0	$0.0
Toxics Substance Compliance*	$408.0	$408.0	$0.0	$0.0	($408.0)
Pesticides Enforcement*	$1,948.0	$2,027.0	($79.0)	$0.0	($1,948.0)
Pollution Prevention	$381.0	$381.0	$0.0	$381.0	$0.0
Tribal General Asst.	$3,055.0	$3,048.0	$7.0	$3,055.0	$7.0
TOTAL Categorical Grants	**$60,174.9**	**$60,760.0**	**($585.1)**	**$48,019.0**	**($12,148.9)**
Clean Water SRF	$46,670.0	$46,603.0	$67.0	$35,643.0	($10,960.0)
Drinking Wtr SRF	$62,506.0	$62,388.0	$118.0	$81,630.0	$19,242.0
Diesel Emissions	$0.0	$0.0	$0.0	$0.0	$0.0
Targeted Airshed	$0.0	$0.0	$0.0	$0.0	$0.0
Brownfields Projects	$96.0	$100.0	($4.0)	$96.0	($4.0)
Total STAG Special Program Grants	**$109,272.0**	**$109,091.0**	**$181.0**	**$117,369.0**	**$8,278.0**
Total STAG Appropriation	**$169,446.9**	**$169,851.0**	**($404.1)**	**$165,388.0**	**($3,870.9)**

**Regional allowances for these programs are not determined during President's Budget; allowances are determined for the Enacted Budget*

Topic: Budget Updates: 2015 PPG Current Status

Background: We have awarded approximately 20% of Montana's grant funds in FY15.

Key RA Message:
We expect to award the remaining available grants funds by mid-May 2015. Pollution Prevention funds will follow at a later date since those are competitive grants. Environmental categories that are forward funded will be awarded before September 30, 2015.

PPA Program Area	2014 Total Awarded Award Dates	2015 Projected Award	Award#1 Nov 2014	Award#2 May 2015	Total Award Amount	Balance to be Awarded 2015
Air Quality	$1,292,041	$1,289,125	$205,790	$954,422	$1,160,212	$128,913
Water Pollution	$2,426,000	$2,426,000	$683,664	$1,742,336	$2,426,000	($0)
Nonpoint Source	$0	$0			$0	$0
Drinking Water	$1,326,000	$1,358,000	$260,337	$1,097,663	$1,358,000	$0
UIC	$0	$0	$0		$0	$0
Haz Waste Mgt.	$169,628	$235,008	$34,390	$200,618	$235,008	($0)
Haz Waste(Comp Assist)	$162,730	$98,095	$24,616	$73,479	$98,095	($0)
Radon	$35,000	$35,000	$6,942	$28,058	$35,000	$0
Pollution Prevention	$0	$0	$0		$0	$0
Lead insp/enf.	$0	$0			$0	$0
PCBs/asbestos	$0	$0			$0	$0
Lead program	$0	$0			$0	$0
Total	$5,411,400	$5,441,228	$1,215,740	$4,096,576	$5,312,316	$128,912

The remaining award amounts are waiting for program approvals.

Contact: Anthony DeLoach, 312-6070

Topic: New Hazardous Waste State Grant Distribution Methodology and FY2016 Allocation - Region 8 Impacts

Background:

- As part of the FY2014 President's Budget submission, OMB requested that EPA assess the RCRA state grant allocation formula for the state hazardous waste grants.
- The RCRA State Grant Allocation Formula Workgroup was made up of representatives of all ten regions to develop options and recommendations for aspects of the grant allocation formula, considering EPA's national program priorities/vision, and the current and future state program workload.
- Nationally, funding levels have been steady and the RCRA program receives approximately $98 million in STAG grant funding annually, of which Region 8 receives approximately $3.1 million for the R8 states.
- When the new STAG Grant Allocation formula is fully implemented in FY2020, R8 will receive $3.4 million in grant funding.
- The Region will use discretion to allocate funding.
- STAG funding accounts for 75% of state RCRA program funds; the mandatory state match is 25%.
- The new formula will be phased in over 5 years.
- The current suggested national state minimum is $350K per state; headquarters suggests increasing the minimum to $400K per state. Not all states require the state minimum to operate a successful RCRA program. R8 RCRA will evaluate the needs of the states and Region in order to prioritize and allocate funding.
- The larger states (UT and CO) are concerned that the nationally recommended state minimum will decrease their hazardous waste funding.
- Region 8 will use regional flexibility to ensure funding levels are consistent with historical funding levels. The Region considers funding based on universe size, workload, prior expenditure rates, program performance, and relative need across the states within the region.

Contacts: Nancy Morlock, OPRA/RCRP, 312-6421; Moye Lin, OPRA RCRP Hazardous Waste, 312-6667

Key RA Messages:

- Headquarters has projected Region 8's STAG funding to increase as a result of the new allocation formula (approx. 6% increase over next 5 years).
- RCRP will hold conference calls with individual states to discuss phase in of the new formula and program needs by the end of April 2015.
- The regions have flexibility in determining individual state allocations based on a variety of factors.
- **The new formula will be phased in starting in FY16. At this time, RCRP does not anticipate more than a 1% change in funding for the R8 states in FY16.**

Note to Deb and Shaun from Melanie:

You had requested to know how much the state would be getting now vs. under the new formula. Since the new formula will not start to be used until FY16 and we do not have an FY16 budget yet, RCRP is not able to provide projections for FY16. In addition, Nancy indicated that the new formula will be phased in over 5 years. Nancy is not expecting more than a 1% change to their budget in FY16.

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Clean Water Rule____

2015 State Legislative Session Tracker **Contact: Rebecca Russo, 303-312-6757**

Please include laws and Resolutions

State	Bill Number (URL)	Short Title/Description	Passed/Failed out of Committee (Date)	Passed/Failed out of Legislature (Date)	Signed/Vetoed by Governor (Date)	Notes
MT	SJR 13	Resolution Supporting Coal: Resolution supporting the responsible development of coal resources and coal-based electricity; supports expansion of additional shipping capacity to allow for the sale of MT resources to emerging markets.		On 4/11, Passed House On 2/26, Passed Senate	4/20/15: Eligible for Governor's Signature	Sponsor: Duane Ankney (Senate R)
MT	SJR 17 Aka Draft 543	Interim Study Regarding Coal Phase Out. Study to investigate the impacts of phasing out and eliminating the mining and burning of coal.	4/20/15: Pending – Tabled (as of 4/8)			Sponsor: Mike Phillips (Senate D)

Legislation Information

Light Gray = Bills that are postponed indefinitely, missed the transmittal deadline, are on hold or failed.
Gray = New from last update.
Dark Gray = Bills that have passed at least one Chamber.
Darker Gray = Enacted or Adopted

State	Bill Number (URL)	Short Title/Description	Passed/Failed out of Committee (Date)	Passed/Failed out of Legislature (Date)	Signed/Vetoed by Governor (Date)	Notes
MT	MT SB 236 2015	Regulation of Carbon: Limits authority to regulate carbon to the discretion of the Legislature. Provides for legislative involvement in the development of a state plan to address GHG emissions from fossil fuel-fired electric generating units. Requires legislative approval of the DEQ State Plan.	3/24/15: Failed – Tabled			Sponsor: Roger Webb (Senate R) http://leg.mt.gov/bills/2015/billpdf/SB0236.pdf
MT	MT S 402	Laws Related to utilities and Coal Fired Generation. Purpose: provide financial partnership between state and local gov and owners of coal-fired generating facilities; to provide for a timely transition in regional energy policy without adversely affecting tax revenue. Seems to require a notification if any coal-generating plant or unit will close.	4/20/15: Pending – House Committee On 3/31 to House committee	On 3/28, Passed Senate		Sponsor: Duane Ankney (Senate R) http://www.elp.com/articles/2015/03/montana-state-senator-proposes-fees-for-companies-that-close-coal-plants.html

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State	Bill Number (URL)	Short Title/Description	Passed/Failed out of Committee (Date)	Passed/Failed out of Legislature (Date)	Signed/Vetoed by Governor (Date)	Notes
		Basically, bill would levy fees against companies that shut down any coal-fired power plant in MT.				
MT	MT D907 2015 aka S305	Renewable Portfolio Standards: Revises them.	4/20/15: Pending – Draft On 1/21, Draft ready for delivery			Sponsor: Scott Sales (Senate R)
MT	MT D1853	Renewable Portfolio Standard Laws. Revises them.	4/20/15: Pending - Draft On 12/8 Draft on Hold			Sponsor: Zach Brown (House D)
MT	MT D2217 2015	Approval of State Plan to Implement EPA Guidelines	4/20/15: Pending - Draft On 1/26			Sponsor: Duane Ankney (Senate R) http://leg.mt.gov/bills/2015/BillPdf/LC2217.pdf

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State	Bill Number (URL)	Short Title/Description	Passed/Failed out of Committee (Date)	Passed/Failed out of Legislature (Date)	Signed/Vetoed by Governor (Date)	Notes
			In draft			
MT	MT – HB 465	Prohibits the implementation of certain federal or state regulations on wood-burning devices. State agencies may not implement or enforce in any way any state or federal regulation, rule, or policy 1) implementing wood-burning device regulatory programs that impose particulate limite more restrictive than current limits; 2) regulating wood-burning devices installed and in use on or before 1/1/15; 3) requiring wood-burning devices to be taken out of use, replaced or removed because of a change in ownership or occupation.	2/27/15: Missed Deadline for Bill Transmittal			Sponsors: Theresa Manzells (House R)

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State	Bill Number (URL)	Short Title/Description	Passed/Failed out of Committee (Date)	Passed/Failed out of Legislature (Date)	Signed/Vetoed by Governor (Date)	Notes
MT	HB 613 Track on ALE or Legiscan	Allowing counties to review certain federal or state regulations on wood-burning devices; prohibiting requirements to remove certain wood-burning devices.	3/31/15: Missed deadline for bill transmittal			Sponsor: T. Manzella (House R)

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State	Bill Number (URL)	Short Title/Description	Passed/Failed out of Committee (Date)	Passed/Failed out of Legislature (Date)	Signed/Vetoed by Governor (Date)	Notes
MT	SB 355 Track on ALE or Legiscan	An act revising the use of Federal Brownfields Money at Brownfields Sites.		4/20/15: Passed one chamber On 4/15, amended version passed Senate On 4/11, returned to Senate w/amend-ments On 2/26, Passed Senate		MT DEQ requested our input on this legislation. We have concerns about the legislation and we are working on a response.

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Topic: Region 8 Annual Commitments (RAC)

Background:

The Region 8 Annual Commitments ("RAC") document outlines Region 8's approach for implementing EPA's Fiscal Year 2014 – 2018 EPA Strategic Plan, while also focusing on the most significant work in the region, which the National Program Manager (NPM) measures may not fully capture. We will use the full set of NPM measures, in addition to FY 2016 Regional Annual Commitments, to evaluate regional efforts throughout the year. Region 8 began our FY 2016 RAC development, internally, in March of this year.

Tentative RAC schedule:

- 4/2015 – 5/7/15: Region 8 internal comment period
- 5/7/15 – 6/4/15: Responses prepared & changes made, in response to internal comments
- June - July: State & Tribal Partner comment period

Key RA Messages:

- The process for FY 2016 RAC development is very similar to that which was used for the last two years; we anticipate that our draft document will be available for states to review, in June / July.

- The document will be made available via email and MAX.gov, from the Region 8 Partnerships & Environmental Stewardship Program. We will accept comments for a four week period.

- As appropriate, the Region 8 *Partnerships & Environmental Stewardship Program* will communicate with state counterparts to incorporate any final RAC measures, which require state efforts, into FY 2016 Performance Partnership Agreements and Performance Partnership Grant workplans.

- The Region relies on our state partners to meet both national and regional commitments; therefore, we thank you for your input into this process.

Contact: Stephanie Vuong, 303-312-7824

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Topic: Multi Year Grant Workplans

Background:

The PPA serves as the workplan for the PPG in all R8 states. The PPG's in all R8 states are multiyear, but the PPAs (grant workplans) are revisited annually. A workgroup was formed in 2014 to develop ways to move to multiyear guidance and to eliminate barriers/develop means toward multiyear workplans. Gary Baughman (CDPHE, Hazardous Waste Director) serves on this workgroup.

As a result of workgroup efforts, the FY16-17 NPM Guidances are two year guidances that emphasize earlier and more meaningful state and tribal engagement in priority and commitment-setting; clear and transparent support for flexibility within the NPM Guidances; and better alignment of NPM and grant guidances. ECOS recommended that NPM guidances be structured so that they minimize the need for addendums in the second year.

Colorado, Utah, South Dakota, North Dakota, and Montana have expressed interest in moving to multiyear PPAs as long as it allows for greater programmatic flexibility and emphasizes program outcomes/results over activities.

Key RA Message:

- States and R8 can use multiyear workplans to improve joint planning and priority setting and to create efficiencies.
- The EPA is committed to working with interested states to transition to multiyear agreements.
- Please ask your program contacts to work with their EPA counterparts to look into how commitments could be adjusted to align with multiyear workplans. Annual commitments need not be showstoppers for the transition to multiyear workplans if we can reach agreement on how we'll reach agreed upon outcomes and results.

Contacts: Gerard Bulanowski, 312-6141; Melanie Wood, 312-7006

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Topic 1: Billings, Montana 1-Hour SO_2 Nonattainment Area

Background:

The state of Montana's SO_2 monitoring data is now showing that the Billings area is meeting the 1-hour SO_2 National Ambient Air Quality Standard (NAAQS). Governor Bullock questioned EPA at a recent National Governors Association meeting about why this area is still a nonattainment area when current monitoring data clearly shows no violations of the SO_2 NAAQS.

The Montana Department of Environmental Quality (MDEQ) submitted a Clean Data Determination request to EPA Region 8 on January 16, 2015 regarding the 1-hour SO_2 nonattainment area in part of Billings. This area was designated nonattainment in August 2013 based on 2009-2011 monitoring data. The nonattainment area is essentially a circle that includes the violating monitor and the 153 MW PPL-Montana Corette coal fired power plant. PPL Montana has announced that the Corette power plant will permanently close in August 2015. The 2012-2014 monitoring data demonstrates the area has attained the standard. This is well in advance of the October 2018 attainment date. Region 8 anticipates proposing an attainment determination based on the state's clean data in May 2015 **(MAY NEED TO BE UPDATED)**. This will alleviate the need for the state to develop and submit an attainment plan, but will not remove the nonattainment designation.

Montana must submit a formal redesignation/maintenance state implementation plan (SIP) in order for EPA to designate the area to attainment. MDEQ is in the process of developing this SIP in coordination with EPA's Air Program staff and plans to submit an informal draft of the SIP for EPA review in April 2015. We are committed to act expeditiously on the plan when it is received, so the area can be designated to attainment status.

In order to prioritize action on this SIP, the Air Program Director and Montana's State Air Director (Dave Klemp) have agreed to move an action slated for completion in FY2015 in the state's 4-Year SIP Management Plan to FY2016.

Tentative Schedule (based on a MT August 2015 submittal although MDEQ has indicated that they plan to submit the redesignation request earlier, which would move the schedule up accordingly)

- August 31, 2015 – Montana submits Billings SO2 redesignation/maintenance SIP to Region 8
- November 2015 – Region 8 signs proposed rulemaking on Billings SO2 redesignation/maintenance SIP
- November 2015 to January 2016 – Proposal publishes and 30-day comment period occurs
- April 2016 – Region 8 signs final rulemaking on Billings SO2 redesignation/maintenance SIP

Contact: Carl Daly, OPRA Air Program, 312-6416 00

Key RA Messages: None

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Topic 2: Clean Air Act Section 128 State Board Requirements for Infrastructure State Implementation Plan (SIP)

Background:

CAA §110(a)(2)(E)(ii) requires SIPs to implement CAA §128. EPA interprets this to mean that compliance with this requirement is necessary for EPA to approve an infrastructure SIP, after each NAAQS revision. CAA §128 requires SIPs to contain provisions governing state boards that "approve permits or enforcement orders."

- 128(a)(1): A majority of the members of the board must "represent the public interest and not derive a significant portion of their income from persons subject to permits or enforcement orders"; and
- 128(a)(2): Members of the board must "adequately disclose potential conflicts of interest."

Montana has a multi-member board that hears appeals of permits and enforcement orders.

For Montana's 1997 ozone NAAQS infrastructure SIP, we negotiated a CD deadline for EPA action of 6/30/11.

- We received adverse comments on the proposed approval for CAA §128 because Montana's SIP does not contain any provisions that address CAA §128 and their statute does not fully meet the requirements either.
- We renegotiated the CD to defer action for CAA §128 in hopes of new legislation. No legislation happened in 2013; no session in 2014.
- Final disapproval for CAA §128 was signed July 24, 2013, published August 6, and effective September 5. EPA has a CAA duty to promulgate a FIP by September 5, 2015.
- EPA is not under an actual CD deadline for the FIP, but we did agree to a WHEREAS clause with a 1-year schedule (expired July 24, 2014).

The Air Program has been working with Montana on this issue for the past couple of years. In October 2014, Dave Klemp (Montana Air Director) sent us draft SIP language for review to meet CAA §128 requirements. The Air Program has been working on revisions to this language with the state.

We received the latest revised New Rule I, II, and III draft language on March 26, 2015 and responded with our comments. This language will next have to go through Montana's attorney general's office and then the Board of Environmental Review for approval.

The New Rule language will need to be adopted by the Board at the May 29th meeting in order for the SIP revision to be sent to EPA prior to the FIP clock running out on September 5, 2015.

Contact: Carl Daly, OPRA Air Program, 312-6416

Key RA Messages:

- We look forward to the Board approving the New Rule on May 29th.

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Topic 3: CAA Section 111(d) Standards for Existing Power Plants

Background:

- EPA signed the CAA Section 111(d) proposed rule on June 2, 2014, and published it in the Federal Register on June 18, 2014. In October 2014, EPA issued a Notice of Data Availability and a Supplemental Proposal for Tribes and Territories, and in November 2014, EPA issued a Rate-to-Mass Technical Support document. On December 1, 2014, the extended public comment period ended. EPA received over 4.3 million comments.

Contact: Callie Videtich, OPRA IO 312-6434, Carl Daly, OPRA Air Program, 312-6416,
Laura Farris, OPRA Air Program, 312-6388

Key RA Messages:

- EPA is on track to issue the final 111(d) rule in mid-summer 2015, along with a proposed model Federal Plan. We will let the states know when EPA has transmitted a draft final rule to OMB for their review. Submittal to OMB is expected sometime in May, 2015 [update status prior to SLT mid-year meeting].
- EPA tools and resources that states might find useful in the development of their 111(d) State Plans can be found in the Clean Power Plan Toolbox on EPA's Clean Power Plan website.
- EPA is preparing additional materials and training for states on the final rule after its release.
- EPA held implementation conference calls for states/tribes and communities in February and March, 2015, respectively.
- The President's FY16 budget request includes $35 million in support for the Clean Power Plan ($25 million in grants to help states and $10 million for federal support to develop tools benefitting all states). It also includes a $4 billion Incentive Fund available to states that go above and beyond the guidelines that will be in the final Clean Power Plan (by achieving early emissions reductions, and/or exceeding emissions reduction targets before the dates set in the guidance).

Topic 4: CAA Section 111(b) Standards for New Power Plants

Background:

- EPA signed the CAA Section 111(b) proposed rule September 20, 2013, and published it in the Federal Register on January 8, 2014 (which also rescinded the April 2012 proposal). On May 9, 2014, the extended public comment period ended. EPA received over 2.6 million comments.

Contact: Callie Videtich, OPRA IO 312-6434, Carl Daly, OPRA Air Program, 312-6416,
Laura Farris, OPRA Air Program, 312-6388

Key RA Message:

- The final rule for new power plants will be issued with the final 111(d) rule in mid-summer 2015.

Topic 5: EPA and Montana DEQ recent public outreach regarding Columbia Falls Aluminum site.

Background: Montana DEQ held a public meeting in Columbia Falls, Montana on December 18th to discuss the recent negotiations with Columbia Falls Aluminum Company (CFAC) to complete a Remedial Investigation at the site. MDEQ outlined the negotiation process and discussed its recent unsuccessful outcome. EPA's Site Assessment unit attended the meeting and discussed the CFAC site analytical data and the CERCLA Remedial Program. EPA believes this site is eligible for the NPL. Prior to the meeting, EPA and DEQ met with staff from Sen Tester's and Sen Walsh's Kalispell office and the Columbia Falls City Manager. EPA has also been in contact with staff with Rep Daines' Missoula office. Attendees of the individual meetings and public meeting expressed their support for additional investigation at the site using EPA CERCLA authorities. At this time, EPA Site Assessment will continue to build public support and create the necessary documentation to propose the site to the NPL.
Contact: Rob Parker 312-6664, Victor Ketellapper 312-6578

Topic 6: Montanore mine draft ROD issued by Kootenai National Forest

Background:

The Forest Service has issued a Draft Record of Decision (ROD) and Final Supplemental EIS for the Montanore Mine Project, a proposed underground copper and silver mine in the Cabinet Mountains Wilderness Area approximately 20 miles southwest of Libby, MT. Given the recommendations EPA provided on the preliminary Final EIS last fall, the NEPA Program plans to review and comment on the Draft ROD. The analysis in this Final EIS is limited by the extreme lack of data available to characterize effects and to determine the necessary mitigation. The Draft ROD does not address EPA's key recommendation for providing a public and agency comment period after the Exploration Phase to assure that valuable information gathered during that phase can inform the public as well as government decisions on mitigation. Last fall, Shaun discussed EPA's concerns with Regional Forester (Faye Krueger – now retired). Outreach from EPA staff and management to Forest Service staff and management, including a comment letter, is anticipated. Comments are due May 11, 2015.

Montanore Mine – Coordinated comment strategy up through the RA on this high-profile preliminary-Final EIS and made a case for an additional, post-FEIS public process. (Unsuccessful thus far)
Contacts: Phil Strobel, 312-6704; Maggie Pierce, 312-6550

Topic 7: Status of Montana nutrient rule

It's been approved by EPA. A question arose upon approval about providing a general variance to the Boulder WWTP, with MDEQ opining that a general variance would be provided and EPA indicating that Boulder doesn't meet the underlying qualifications. This was resolved by agreement to apply a compliance schedule and assess the facility's qualification for a variance during the 2017 triennial review. OPRA Water is providing more on this issue.

The Upper Missouri River Waterkeeper filed an NOI regarding the general variance provision in Montana's nutrient rule. They prefer no variances. In the interest of preserving national policy on variance as applied to nutrients, OST intends to call the Waterkeeper to discuss this matter. Bert will be part of this call. We will emphasize the importance of providing implementation flexibility (like variances) as a necessity for obtaining stakeholder support and state willingness to set stringent and protective nutrient water quality standards

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Topic 8: Proposed Plan for Libby Asbestos Site Cleanup

The proposed plan addresses five of eight areas at the Site. Remedial action has already been completed at Operable Unit 1 (the former Export Plant, now Riverfront Park in Libby) and Operable Unit 2 (former Screening Plant). Operable Unit 3 (the former Libby vermiculite mine and forested areas) will be addressed in a separate proposed plan. Investigation and cleanup are being conducted by the U.S. Environmental Protection Agency (EPA) in consultation with the Montana Department of Environmental Quality (DEQ) under the federal Superfund law.

Because long-term management tools, otherwise known as institutional controls, are instrumental to the cleanup, we have divided this document into three sections. *Part one* provides background and explains alternatives considered for the construction portion of the remedy. *Part two* explains why waste will remain at the site and provides additional information about institutional controls. *Part three* summarizes EPA's and the state's preferred remedial alternative.

As lead agency, EPA is required to issue a proposed plan and solicit public input. Citizens can provide comment during a public comment period, May 8 to July 8, 2015, or at the public meetings.

At the end of the comment period, EPA will consider and respond to all comments provided. EPA may then select the preferred cleanup alternative, modify it, select another alternative, or develop new alternatives if public comments warrant or if new information is presented. That selection will be presented in a written record of decision.

Mark your calendars!

EPA and MDEQ are hosting two public meetings to present this proposed plan and accept formal public comment:

7–9 p.m. Wednesday, May 20, City of Libby's Ponderosa Room, 952 E. Spruce St.

7–9 p.m. Thursday, May 21
(location in Troy TBD)

EPA and MDEQ are also hosting a workshop in conjunction with the county's Asbestos Resource Program, Libby Technical Advisory Group and Community Advisory Group to evaluate input received on the preferred institutional controls:

7–9 p.m. Wednesday, June____
(location in Libby TBD)

Topic 9: MT EC/SAR Remand

R8's remaining tasks are:

- Complete the literature review for aquatic life impacts from EC/SAR, to ensure we're taking into account the latest science.
- Incorporate USDA comments on irrigated ag use impacts into our final assessment.
- Finalize administrative record, brief upper management, polish our action letter.

Governor Steve Bullock Comments on Clean Power Plan

April 2015

1. The State of Montana (Governor and DEQ) comments on the Clean Power Plan were submitted to the docket in December 2014 stating:

- Montana is proud that they are an energy producing state, sees the effects of climate change, and recognizes that the cost in inaction is high. They are in favor of climate action that keeps coal in play.
- They are concerned about the economic effects of the Plan, especially as it may affect their coal industry. The feel that the Administration has not done enough to advance clean coal technologies.
- BB3 should rely upon RE generation for compliance, rather than consumption to be consistent with the generation-based accounting for the EGUs and nuclear facilities.
- Use of the REC accounting system would provide inaccurate and misleading results.
- It is a mistake to interpret increases in RE and EE as decreases in coal generation [e.g., a MW of coal power ≠ a MW of wind power].
- BB4 savings rates should be capped at 1.5% and 0.2% incremental improvements per year, which are both significant challenges for Montana.
- EPA should permit states to segment their state plan into either geographic or economic groups with separate multi-state compliance plans for each as long as they can demonstrate compliance with their goal.

2. On September 19, 2014, Governor Bullock wrote a letter to the citizens of Montana on the Clean Power Plan saying that he is concerned about the impacts of climate change on the state's economy and environment, mentioned the Clean Power Plan's goals for the state and the flexibility it provides, and described the opportunities it presents. The letter was accompanied by a White Paper from the DEQ discussing compliance scenarios.

3. The Attorneys General of Montana, North Dakota, South Dakota, Utah, and Wyoming signed a comment letter on the CPP dated November 2014 with other states stating that the proposed rule has numerous legal defects, each of which provides an independent basis to invalidate the rule in its entirety, including:

- The Clean Air Act unambiguously prohibits EPA from regulating power plants under section 111(d) now that EPA has chosen to regulate those plants under section 112
- The proposed section 111(d) rule is illegal because EPA has not finalized any lawful rule for equivalent new sources
- Section 111(d) cannot be used to override state authority to manage power resources
- Section 111(d) limits EPA's role in the first instance to procedure, not substance
- Section 111(d) is limited to source-level, inside-the-fence line, unit-by-unit emission reduction measures
- EPA's proposal conflicts with the Federal Power Act

4. Colorado, Montana, North Dakota, South Dakota, Utah, and other Western States signed a comment letter on the CPP dated November 2014 [facilitated by the Center for a New Energy Economy] stating that the final rule should:

- Allow for a range of planning options, including those that support flexible, multistate compliance options without necessarily requiring states to enter into a single regional plan

- Allow for flexible interim compliance targets that provide room for a range of effective emissions reduction strategies
- Coordinate action on tribal sources with compliance planning in the Western region
- Allow regional coordination, while at the same time allowing states to submit individual plans if they choose to do so
- Provide states multiple options for capturing the benefits of state energy efficiency and renewable energy programs
- Allow states to take either a rate-based or mass-based approach to achieving state goals
- Preserve the states' role as primary implementers of the section 111(d) performance standards

[The State has participated in all four of the CNEE meetings on the Clean Power Plan]

5. In December, 2014, the Montana Attorney General submitted joint comments on the Clean Power Plan to the docket with the Crow Nation stating that they have grave concerns about the negative impact the rules could have on the Crow Nation and its citizens because of the revenues they receive from coal mining, and that there was a lack of meaningful consultation with the Tribe before the rule was proposed rule.