Montana
Board of Environmental Review
P. O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • Website: www.deq.state.mt.us

AGENDA

FRIDAY, MARCH 21, 2014
METCALF BUILDING, ROOM 111
1520 EAST SIXTH AVENUE, HELENA, MONTANA
****

NOTE: *Individual agenda items are not assigned specific times. For public notice purposes, the meeting will begin no earlier than the time specified; however, the Board might not address the specific agenda items in the order they are scheduled. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this meeting. Please contact the Board Secretary by telephone at (406) 444-6701 or by e-mail at jwittenberg@mt.gov no later than 4 days prior to the meeting to advise her of the nature of the accommodation you need.*

9:00 A.M.

I. ADMINISTRATIVE ITEMS

A. REVIEW AND APPROVE MINUTES

1. The Board will vote on adopting the January 21, 2014, meeting minutes.

II. BRIEFING ITEMS

A. CONTESTED CASE UPDATE

1. Enforcement cases assigned to the Hearing Examiner

   a. **In the matter of violations of the Public Water Supply Laws by Trailer Terrace Mobile Park, LLC, Dennis Deschamps and Dennis Rasmussen at the Trailer Terrace, PWSID No. MT0000025, Great Falls, Cascade County, BER 2012-11 PWS.** A *Fourth Order Granting Extension* was issued on December 1, 2013, giving the parties through April 1, 2014, to settle the matter or file a joint proposed prehearing schedule.

   b. **In the matter of violations of the Sanitation in Subdivisions Act and Public Water Supply Laws by Roger Emery at the Sunrise Motel, Sidney, Richland County, BER 2013-06 SUB.** On February 3, 2014, the parties filed a *Proposed Schedule*, proposing the contested case hearing for September 10, 2014.

2. Contested Cases not assigned to a Hearing Examiner

   a. **In the matter of the notice of appeal and request for hearing by Western Energy Company (WECO) regarding its MPDES Permit No. MT0023965 issued for WECO's Rosebud Mine in Colstrip, BER 2012-12 WQ.** On January 21, 2014, the parties filed *Stipulation to Modification of Pre-trial Schedule*, extending the telephonic prehearing conference to May 14, 2014, along with a *Motion for Approval*

of Stipulation. On February 4, 2014, a *Third Scheduling Order* was issued implementing the stipulated schedule. The date of the hearing before the Board will be set at the prehearing conference. On March 3, 2014, parties DEQ and Western Energy Company filed a *Joint Unopposed Motion for Partial Remand of Permit to Department of Environmental Quality and for Suspension of Proceedings.*

b. **In the matter of the notice of appeal for hearing by Montana Environmental Information Center regarding DEQ's approval of coal mine permit No. C1993017 issued to Signal Peak Energy, LLC, for Bull Mountain Mine No. 1 in Roundup, MT, BER 2013-07 SM.** On January 6, 2014, an *Order Adopting Joint Stipulated Procedural Schedule for Administrative Review* was issued. A *Notice of Entry of Appearance* was filed by Derf Johnson, as counsel for MEIC, on January 29, 2014.

III. ACTION ITEMS

A. OTHER ACTION ITEMS

1. Amend the Missoula City-County air quality regulations to clarify the wildfire smoke emergency episode avoidance plan; add a temporary permitting process for portable industrial sources; clarify general outdoor burning procedures and the definition of bonfire; modify existing paving rules; provide general rule clarification and the addition of solid fuel burning devices for licensed mobile food vendors; and removal of the administrative review process for certain permitting actions.

B. INITIATION OF RULEMAKING

DEQ will propose that the Board initiate rulemaking to:

1. Amend Title 17, Chapter 36, Subchapter 9, On-Site Subsurface Wastewater Treatment Systems by updating definitions and Table 1 Setback Distances to provide consistency between the subdivision rules in Title 17, Chapter 36 and Circular DEQ-4, 2013 edition; amend Title 17, Chapter 38, Subchapter 101(4)(d) to adopt by reference the proposed changes to Title 17, Chapter 36 for Subdivisions, specifically ARM 17.36.320 through 17.36.323 and 17.36.325, and to remove the adoption by reference in ARM 17.36.327; amend Title 17, Chapter 38, Subchapter 106(2)(a), (d), and (e) to provide fee structure consistency for review of public water supply and sewage systems that correspond to the proposed changes to Department Circular DEQ-1, the adopted changes to Department Circular DEQ-4, 2013 edition, and new proposed Department Circular DEQ-10; and to amend Title 17, Chapter 38, Subchapter 106(2) to add a provision (f) for the review of public water supply systems that correspond to proposed Department Circular DEQ-16.

C. REPEAL, AMENDMENT, OR ADOPTION OF FINAL RULES

1. In the matter of the amendment of the insitu coal operations rule as requested by the Office of Surface Mining (OSM). The change will only be removing the language stating that ARM 17.24.320 (Plans for Disposal of Excess Spoil) is not applicable to

insitu coal operations. This was requested by OSM as it made the States rule less stringent then the Federal rule.

2. In the matter of the adoption of new rule I pertaining to the administrative requirements for limited opencut operations. The Department is proposing New Rule I in order to implement the provisions for limited opencut operations in Section 5 of Senate Bill 332 (2013).

3. In the matter of final adoption of proposed amendments to Title 17, Chapter 30, Subchapter 6, temporary water quality standards for the New World Mining District, as noticed in MAR 17-352.

D. FINAL ACTION ON CONTESTED CASES

1. **In the matter of the request for hearing by Montana Environmental Information Center and Sierra Club regarding DEQ's issuance of Montana Air Quality Permit No. OP0513-08 for the Colstrip Steam Electric Station, Colstrip, BER 2013-01 AQ.** Oral arguments on pending motions occurred on October 22, 2013. Multiple prehearing motions were filed. The motions are listed with their respective disposition:

   - Motion for Partial Summary Judgment (Appellants-Montana Environmental Information Center and Sierra Club) (denied)
   - Motion in Limine to Preclude Appellant's Expert Witnesses from, testifying about Certain issues (PPL) (denied in part and granted in part)
   - Motion to Dismiss Appellant's Third Claim (PPL) or in the Alternative for Summary Judgment on Appellant's Third Claim; Cross-Motion for Summary Judgment (PPL) (denied)
   - Motion and Brief for Summary Judgment (DEQ) (denied; written order to follow)
   - Motion and Brief in Limine (DEQ) (granted in part and denied in part)
   - Stipulation for Partial Dismissal (all parties)
   - Motion for Leave to Amend Affidavit together with Amended Affidavit (Appellants) (granted)
   - Motion for Leave to Supplement Briefs with Appellants' Discovery Responses with supporting Brief (granted)

   On March 7, 2014, the parties submitted a *Stipulation for Dismissal with Prejudice*. A *General Release and Settlement Agreement* was provided.

2. **In the matter of the request for hearing by Montana Environmental Information Center and Sierra Club regarding DEQ's issuance of Montana Air Quality Permit No. OP2953-07 for the JE Corette Steam Electric Station, Billings, BER 2013-02 AQ.** Oral arguments on pending motions occurred on October 22, 2013. The following prehearing motions were filed:

   - Motion for Partial Summary Judgment (Appellants- Montana Environmental Information Center and Sierra Club) (denied)
   - Motion for Summary Judgment (PPL) (denied)

- Motion to Dismiss Appellant's Third claim or in the Alternative for summary Judgment on Appellant's Third Claim (PPL) (disposition suspended pending settlement)
- Cross Motion for Summary Judgment (PPL) (denied)
- Motion and Brief for Summary Judgment (DEQ) (denied)
- Stipulation for Partial Dismissal (all parties)
- Appellants' Motion for Leave to Amend Affidavit with an Amended Affidavit (Appellants) (granted)
- Motion to Dismiss Appellants' Fourth Claim or in the Alternative, for Summary Judgment on Appellants' Fourth Claim and Its Motion for Summary Judgment for Appellants' Failure to Designate an Expert Witness. (denied)
- Motion for Leave to Supplement Briefs with Appellants' Discovery Responses (granted)

On March 7, 2014, the parties submitted a *Stipulation for Dismissal with Prejudice*. A *General Release and Settlement Agreement* was provided.

IV. GENERAL PUBLIC COMMENT

Under this item, members of the public may comment on any public matter within the jurisdiction of the Board that is not otherwise on the agenda of the meeting. Individual contested case proceedings are not public matters on which the public may comment.

V. ADJOURNMENT

Montana
Board of Environmental Review
P. O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • Website: www.deq.state.mt.us

MINUTES

January 21, 2014

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Madam Chair Shropshire at 9:00 a.m., on Friday, July 26, 2013, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Madam Chair Shropshire, Joan Miles, Chris Tweeten, Larry Mires, Joe Russell, Marietta Canty, Heidi Kaiser

Board Attorney Present: Katherine Orr, Attorney General's Office, Department of Justice

Board Secretary Present: Joyce Wittenberg

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Tracy Stone-Manning (Director); Tom Livers (Deputy Director); Chris Saeger, Steve Kilbreath – Director's Office; John North, Norman Mullen, Carol Schmidt – Legal; John DeArment, Lisa Peterson – Permitting & Compliance Division; Jon Dilliard, Eugene Pizzini, Rachel Clark, Denver Fraser – Public Water Supply & Subdivisions Bureau; Bob Habeck, Paul Skubinna – Water Protection Bureau; David Klemp. Eric Merchant, Julie Merkel, Dave Aguirre, Annette Williams, Rebecca Harbage, Liz Ulrich, Eileen Steilman, Hoby Rash – Air Resources Management Bureau; John Arrigo – Enforcement Division; George Mathieus – Planning Division; Mark Bostrom. Mike Suplee, Eric Regensberger, Eric Urban – Water Quality Planning Bureau; Todd Teegarden, Joe Meek – Technical and Financial Assistance Bureau; Jeff Blend – Energy and Pollution Prevention Bureau; John Koerth – Remediation Division

Interested Persons Present *(Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.)*: Anne Hedges – Montana Environmental Information Center; Mary Beth Marks, Robert Grosvenor, Shane M. – US Forest Service; Julie DalSoglio, Tina Laidlaw – Environmental Protection Agency; Mark Lambrecht – Treasure State Resource Industry Association; Barbera Hall, Kascie Herron – Clark Fork Coalition; Dave Galt – Montana Petroleum Association; Olivia Hunter (on phone)

At the request of Chairman Shropshire, Mr. Livers took roll call of Board members present. Mr. Tweeten was not present.

I.A.1 Review and approve December 6, 2013, Board meeting minutes.

Mr. Mires MOVED to approve the December 6, 2013, meeting minutes as submitted. Ms. Kaiser SECONDED the motion. The motion CARRIED with a 6-0 vote.

II.A.1.a In the matter of violations of the Public Water Supply Laws by Trailer Terrace Mobile Park, LLC, Dennis Deschamps and Dennis Rasmussen at the Trailer Terrace, PWSID No. MT0000025, Great Falls, Cascade County, BER 2012-11 PWS. *(No discussion took place regarding this matter.)*

II.A.2.a In the matter of violations of the Sanitation in Subdivision Act and Public Water Supply Laws by Roger Emery at the Sunrise Motel, Sidney, Richland County, BER 2013-06 SUB. *(No discussion took place regarding this matter.)*

II.A.3.a In the matter of the notice of appeal and request for hearing by Western Energy Company (WECO) regarding its MPDES Permit No. MT0023965 issued for WECO's Rosebud Mine in Colstrip, BER 2012-12 WQ.

Ms. Orr said the parties had requested an extension and that the prehearing conference would no longer take place on April 14.

II.A.3.b In the matter of the notice of appeal for hearing by Montana Environmental Information Center regarding DEQ's approval of coal mine permit NO. C1993017 issued to Signal Peak Energy, LLC, for Bull Mountain Mine No. 1 in Roundup, MT, BER 2013-07 SM.

Ms. Orr said the parties asked for a one-month extension to complete discovery.

II.A.3.c In the matter of the request for hearing by Montana Environmental Information Center and Sierra Club regarding DEQ's issuance of Montana Air Quality Permit No. OP2953-07 for the Colstrip Steam Electric Station, Colstrip, BER 2013-01 AQ. *(see II.A.3.d)*

II.A.3.d In the matter of the request for hearing by Montana Environmental Information Center and Sierra Club regarding DEQ's issuance of Montana Air Quality Permit No. OP0513-08 for the JE Corette Steam Electric Station, Billings, BER 2013-02 AQ.

Ms. Orr said the parties had determined that they would like to try to settle these cases (BER 2013-01 AQ and BER 2013-02 AQ), and asked for an order on two of the motions for summary judgment that were filed by PPL and DEQ concerning the applicability of ARM 17.8.212(4), and that she would be issuing it soon. She said the parties will file a status report at the end of February.

[Mr. Tweeten arrived.]

III.A.1 In the matter of the amendment of ARM 17.8.102 to incorporate by reference updated federal and state regulations and other non-substantive "housekeeping" revisions to the ARM.

Mr. Merchant said the department is asking the Board to initiate the rulemaking to adopt the current editions of Federal and State statutes and rules that are incorporated by reference in the Administrative Rules of Montana. He provided information regarding some of the changes to the statutes and rules.

Mr. Merchant and Mr. Klemp responded to questions from the Board.

Chairman Shropshire called for a motion to initiate the rulemaking and to appoint Ms. Orr as the presiding officer. Mr. Russell so MOVED. Ms. Canty SECONDED the motion. The motion CARRIED 7-0.

III.A.4 *(taken out of order)* In the matter of the request to initiate rulemaking to extend the expiration date for the temporary water quality standards adopted for the New World Mining District at ARM 17.30.630.

Mr. Urban, on behalf of the department, requested that the Board initiate rulemaking for the New World Mining District Area to extend the existing temporary water quality standards five years, to expire on June 14, 2019. Mr. Urban provided some background information regarding the New World Mine Project.

Ms. Marks explained that the temporary standards allow the US Forest Service to clean up the historical mining wastes and move towards water quality improvements in support of the designated uses for the streams involved. She described the work completed to date.

Ms. Marks and Mr. Urban responded to questions from Board members. Mr. Livers described the concept of temporary standards.

Chairman Shropshire called for a motion to initiate the rulemaking to extend the temporary standards for five years. Mr. Tweeten so MOVED. Ms. Miles SECONDED the motion. Chairman Shropshire called for public comment. No one responded. The motion CARRIED 7-0.

Ms. Miles made a friendly amendment to appoint Ms. Orr as the presiding officer. The amendment CARRIED with a 7-0 vote.

III.A.2 In the matter of the request to initiate rulemaking to adopt new nutrient standards for surface waters throughout Montana.

Mr. Mathieus provided some background information on the nutrient rule package. He explained that the rule package is divided into two components: 1) the numeric criteria, which the Board is considering; and 2) the implementation elements, which

will be carried out by the department. He said if the Board initiates the rulemaking, DEQ will align the department rulemaking with the Board's.

Dr. Suplee provided details of the rule package and responded to questions from the Board.

At the Board's request, Mr. Mathieus further explained the DEQ portion of the rulemaking regarding variance and responded to questions from the Board.

Chairman Shropshire called for public comment. There was none.

Further discussion took place. Chairman Shropshire again asked if anyone wanted to comment.

Mr. Lambrecht reminded the Board that the numbers are based on science and several years of work. He cautioned the Board to think carefully before making significant changes to the numbers.

Chairman Shropshire called for a motion to initiate the rulemaking and to appoint Ms. Orr as the presiding officer. Ms. Miles so MOVED. Mr. Russell SECONDED the motion. Further discussion took place. The motion CARRIED 7-0.

III.A.3 In the matter of the request to initiate rulemaking to amend Title 17, Chapter 38, Subchapter 1, Public Water and Sewer Plans, Cross Connections, and Drilling Water Wells, by updating Department Circulars DEQ-1, DEQ-3, DEQ-10, and DEQ-16.

Mr. Pizzini said DEQ is proposing a joint rulemaking of department and Board rules to update the adoption by reference of department circulars DEQ-1 and DEQ-3, and adopt new circulars DEQ-10 and DEQ-16. He explained that the adoption by reference gives the circulars the force of rule without having to publish all the information from the circulars into the rules themselves. He provided detail of the changes and responded to questions from the Board.

Chairman Shropshire called for a motion to initiate the rulemaking, appoint Ms. Orr as the permanent Hearing Examiner and hold a public hearing, to amend the public water supply rules -- to amend existing public water supply engineering rules to adopt updated Department Circular DEQ-1, 2014 edition -- to amend existing public water supply rules to adopt updated Department Circular DEQ-1, 2014 edition, which sets forth the requirements for the design and preparation of plans and specifications for public water systems; to amend the existing public water supply engineering rules to adopt updated Department Circular DEQ-3, 2014 edition, which sets forth minimum design standards for small water systems; to adopt new Department Circular DEQ-10, 2014 edition, which sets forth the standards for the development of springs to serve public water supply systems; to adopt new Department Circular DEQ-16, 2014 edition, which sets forth the standards for cisterns to serve non-community public water supply systems; to amend the existing checklist

to incorporate proposed changes in DEQ-1 and DEQ-3, and previous changes to Department Circular DEQ-4, 2013 edition; clarification of existing rules related to whether a professional engineer is required to submit plans and specifications; to amend for clarification existing rules related to submission of required documents by a professional engineer; amend existing rules for clarification related to submission of plans and specifications for systems that have never submitted plans and specifications for those systems that fail to complete construction within a three-year window; to amend subdivision rules that adopt DEQ-1 and DEQ-3 to reference the 2014 editions; to reorganize for clarity, without changing the substance, portions of these rules mentioned before; and to incorporate the new federal standard for definition for "lead-free." Mr. Mires so MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED 7-0.

IV. General Public Comment

Chairman Shropshire asked if any member of the audience would like to speak to any matters before the Board. No one responded affirmative.

V. Adjournment

Chairman Shropshire called for a motion to adjourn. Mr. Tweeten so MOVED. Ms. Miles SECONDED the motion. The motion CARRIED with a unanimous vote.

The meeting adjourned at 12:01 p.m.

Board of Environmental Review January 21, 2014, minutes approved:

_____
ROBIN SHROPSHIRE
CHAIRMAN
BOARD OF ENVIRONMENTAL REVIEW

_____
DATE

MISSOULA COUNTY

MISSOULA CITY-COUNTY HEALTH DEPARTMENT
ENVIRONMENTAL HEALTH DIVISION
301 WEST ALDER
MISSOULA, MONTANA 59802-4123

(406) 258-4755 FAX # (406) 258-4781

Executive Summary for Missoula City-County Air Pollution Control Program Rule Changes

November 2012 Changes
&
October 2013 Changes

The Missoula City-County Health Department (Department) is requesting that the Montana State Board of Environmental Review simultaneously approve two records of adoptions for the Missoula City-County Air Pollution Control Program.

On November 15, 2012, the Missoula City-County Air Pollution Control Board (Air Board) approved changes to Chapters 4, 6, 7, 8, 9, and 14 of the Missoula City-County Air Pollution Control Program. These changes were then approved by the Missoula City Council and the Missoula Board of County Commissioners on February 25, 2013. See the November 2012 Record of Adoption for complete details.

After these rules were passed at the local level, the Department received comments that one of the rule changes conflicted with state law. It was also noticed that reference errors were present in the proposed rule changes.

To correct the potential conflict with state law and the reference errors, the Department started the local rule making process again with the intent to fix the conflict with state law and the reference errors found in the previous set of changes. The Department requested that the rule changes approved earlier by the Air Board, the City Council and the County Board of County Commissioners not be put on the Montana State Board of Environmental Review agenda until a second Missoula City-County Air Pollution Control Program rule making process could be completed at the local level.

On October 17, 2013, the Air Board approved changes to Chapters 3, 6, 8, and 15 of the Missoula City-County Air Pollution Control Program. These changes were then approved by the Missoula City Council and the Missoula Board of County Commissioners on December 9, 2013. This second set of rule changes fix the conflict with state law, corrects several references errors in the rules, clarifies some of the rules, corrects reference errors in the November 8, 2012 *Applicability of 75-2-301 Findings* document, and corrects reference errors in the November 15, 2012 *75-2-301 Written Findings* document. See the October 2013 Record of Adoption for complete details.

By approving both records of adoption at the same time, potential conflicts with state law are avoided and several reference errors are fixed.

November 2012 Changes

Chapter 4: Missoula County Air Stagnation and Emergency Episode Avoidance Plan

- **Rule 4.112** states that air alerts and warnings with regulatory requirements must be called during Air Alerts, Warnings, Emergencies and Crisis when wildfire smoke is the cause of high air pollution levels. The proposed rule change removes the requirement that air alerts be called when wildfire smoke causes high air pollution levels. Health advisories are the appropriate response for wildfire smoke episodes, not regulatory actions. This change would fix an oversight from previous rule revisions.

Chapter 6: Standards for Stationary (Industrial) Sources

- **Rule 6.101(8)** adds a definition for a portable source.
- **Rule 6.101(10)** corrects a reference error.
- **Rule 6.102 (3-4)** allows portable industrial sources with a valid State of Montana Air Quality Permit to operate under a temporary Missoula City-County Air Quality Permit while the portable source pursues a permanent Missoula City-County Air Quality Permit. This rule change allows portable sources with a valid state permit to operate in Missoula County in a timely fashion while ensuring that all environmental rules and local, state, and federal air pollution emission standards are met.
- **Rule 6.102(5)** clarifies that the Air Board may require an air quality permit if a permit is needed to protect the National Ambient Air Quality Standards. Maintaining air pollutant levels below the National Ambient Air Quality Standards is one of the main purposes of the Air Pollution Control Program.
- **Rule 6.601(4)** corrects a reference error.
- **Rules 6.103(6), 6.106(3), 6.107 (5-6) and 6.108(3)** removes the Administrative Review Process from the Air Pollution Control Program permitting actions and clarifies who may request an Air Board Hearing. The administrative review process has never been successfully used to resolve disputes or concerns with permitting actions. Every request for an administrative review of an air permitting action has gone to an Air Board Hearing. The administrative review process for air permits is a redundant step that uses up staff, public and permittees' time with no benefit or resolution. The ability for affected parties to request a Hearing before the Air Board for a department permitting action is maintained. Who can request an Air Board Hearing is also clarified and expanded in this rule rewrite.

Chapter 7: Outdoor Burning

- **Rule 7.101(3)** clarifies the definition of a bonfire for the county. The previous definition was often interpreted in different and inconsistent ways. This definition re-write will allow the department to give a more consistent interpretation of what constitutes a bonfire.
- **Rule 7.106(1)** updates the rules to agree with how the outdoor burning permit program is now run. The paper and phone methods have gone primarily to an internet and phone program and this change is needed to keep up with the new system.

- **Rule 7.107(3)** clarifies major outdoor burning source requirements in the county.
- **Rule 7.110(7)** removes an out of date phone number.

Chapter 8: Fugitive Particulate

Chapter 8 was changed to allow alternatives to asphalt or concrete paving in situations where other surfaces with low fugitive emissions are technically feasible. Over the years, the Missoula City-County Health Department has received several requests to allow paving options other than asphalt or concrete in appropriate situations; these changes address those requests. The rule changes clarify that temporary roads at mining sites may not need to be paved and that material carry out at mining sites must be controlled to reduce fugitive emissions.

- **Rule 8.101(5)** adds a definition for block pavers.
- **Rule 8.101(6)** adds a definition for bound recycled glass.
- **Rule 8.101(21)** adds a definition for reinforced grids. This replaces the "geoblock" definition that was in Rule 8.101(9).
- **Rule 8.102(2)** clarifies opacity rules for sources.
- **Rule 8.102(3)** replaces the term "geoblocks" with reinforced grids and block pavers.
- **Rule 8.104** clarifies that roads at mining sites are temporary.
- **Rule 8.104(1)** clarifies that temporary roads at mining sites are required to control material carry out.
- **Rule 8.104(2)** clarifies that temporary roads at mining sites may not be required to pave.
- **Rule 8.202(4)** clarifies that roads used for solely for utilities, agricultural or silvicultral purposes are exempt from the paving requirements of Subchapter 8.2.
- **Rule 8.202(5)** clarifies that landfill roads may be considered temporary if they exist in the same location for less than three years.
- **Rule 8.203(1)** acknowledges the addition of 8.203(4).
- **Rule 8.203(3)(a)(ii)** clarifies that long term parking area exemptions do not apply to sales lots for automobiles or RVs.
- **Rule 8.203(b)(ii) and Rule 8.203(d)** replaces the term geoblock with reinforced grids since geoblock is a trade name and needs to be replaced.
- **Rule 8.203(4)** adds a provision to allow self-draining solid surfaces (i.e. permeable paving) in parking areas as long as certain conditions are met.
- **Rule 8.204(1)** allows a self-draining solid surface as an option for new private driveways.
- **Rule 8.204(4)** adds a provision to allow self-draining solid surfaces in lieu of paving for new driveways in the air stagnation zone as long as certain conditions are met.

Chapter 9: Solid Fuel Burning Devices (Wood Stoves)

- **Rules 9.203(1)(b) and 9.204(1)(g)** allows licensed mobile food service establishment to obtain a solid fuel burning device permit throughout the county. This change will allow the air rules to mesh better with the goals of the county licensed establishment food handling program. To comply with the air rules,

mobile food service establishments currently place their solid fuel cooking devices outside the mobile unit. Best food handling practices require cooking to occur inside the mobile unit. This rule change would allow the solid fuel burning/cooking devices to be inside the mobile unit and the rule does not allow the solid fuel burning device to be used in the winter months when we have air pollution problems from these types of devices.

- **Rule 9.401** corrects reference errors.
- **Rule 9.402** changes labeling requirements for businesses that sell solid fuel burning devices. This change is needed to reflect previous changes in solid fuel burning device installation requirements throughout the county. This requirement will make it clearer to customers where different devices may be installed in the county.

Chapter 14: Enforcement and Administrative Procedures

- **Rules 14.106(1-2, 6) and 14.107(1-2)** removes the Administrative Review Process from the Air Pollution Control Program permitting actions and clarifies who may request an Air Board Hearing. The administrative review process has never been successfully used to resolve disputes or concerns with permitting actions. All requests for administrative reviews of air permitting actions have gone to Air Board Hearings. The administrative review process for air permits is a redundant step that uses up staff, public, and permittees' time with no benefit or resolution. The ability for affected parties to request a Hearing before the Air Board for a department permitting action is maintained. This rule rewrite also clarifies and expands who can request an Air Board Hearing.

October 2013 Changes

Chapter 3: Failure To Attain Standards

- **Rule 3.102(1)(b)** corrects reference errors in the Particulate Matter Contingency Measures.

Chapter 6: Standards for Stationary Sources

- **Rule 6.102 (4)** clarifies that the Missoula City-County Health Department air quality permitting policies and conditions for the Missoula Air Stagnation Zone replace the Montana Air Quality Permit addendums specific to PM_{10} nonattainment areas. Also corrects a reference omission in Rule 6.102(4)(d).
- **Rule 6.102(5)(a)** adds language to remove any potential conflict with state law.
- **Rule 6.102(6)** corrects a reference error.

Chapter 8: Fugitive Particulate

- **Rule 8.203(3)(a)(ii)** clarifies that long term parking area exemptions do not apply to sales lots for vehicles.

Chapter 15: Penalties

- **Rule 15.104(3)(a and b)** corrects reference errors.

RECORD OF ADOPTION

REVISIONS TO THE MISSOULA CITY-COUNTY AIR POLLUTION CONTROL PROGRAM

CHAPTERS 3, 6, 8, 15

OCTOBER 2013

Missoula City–County Air Pollution Control Program Proposed Changes

State Board of Environmental Review

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7. December 9, 2013 Missoula City Council and Board of County Commissioners Agenda
8. Minutes Summary from December 9, 2013 Joint City Council and County Commissioners Hearing
9. Joint Missoula City Council Resolution 7839 and Missoula Board of County Commissioners Resolution 2013-131

Section 4: Air Quality Advisory Council (AQAC) Meetings

1. Interested Parties Email Notice for September AQAC Meeting
2. Air Quality Advisory Council Agenda from September 9, 2013
3. Interested Parties Email Notice for October AQAC Meeting
4. Air Quality Advisory Council Agenda from September 4, 2012

Section 5: Findings for HB521

1. Applicability of 75-2-301 Findings that Corrects November 8, 2012 Applicability of 75-2-301 Findings: Dated September 19, 2012
2. 75-2-301 Written Findings that Corrects November 15, 2012 Written Findings Document: Dated November 15, 2012
3. Applicability of 75-2-301 Findings for Current Rule Changes: Dated October 17, 2013

Section 1

Proposed Changes to Missoula City-County Air Pollution Control Program Chapters 3, 6, 8, and 15

MISSOULA COUNTY

MISSOULA CITY-COUNTY HEALTH DEPARTMENT
ENVIRONMENTAL HEALTH DIVISION
301 WEST ALDER
MISSOULA, MONTANA 59802-4123
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Summary and Explanation for Changes to the Missoula City-County Air Pollution Control Program

October 2013

Chapter 3 – Failure To Attain Standards

1. Rule 3.102(1)(b) – Particulate Matter Contingency Measures
Reference errors are fixed.

Chapter 6- Standards for Stationary Sources

1. Rule 6.102 (4) – Air Quality Permit Required
The rule change in 6.102(4)(a) clarifies that the Missoula City-County Health Department air quality permitting policies and conditions for the Missoula Air Stagnation Zone replace the Montana Air Quality Permit addendums specific to PM_{10} nonattainment areas. A reference omission is also fixed in Rule 6.102(4)(d).

2. Rule 6.102(5)(a) – Air Quality Permit Required
6.102(5)(a) may conflict with state law. The additional language proposed for 6.102(5)(a) removes any potential conflict with state law.

3. Rule 6.102(6) – Air Quality Permit Required
A reference error is fixed.

Chapter 8 – Fugitive Particulate

1. Rule 8.203(3)(a)(ii) clarifies that long term parking area exemptions do not apply to sales lots for vehicles.

Chapter 15 – Penalties

1. Rule 15.104(3)(a and b) – Solid Fuel Burning Device Penalties
Reference errors are fixed.

Missoula City – County
Air Pollution Control Program

Revisions adopted by the:
Missoula City-County Air Pollution Control Board on October 17, 2013
Missoula City Council on December 9, 2013
Missoula Board of County Commissioners on December 9, 2013

To be forwarded to
The Montana Board of Environmental Review for approval

9/19/2013
CHAPTER 3
FAILURE TO ATTAIN STANDARDS

Rule 3.101 - Purpose
As required by 42 USC 7410(a)(2)(G) of the FCAA, this chapter outlines what the department will do in the event that either non-attainment areas fail to attain the NAAQS or to make reasonable progress in reducing emissions.

Rule 3.102 - Particulate Matter Contingency Measures
(1) Within sixty (60) days after being notified by the DEQ and EPA that the area has failed to attain the PM_{10} NAAQS or make reasonable further progress in reducing emissions, the department will select and implement one of the following contingency measures:
(a) If the major contributing source is re-entrained road dust, then the department will implement Rule 8.304.

(b) If the major contributing source is wood burning, then the department will implement Rules ~~4.112~~ 4.113 and ~~9.119~~ 9.601.

(2) The department will determine what source is the significant contributor to the violation using chemical or microscopic analysis of exposed PM_{10} filters.

(3) If neither wood burning nor re-entrained road dust is the major contributing source, the department will still implement one of the contingency measures listed in (1) of this rule.

Rule 3.103 - Carbon Monoxide Contingency Measures
Within sixty (60) days of notification by the DEQ and the EPA that the area has failed to attain the carbon monoxide NAAQS or make reasonable further progress in reducing emissions, the department will implement Rules 9.119 and if the department determines that motor vehicles are greater than 40 percent of the cause, the department will implement Rule 10.110.

Rule 3.104 - Early Implementation of Contingency Measures
Early implementation of a contingency measure will not result in the requirement to implement additional moderate area contingency measures if the area fails to attain the NAAQS or make reasonable further progress in reducing emissions. However, if the area is redesignated as serious, additional control measures including Best Available Control Measures and serious area contingency measures will be necessary.

CHAPTER 6
STANDARDS FOR STATIONARY SOURCES

Subchapter 1 – Air Quality Permits for Air Pollutant Sources

Rule 6.101 – Definitions

For the purpose of this subchapter the following definitions apply:

(1) "Air Quality Permit" or "permit" means a permit issued by the department for the construction, installation, alteration, or operation of any air pollution source. The term includes annual operating and construction permits issued prior to November 17, 2000.

(2) "Commencement of construction" means the owner or operator has either:

(a) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(3) "Construct or Construction" means on-site fabrication, modification, erection or installation of a source or control equipment, including a reasonable period for startup and shakedown.

(4) "Existing Source" means a source or stack associated with a source that is in existence and operating or capable of being operated or that had an air quality permit from the department or the Control Board on March 16, 1979.

(5) "Major Emitting Facility" means a stationary source or stack associated with a source that directly emits, or has the potential to emit, 100 tons per year of any air pollutant, including fugitive emissions, regulated under the Clean Air Act of Montana.

(6) "New or Altered Source" means a source or stack (associated with a source) constructed, installed or altered on or after March 16, 1979.

(7) "Owner or Operator" means the owner of a source or the authorized agent of the owner, or the person who is responsible for the overall operation of the source.

(8) "Portable source" means a source which is not stationary or fixed to a single location, and which is not fully self propelled. The term may include, but is not limited to, portable asphalt plants, portable gravel crushers and portable wood chippers

(9) "Potential to Emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, must be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a source.

(10) "Source" means a "stationary source" as defined by Rule 2.101(45).

Rule 6.102 – Air Quality Permit Required

(1) A person may not construct, install, alter, operate or use any source without having a valid permit from the department when required by this rule to have a permit.

(2) A permit is required for the following:

(a) any source that has the potential to emit 25 tons or more of any pollutant per year;

(b) Incinerators; asphalt plants; concrete plants; and rock crushers without regard to size;

(c) Solid fuel burning equipment with the heat input capacity of 1,000,000 BTU/hr or more;

(d) A new stack or source of airborne lead pollution with a potential to emit five tons or more of lead per year;

(e) An alteration of an existing stack or source of lead pollution that increases the maximum potential of the source to emit airborne lead by 0.6 tons or more per year.

(3) A portable source with a Montana Air Quality Permit issued pursuant to the Administrative Rules of Montana Title 17, Chapter 8, subchapter 7 may apply for a Temporary Missoula City-County Air Quality Permit. The department may issue a Temporary Missoula City-County Air Quality Permit to a source if the following conditions are met:

(a) The applicant sends written notice of intent to transfer location to the department. Such notice must include documentation that the applicant has published a notice of the intended transfer in a legal publication in a newspaper of general circulation in the area into which the permit transfer is to be made. The notice must include the statement that the department will accept public comments for fifteen days after the date of publication; and

(b) The applicant has submitted a complete Missoula City-County Air Quality Permit application to the department prior to submitting an application for a Temporary Missoula City-County Air Quality Permit.

(4) A source with a Temporary Missoula City-County Air Quality Permit is subject to the following conditions:

(a) The emission control requirements of the Montana Air Quality Permit issued to the portable source are transferred verbatim, without augmentation, revision, or redaction to the Temporary Missoula City-County Air Quality Permit excluding conditions and addendums specific to PM_{10} nonattainment areas. Missoula City-County Health Department air quality permitting policies and conditions for the Missoula Air Stagnation Zone replace the Montana Air Quality Permit addendums specific to PM_{10} nonattainment areas; and

(b) The source may locate and operate in Missoula County after the department has approved the permit transfer; and

(c) A Temporary Missoula City-County Air Quality Permit expires in 180 days or upon completion of the Missoula City-County air quality permitting process required by Rule 6.102(3)(b), whichever occurs first; and

(d) The Department may revoke a Temporary Missoula City-County Air Quality Permit prior to the expiration of the time period set forth in 6.102(4)(c) if the portable source violates any provision of the Temporary Missoula City-County Air Quality Permit.

(5) An air quality permit is not required for the following, except when the Control Board determines an air quality permit is necessary to insure compliance with the NAAQS and other provisions of this Program:

(a) Any major stationary source or modification, as defined in 40 CFR 51.165 or 51.166, which is required to obtain an air quality permit from the MT DEQ in conjunction with ARM Title 17, Chapter 8, Subchapters 8, 9 or 10 that does not have the potential to emit 250 tons a year or more of any pollutant subject to regulation under Title 75, Chapter 2, MCA, including fugitive emissions;

(b) Residential, institutional, and commercial fuel burning equipment of less than 10,000,000 BTU/hr heat input if burning liquid or gaseous fuels, or 1,000,000 BTU/hr input if burning solid fuel;

(c) Residential and commercial fireplaces, barbecues and similar devices for recreational,

cooking or heating use;

(d) motor vehicles, trains, aircraft or other such self-propelled vehicles;

(e) agricultural and forest prescription fire activities;

(f) emergency equipment installed in hospitals or other public institutions or buildings for use when the usual sources of heat, power and lighting are temporarily unattainable;

(g) routine maintenance or repair of equipment;

(h) public roads; and

(i) any activity or equipment associated with the planting, production or harvesting of agricultural crops.

(6) A source that is exempt from obtaining an air quality permit by Rule 6.102(~~3~~5) is subject to all other applicable provisions of this program, including but not limited to those regulations concerning outdoor burning, odors, motor vehicles, fugitive particulate and solid fuel burning devices.

(7) A source not otherwise required to obtain an air quality permit may obtain such a permit for the purpose of establishing federally enforceable limits on its potential to emit.

Rule 6.103 – General Conditions

(1) An air quality permit must contain and permit holders must adhere to the following provisions:

(a) requirements and conditions applicable to both construction and subsequent use including, but not limited to, applicable emission limitations imposed by subchapter 5 of this chapter, the Clean Air Act of Montana and the FCAA.

(b) such conditions as are necessary to assure compliance with all applicable provisions of this Program and the Montana SIP.

(c) a condition that the source shall submit information necessary for updating annual emission inventories.

(d) a condition that the permit must be available for inspection by the department at the location for which the permit is issued.

(e) a statement that the permit does not relieve the source of the responsibility for complying with any other applicable City, County, federal or Montana statute, rule, or standard not contained in the permit.

(2) An air quality permit is valid for five years, unless:

(a) additional construction that is not covered by an existing construction and operating permit begins on the source;

(b) a change in the method of operation that could result in an increase of emissions begins at the source;

(c) the permit is revoked or modified as provided for in Rules 6.108 and 6.109; or

(d) the permit clearly states otherwise.

(3) A source whose permit has expired may not operate until it receives another valid permit from the department.

(4) An air quality permit for a new or altered source expires 36 months from the date of issuance if the construction, installation, or alteration for which the permit was issued is not completed within that time. Another permit is required pursuant to the requirements of this subchapter for any subsequent construction, installation, or alteration by the source.

(5) A new or altered source may not commence operation, unless the owner or operator demonstrates that construction has occurred in compliance with the permit and that the source can operate in

compliance with applicable conditions of the permit, provisions of this Program, and rules adopted under the Clean Air Act of Montana and the FCAA and any applicable requirements contained in the Montana SIP.

(6) Commencement of construction or operation under a permit containing conditions is deemed acceptance of all conditions so specified, provided that this does not affect the right of the permittee to appeal the imposition of conditions through the Control Board hearing process as provided in Chapter 14.

(7) Having an air quality permit does not affect the responsibility of a source to comply with the applicable requirements of any control strategy contained in the Montana SIP.

Rule 6.104 – Reserved

Rule 6.105 – Air Quality Permit Application Requirements

(1) The owner or operator of a new or altered source shall, not later than 180 days before construction begins, or if construction is not required not later than 120 days before installation, alteration~~,~~ or use begins, submit an application for an air quality permit to the department on forms provided by the department.

(a) An application submitted by a corporation must be signed by a principal executive officer of at least the level of vice president, or an authorized representative, if that representative is responsible for the overall operation of the source;

(b) An application submitted by a partnership or a sole proprietorship must be signed by a general partner or the proprietor respectively;

(c) An application submitted by a municipal, state, federal or other public agency must be signed by either a principal executive officer, appropriate elected official or other duly authorized emplôyee; and

(d) An application submitted by an individual must be signed by the individual or his or her authorized agent.

(2) The application must include the following:

(a) A map and diagram showing the location of the proposed new or altered source and each stack associated with the source, the property involved, the height and outline of the buildings associated with the new or altered source, and the height and outline of each stack associated with the new or altered source;

(b) A description of the new or altered source including data on maximum design production capacity, raw materials and major equipment components;

(c) A description of the control equipment to be installed;

(d) A description of the composition, volume and temperatures of the effluent stream, including the nature and extent of air pollutants emitted, quantities and means of disposal of collected pollutants, and the air quality relationship of these factors to conditions created by existing sources or stacks associated with the new or altered source;

(e) Normal and maximum operating schedules;

(f) Adequate drawings, blueprints, specifications or other information to show the design and operation of the equipment involved;

(g) Process flow diagrams containing material balances;

(h) A detailed schedule of construction or alteration of the source;

(i) A description of the shakedown procedures and time frames that will be used at the

source;

(j) Other information requested by the department that is necessary to review the application and determine whether the new or altered source will comply with applicable provisions of this Program; including but not limited to information concerning compliance with environmental requirements at other facilities;

(k) Documentation showing the city or county zoning office was notified in writing by the applicant that the proposed use requires an air quality permit;

(l) A valid city or county zoning compliance permit for the proposed use;

(3) The department may waive the requirement that any of the above information must accompany a permit application.

(4) When renewing an existing permit, the owner or operator of a source is not required to submit information already on file with the department. However, the department may require additional information to ensure the source will comply with all applicable requirements.

(5) An application for a solid or hazardous waste incinerator must include the information specified in Rule 6.605.

(6) An owner or operator of a new or altered source proposing construction or alteration within any area designated as nonattainment in 40 CFR 81.327 for any regulated air pollutant shall demonstrate that all major emitting facilities located within Montana and owned or operated by such persons, or by an entity controlling, controlled by, or under common control with, such persons, are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable air quality emission limitations and standards contained in ARM Title 17, Chapter 8.

(7) The owner or operator of a new or altered source shall, before construction is scheduled to end as specified in the permit, submit additional information on a form provided by the department. The information to be submitted must include the following:

(a) Any information relating to the matters described in Section (2) of this rule that has changed or is no longer applicable; and

(b) A certification by the applicant that the new or altered source has been constructed in compliance with the permit.

(8) An application is deemed complete on the date the department received it unless the department notifies the applicant in writing within thirty (30) days thereafter that it is incomplete. The notice must list the reasons why the application is considered incomplete and must specify the date by which any additional information must be submitted. If the information is not submitted as required, the application is considered withdrawn unless the applicant requests in writing an extension of time for submission of the additional information. The application is complete on the date the required additional information is received.

Rule 6.106 – Public Review of Air Quality Permit Application

(1) The applicant shall notify the public, by means of legal publication in a newspaper of general circulation in the area affected by the application of its application for an air quality permit. The notice must be published not sooner than ten (10) days prior to submittal of an application nor later than ten (10) days after submittal of an application. The applicant shall use the department's format for the notice. The notice must include:

(a) the name and the address of the applicant;

(b) address and phone number of the premises at which interested persons may obtain further information, may inspect and may obtain a copy of the application;

(c) the date by which the department must receive written public comment on the

application. The public must be given at least 30 days from the date the notice is published to comment on the application.

(2) The department shall notify the public of its preliminary determination by means of legal publication in a newspaper of general circulation in the area affected by the application and by sending written notice to any person who commented on the application during the initial 30-day comment period. Each notice must specify:

(a) whether the department intends on issuing, issuing with conditions, or denying the permit;

(b) address and phone number of the premises at which interested persons may obtain further information, may inspect and may obtain a copy of the proposed permit;

(c) the date by which the department must receive written public comment on the application. The public must be given at least 15 days from the date the notice is published to comment on the application.

(3) A person who has submitted written comments and who is adversely affected by the department's final decision may request, in writing, a hearing before the Control Board within fifteen (15) days after the department's final decision. The request for hearing must state specific grounds why the permit should not be issued, should be issued, or why it should be issued with particular conditions. Department receipt of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing process.

(4) Permit renewals are subject to this rule.

Rule 6.107 – Issuance or Denial of an Air Quality Permit

(1) A permit may not be issued to a new or altered source unless the applicant demonstrates that the source:

(a) can be expected to operate in compliance with:

(i) the conditions of the permit,

(ii) the provisions of this Program;

(iii) rules adopted under the Clean Air Act of Montana) and the FCAA.; and

(iv) any applicable control strategies contained in the Montana SIP.

(b) will not cause or contribute to a violation of a Montana or NAAQS.

(2) An air quality permit for a new or altered source may be issued in an area designated as nonattainment in 40 CFR 81.327 only if the applicable SIP approved in 40 CFR Part 52, Subpart BB is being carried out for that nonattainment area.

(3) The department shall make a preliminary determination as to whether the air quality permit should be issued or denied within forty (40) days after receipt of a completed application.

(4) The department shall notify the applicant in writing of its final decision within sixty (60) days after receipt of the completed application.

(5) If the department's final decision is to issue the air quality permit, the department may not issue the permit until:

(a) fifteen (15) days have elapsed since the final decision and no request for a hearing before the Control Board has been received; or

(b) the end of the Control Board Hearing process as provided for in Chapter 14, if a request for a Control Board Hearing was received.

(6) If the department denies the issuance of an air quality permit it shall notify the applicant in writing

of the reasons why the permit is being denied and advise the applicant of his or her right to request a hearing before the Control Board within fifteen (15) days after receipt of the department's notification of denial of the permit.

Rule 6.108 – Revocation or Modification of an Air Quality Permit

(1) An air quality permit may be revoked for any violation of:

(a) A condition of the permit;

(b) A provision of this Program;

(c) An applicable regulation, rule or standard adopted pursuant to the FCAA;

(d) A provision of the Clean Air Act of Montana; or

(f) any applicable control strategies contained in the Montana SIP.

(2) An air quality permit may be modified for the following reasons:

(a) Changes in any applicable provisions of this Program adopted by the Control Board, or rules adopted under the Clean Air Act of Montana;

(b) Changed conditions of operation at a source that do not result in an increase of emissions

(c) When the department or Control Board determines modifications are necessary to insure compliance with the provisions of this Program or an implementation plan approved by the Control Board.

(3) The department shall notify the permittee in writing of its intent to revoke or modify the permit. The permit is deemed revoked or modified in accordance with the department's notice unless the permittee makes a written request for a hearing before the Control Board within fifteen (15) days of receipt of the department's notice. Departmental receipt of a written request initiates the appeals process outlined in Chapter 14 of this Program and postpones the effective date of the department's decision to revoke or modify the permit until the conclusion of the hearing process.

Rule 6.109 – Transfer of Permit

(1) An air quality permit may not be transferred from one location to another or from one piece of equipment to another, except as allowed in (2) of this rule.

(2) An air quality permit may be transferred from one location to another if:

(a) written notice of intent to transfer location is sent to the department, along with documentation that the permittee has published notice of the intended transfer by means of a legal publication in a newspaper of general circulation in the area to which the transfer is to be made. The notice must include the statement that public comment will be accepted by the department for fifteen days after the date of publication;

(b) the source will operate in the new location for a period of less than one year; and

(c) the source is expected to operate in compliance with:

(i) this Program;

(ii) the standards adopted pursuant to the Clean Air Act of Montana, including the Montana ambient air quality standards;

(iii) applicable regulations and standards promulgated pursuant to the FCAA, including the NAAQS; and

(iv) any control strategies contained in the Montana state implementation plan.

(d) the source has a valid city or county zoning compliance permit for the proposed use at the

new location; and

(e) the source pays the transfer fee listed in Attachment A.

(3) An air quality permit may be transferred from one person to another if written notice of intent to transfer, including the names of the transferor and the transferee, is sent to the department.

(4) The department will approve or disapprove a permit transfer within 30 days after receipt of a complete notice of intent as described in (2) or (3) of this rule.

Subchapters 2, 3, 4 – *reserved*

Subchapter 5 – Emission Standards

Rule 6.501 – Emission Control Requirements

(1) For the purpose of this rule, Best Available Control Technology (BACT)" means an emission limitation (including a visible emission standard), based on the maximum degree of reduction for each pollutant subject to regulation under the FCAA or the Clean Air Act of Montana, that would be emitted from any proposed stationary source or modification that the department, on a case by case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event may application of BACT result in emission of any pollutant that would exceed the emissions allowed by any applicable standard under Rules 6.506 or 6.507. If the department determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice or operational standard or combination thereof, to require the application of BACT. Such standard must, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation and must provide for compliance by means which achieve equivalent results.

(2) The owner or operator of a new or altered source for which an air quality permit is required by subchapter 1 of this Chapter shall install on that source the maximum air pollution control capability that is technically practicable and economically feasible, except that:

(a) best available control technology must be used; and

(b) the lowest achievable emission rate must be met when required by the FCAA.

(3) The owner or operator of any air pollution source for which an air quality permit is required by subchapter 1 of this Chapter shall operate all equipment to provide the maximum air pollution control for which it was designed.

(4) The department may establish emission limits on a source based on an approved state implementation plan or maintenance plan to keep emissions with in a budget.

Rule 6.502 – Particulate Matter from Fuel Burning Equipment

(1) For the purpose of this rule "new fuel burning equipment" means any fuel burning equipment constructed or installed after November 23, 1968.

(2) The following emission limits apply to solid fuel burning equipment constructed or installed after May 14, 2010 with a heat input capacity from 1,000,000 BTU/hr up to and including 10,000,000 BTU/hr.

(a) Inside the Air Stagnation Zone, solid fuel burning equipment must meet LAER and a person may not cause or allow particulate matter emissions in excess of 0.1 pounds per million BTU heat input to be discharged from any stack, opening or chimney into the atmosphere.

(b) Outside the Air Stagnation Zone, solid fuel burning equipment must meet BACT and a person may not cause or allow particulate matter emissions in excess of 0.20 lbs per million BTU heat input to be discharged from any stack, opening or chimney into the atmosphere.

(3) For devices or operations not covered in Rule 6.502(2), a person may not cause or allow particulate matter caused by the combustion of fuel to be discharged from any stack or chimney into the atmosphere in excess of the hourly rates set forth in the following table:

Heat Input (million BTUs/hr)	Maximum Allowable Emissions of Particulate Matter (lbs/million BTU's)	
	Existing Fuel Burning Equipment	New Fuel Burning Equipment
≤ 10	0.60	0.60
100	0.40	0.35
1,000	0.28	0.20
≥ 10,000	0.19	0.12

(4) For a heat input between any two consecutive heat inputs stated in the preceding table, maximum allowable emissions of particulate matter are shown for existing fuel burning equipment on Figure 1 and for new fuel burning equipment on Figure 2. For the purposes hereof, heat input is calculated as the aggregate heat content of all fuels (using the upper limit of their range of heating value) whose products of combustion pass through the stack or chimney.

(5) When two or more fuel burning units are connected to a single stack, the combined heat input of all units connected to the stack may not exceed that allowable for the same unit connected to a single stack.

(6) This rule does not apply to:

(a) emissions from residential solid fuel combustion devices, such as fireplaces and wood and coal stoves with heat input capacities less than 1,000,000 BTU per hour; and

(b) new stationary sources subject to Rule 6.506 for which a particulate emission standard has been promulgated.

FIGURE 1
Maximum Emission of Particulate Matter from Existing Fuel Burning Installations

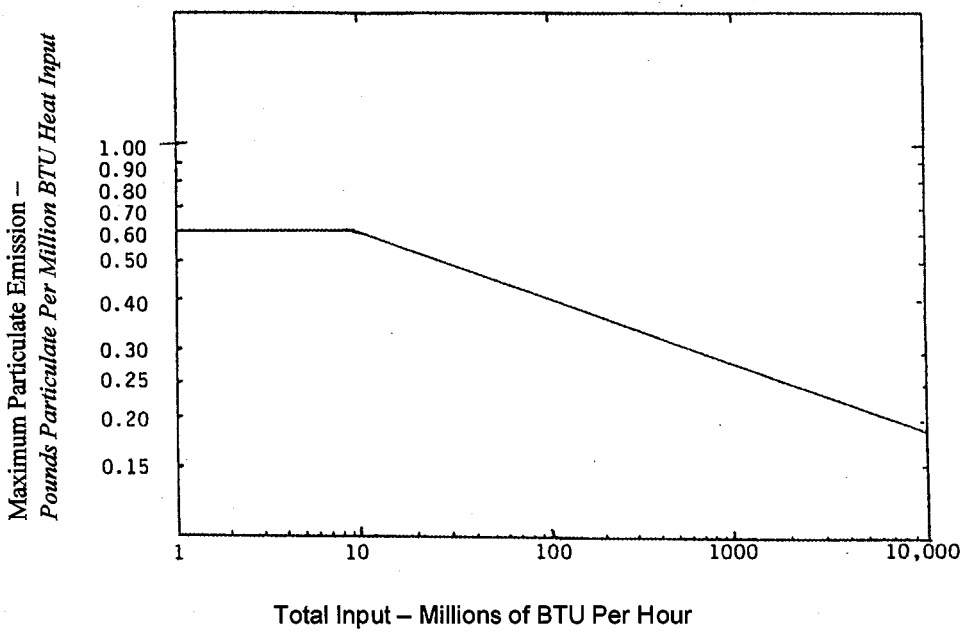
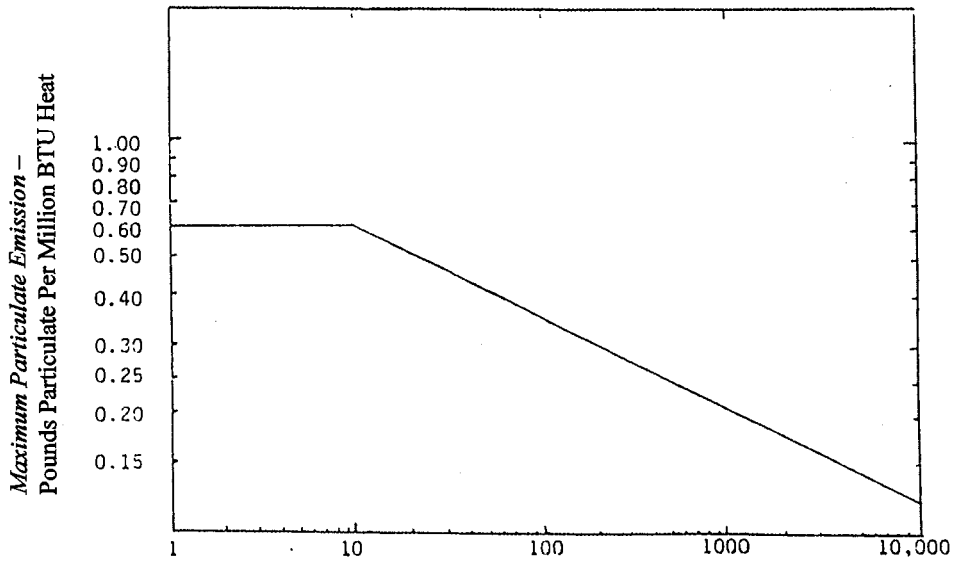


FIGURE 2
Maximum Emission of Particulate Matter from New Fuel Burning Installations



Rule 6.503 – Particulate Matter from Industrial Processes

(1) A person may not cause or allow particulate matter in excess of the amount shown in the following table to be discharged into the outdoor atmosphere from any operation, process or activity.

Process (lb/hr)	Weight Rate (tons/hr)	Rate of Emission (lb/hr)
100	0.0	0.551
200	0.10	0.877
400	0.20	1.40
600	0.30	1.83
800	0.40	2.22
1,000	0.50	2.58
1,500	0.75	3.38
2,000	1.00	4.10
2,500	1.25	4.76
3,000	1.50	5.38
3,500	1.75	5.96
4,000	2.00	6.52
5,000	2.50	7.58
6,000	3.00	8.56
7,000	3.50	9.49
8,000	4.00	10.4
9,000	4.50	11.2
10,000	5.00	12.0
12,000	6.00	13.6
16,000	8.00	16.5
18,000	9.00	17.9
20,000	10.00	19.2
30,000	15.00	25.2
40,000	20.00	30.5
50,000	25.00	35.4
60,000	30.00	40.0
70,000	35.00	41.3
80,000	40.00	42.5
90,000	45.00	43.6
100,000	50.00	44.6
120,000	60.00	46.3
140,000	70.00	47.8
160,000	80.00	49.0
200,000	100.00	51.2
1,000,000	500.00	69.0
2,000,000	1,000.00	77.6
6,000,000	3,000.00	92.7

(2) When the process weight rate falls between two values in the table, or exceeds 3,000 tons per hour, the maximum hourly allowable emissions of particulate are calculated using the following equations:

(a) for process weight rates up to 60,000 pounds per hour:

$$E = 4.10\ P^{0.67}$$

(b) for process weight rates in excess of 60,000 pounds per hour:

$$E = 55.0\ P^{0.11} - 40$$

Where E = rate of emission in pounds per hour and P = process weight rate in tons per hour.

(3) This rule does not apply to particulate matter emitted from:

(a) the reduction cells of a primary aluminum reduction plant,

(b) those new stationary sources listed in Rule 6.506 for which a particulate emission standard has been promulgated,

(c) fuel burning equipment, and

(d) incinerators.

Rule 6.504 – Visible Air Pollutants

(1) A person may not cause or allow emissions that exhibit an opacity of forty percent (40%) or greater averaged over six consecutive minutes to be discharged into the outdoor atmosphere from any source installed on or before November 23, 1968, the provisions of this rule do not apply to transfer of molten metals or emissions from transfer ladles.

(2) A person may not cause or authorize emissions to be discharged into the outdoor atmosphere from any source installed after November 23, 1968, that exhibit an opacity of twenty percent (20%) or greater averaged over six consecutive minutes.

(3) During the building of new fires, cleaning of grates, or soot blowing, the provisions of Sections (1) and (2) apply, except that a maximum average opacity of sixty percent (60%) is permissible for not more than one four minute period in any 60 consecutive minutes. Such a four-minute period means any four consecutive minutes.

(4) This rule does not apply to emissions from:

(a) wood-waste burners;

(b) incinerators;

(c) motor vehicles;

(d) those new stationary sources listed in ARM 17.8.340 for which a visible emission standard has been promulgated; or

(e) residential solid-fuel burning devices.

Rule 6.505 – Fluoride Emissions

(1) A person may not cause or allow to be discharged into the outdoor atmosphere from any phosphate rock or phosphorate processing equipment or equipment used in the production of elemental phosphorous, enriched phosphates, phosphoric acid, defluorinated phosphates, phosphate fertilizers or phosphate concentrates or any equipment used in the processing of fluorides or wastewater enriched flourides, in a gaseous or particulate form or any combination of gaseous or particulate forms in excess of 0.3 pounds per ton of P_2O_5 (phosphorous pentoxide) introduced into the process of any calcining, nodulizing, defluorinating or acidulating process or any combination of the foregoing, or any other process, except aluminum reduction, capable of causing a release of fluorides in the form or forms indicated in this rule.

(2) Pond emissions:

(a) A person may not cause or allow fluorides in excess of 108 micrograms per square centimeter per 28 days (µg/cm2/28 days) to be released into the outdoor atmosphere from any storage pond, settling basin, ditch, liquid holding tank or other liquid holding or

conveying device from operations outlined in Section (1). The concentration of fluorides is to be determined using the calcium formate paper method. Papers must be exposed in a standard Montana Box located not less than 18 inches or more than 48 inches above the level of the liquid in the devices herein enumerated and not more than 16 inches laterally from the liquid's edge. Other locations may be permitted if approved by the department.

(b) At least four such sampling stations must be placed at locations designated by the department. Two or more calcium formate papers, as designated by the department, must be exposed in the standard Montana Box for a period designated by the department. Regardless of the duration of the sampling period, the values determined must be corrected to 28 days.

(c) A minimum of two calcium formate papers for each sampling period from each sample box must be provided to the department, if requested, within ten days from the date of the request.

(3) Preparation, exposure and analysis:

(a) Preparation of calcium formate papers:

(i) Soak Whatman #2, 11 cm. filter papers in a 10 percent solution of calcium formate for five minutes.

(ii) Dry in a forced air oven at 80°C. Remove immediately when dryness is reached.

(b) Exposure of calcium formate papers:

(i) Two papers, or more, if directed, are suspended in a standard Montana Box on separate hangers at least two inches apart.

(ii) Exposure must be for 28 days + 3 days unless otherwise indicated by the department.

(iii) Calcium formate papers must be kept in an air tight container both before and after exposure until the time of analysis.

(c) Analysis of calcium formate papers is adapted from Standard Methods for the Examination of Water and Waste Water; using Willard-Winter perchloric acid distillations and the Spadns-Zirconium Lake method for fluoride determination.

Rule 6.506 – New Source Performance Standards

(1) For the purpose of this rule, the following definitions apply:

(a) "Administrator", as used in 40 CFR Part 60, means the department, except in the case of those duties that cannot be delegated to the local program by the state and the EPA, in which case "administrator" means the administrator of the EPA.

(b) "Stationary source" means any building, structure, facility, or installation that emits or may emit any air pollutant subject to regulation under the Federal Clean Air Act.

(2) The terms and associated definitions specified in 40 CFR 60.2, apply to this rule, except as specified in subsection (1)(a) above.

(3) The owner and operator of any stationary source or modification, as defined and applied in 40 CFR Part 60, shall comply with the standards and provisions of 40 CFR Part 60.

(4) For the purpose of this rule, the Control Board hereby adopts and incorporates by reference 40 CFR Part 60, which pertains to standards of performance for new stationary sources and modifications.

Rule 6.507 – Hazardous Air Pollutants

(1) For the purpose of this rule, the terms and associated definitions specified in 40 CFR 61.02 apply, except that:

(a) "Administrator", as used in 40 CFR Part 61, means the department, except in the case of those duties that cannot be delegated to the local program by the state and the EPA in which case "administrator" means the administrator of the EPA.

(2) The owner or operator of any existing or new stationary source, as defined and applied in 40 CFR Part 61, shall comply with the standards and provisions of 40 CFR Part 61.

(3) For the purpose of this rule, the Control Board hereby adopts and incorporates by reference 40 CFR Part 61, which pertains to emission standards for hazardous air pollutants.

Rule 6.508 – Hazardous Air Pollutants for Source Categories

(1) For this rule, the following definitions apply:

(a) "112(g) exemption" means a document issued by the department on a case-by-case basis, finding that a major source of HAP meets the criteria contained in 40 CFR 63.41 [definition of "construct a major source", (2)(i) through (vi)], and is thus exempt from the requirements of 42 USC 7412(g).

(b) "Beginning actual construction" means, in general, initiation of physical on-site construction activities of a permanent nature. Such activities include, but are not limited to, installing building supports and foundations, laying underground pipework, and constructing permanent storage structures.

(c) "Construct a major source of HAP" means:

(i) to fabricate, erect, or install a major source of HAP; or

(ii) to reconstruct a major source of HAP, by replacing components at an existing process or production unit that in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, whenever:

(A) the fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable process or production unit; and

(B) it is technically and economically feasible for the reconstructed major source to meet the applicable MACT emission limitation for new sources established under 40 CFR 63 subpart B.

(d) "Greenfield site" means a contiguous area under common control that is an undeveloped site.

(e) "MACT standard" means a standard that has been promulgated pursuant to 42 USC 7412(d), (h), or (j).

(f) "Major source of HAP" means:

(i) at any greenfield site, a stationary source or group of stationary sources that is located within a contiguous area and under common control and emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP; or

(ii) at any developed site, a new process or production unit which in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP.

(g) "Maximum achievable control technology" or "MACT" means the emission limitation that is not less stringent than the emission limitation achieved in practice by the best controlled similar source, and that reflects the maximum degree of reduction in emissions that the department, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by the constructed or reconstructed major source of HAP.

(h) "Notice of MACT approval" means a document issued by the department containing all federally enforceable conditions necessary to enforce MACT or other control technologies such that the MACT emission limitation is met.

(i) "Process or production unit" means any collection of structures and/or equipment, that processes, assembles, applies or otherwise uses material inputs to produce or store an intermediate or final product. A single facility may contain more than one process or production unit.

(2) The owner or operator of any affected source, as defined and applied in 40 CFR Part 63, shall comply with the requirements of 40 CFR 63, incorporated by reference in this rule. All references in 40 CFR 63, Subpart B to "permitting authority" refers to the department.

(3) Any owner or operator who constructs a major source of HAP is required to obtain from the department a notice of MACT approval or a 112(g) exemption pursuant to this rule, prior to beginning actual construction, unless:

(a) the major source has been specifically regulated or exempted from regulation under a MACT standard issued pursuant to 42 USC 7412(d), (h) or (j) and incorporated into 40 CFR Part 63;

(b) the owner or operator of the major source has already received all necessary air quality permits for such construction as of (the effective date of this rule); or

(c) the major source has been excluded from the requirements of 42 USC 7412(g) under 40 CFR 63.40(c), (e) or (f).

(4) Unless granted a 112(g) exemption under (6) below, at least 180 days prior to beginning actual construction, an owner or operator who constructs a major source of HAP shall apply to the department for a notice of MACT approval. The application must be made on forms provided by the department, and must include all information required under 40 CFR 63.43(e).

(5) When acting upon an application for a notice of MACT approval, the department shall comply with the principles of MACT determination specified in 40 CFR 63.43(d).

(6) The owner or operator of a new process or production unit that in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, may apply to the department for a 112(g) exemption, if the process or production unit meets the criteria contained in 40 CFR 63.41 [definition of "construct a major source" (2)(i) through (vi)]. Application must be made on forms provided by the department, at least 180 days prior to beginning actual construction. The application must include such information as may be necessary to demonstrate that the process of production unit meets the criteria referenced herein.

(7) As further described below, and except as expressly modified by this rule, the procedural requirements of Chapter 6, subchapter 1 apply to an application for a notice of MACT approval or 112(g) exemption. For the purpose of this rule:

(a) all references in applicable provisions of Chapter 6, subchapter 1 to "permit", or "air quality permit" mean "notice of MACT approval" or "112(g) exemption," as appropriate;

(b) all references in applicable provisions of Chapter 6, subchapter 1 to "new or altered source" mean "major source of HAP."

(8) The following rules govern the application, review and final approval or denial of a notice of MACT approval or 112 (g) exemption: Rules 5.112, 6.103(2), 6.103(4)-(7), 6.106, 6.107(1) and

6.107(6);

(9) The department shall notify the applicant in writing of any final approval or denial of an application for a notice of MACT approval or 112(g) exemption.

(10) A notice of MACT approval must contain the elements specified in 40 CFR 63.43(g). The notice expires if fabrication, erection, installation or reconstruction has not commenced within 18 months of issuance, except that the department may grant an extension which may not exceed an additional 12 months.

(11) An owner or operator of a major source of HAP that receives a notice of MACT approval or a 112(g) exemption from the department shall comply with all conditions and requirements contained in the notice of MACT approval or 112(g) exemption.

(12) If a MACT standard is promulgated before the date an applicant has received a final and legally effective determination for a major source of HAP subject to the standard, the applicant shall comply with the promulgated standard.

(13) The department may revoke a notice of MACT approval or 112(g) exemption if it determines that the notice or exemption is no longer appropriate because a MACT standard has been promulgated. In pursuing revocation, the department shall follow the procedures specified in Rule 6.108. A revocation under this section may not become effective prior to the date an owner or operator is required to be in compliance with a MACT standard, unless the owner or operator agrees in writing otherwise.

Subchapter 6 – Incinerators

Rule 6.601 – Minimum Standards

(1) A person may not cause or authorize to be discharged into the outdoor atmosphere from any incinerator, particulate matter in excess of 0.10 grains per standard cubic foot of dry flue gas, adjusted to twelve percent (12%) carbon dioxide and calculated as if no auxiliary fuel had been used.

(2) A person may not cause or authorize to be discharged into the outdoor atmosphere from any incinerator emissions that exhibit an opacity of ten percent (10%) or greater averaged over six consecutive minutes.

(3) An incinerator may not be used to burn solid or hazardous waste unless the incinerator is a multiple chamber incinerator or has a design of equal effectiveness approved by the department prior to installation or use.

(4) The department or Control Board shall place additional requirements on the design, testing and operation of incinerators constructed after March 20, 1992. This requirement does not apply to incinerators that burn paper waste or function as a crematorium or are in compliance with Lowest Achievable Emission Rate as defined in Rule 2.101(25) for all regulated air pollutants.

Rule 6.602 – Hours of Operation

(1) The department may, for purposes of evaluating compliance with this rule, direct that a person may not operate or authorize the operation of any incinerator at any time other than between the hours of 8:00 AM and 5:00 PM, except that incinerators that burn only gaseous materials will not be subject to this restriction.

(2) When the operation of incinerators is prohibited by the department, the owner or operator of the incinerator shall store the solid or hazardous waste in a manner that will not create a fire hazard or arrange for the removal and disposal of the waste in a manner consistent with ARM Title 17, Chapter 50, Subchapter 5.

Rule 6.603 – Performance Tests

(1) The provisions of this chapter apply to performance tests for determining emissions of particulate matter from incinerators. All performance tests must be conducted while the affected facility is operating at or above the maximum refuse charging rate at which such facility will be operated and the material burned must be representative of normal operation and under such other relevant conditions as the department shall specify based on representative performance of the affected facility. Test methods set forth in 40 CFR, Part 60, or equivalent methods approved by the department must be used.

Rule 6.604 – Hazardous Waste Incinerators

Effective March 20, 1992, a new permit may not be issued to incinerate hazardous wastes as listed in ARM Title 17, Chapter 54, Subchapter 3, inside the Air Stagnation Zone.

Rule 6.605 – Additional Air Quality Permit Requirements

(1) In addition to the permitting requirements of Chapter 6, subchapter 1, an application for an air quality permit for a solid or hazardous waste incinerator must include the following:

(a) A human health risk assessment protocol (hereafter "protocol") detailing the human health risk assessment procedures; and

(b) A human health risk assessment (hereafter "assessment") that shows that ambient concentrations of pollutants from emissions constitute no more than a negligible risk to the public health, safety, and welfare and to the environment.

(2) The protocol must include, at a minimum, methods used in compiling the emission inventory, ambient dispersion models and modeling procedures used, toxicity values for each pollutant, exposure pathways and assumptions, any statistical analysis applied and any other information necessary for the department to review the adequacy of the assessment.

(3) The assessment must include, at a minimum, the following:

(a) a list of potential emissions of all pollutants specified in the federal Clean Air Act Hazardous Air Pollutants List (as defined in section 112(b) of the FCAA) from the following sources;

(i) emitting unit(s) to be permitted;

(ii) existing incineration unit(s) at the facility;

(iii) new or existing emitting units solely supporting any incineration unit at the facility (such as fugitive emissions from fuel storage); and

(iv) existing units that partially support the incineration unit if the type or amount of any emissions under an existing permit will be changed. If an existing emitting unit, wholly or partially supporting the incineration facility, increases the types or amount of its emissions, so that a permit alteration is required, that portion of the emissions increase attributable to the support of the incineration facility must be considered in the human health risk assessment.

(b) a characterization of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from any existing emission source at the facility; and

(c) an assessment of impacts of all pollutants inventoried in (a) above, except pollutants may be excluded if the department determines that exposure from inhalation is the only appropriate pathway to consider and if:

(i) the potential to emit the pollutant is less than 1.28×10^{-13} grams per second; the source has a stack height of at least 2 meters, a stack velocity of at least 0.645 meters per second, and a stack exit temperature of at least 800°F; and the stack is at least 5 meters from the property boundary; or

(ii) the ambient concentrations of the pollutants (calculated using the potential to emit; enforceable limits or controls may be considered) are less than the levels specified in ARM 17.8.770 (See Tables 1 and 2 in Appendix C).

(4) The assessment must address risks from all appropriate pathways. Incineration facilities that do not emit or emit only minute amounts of hazardous air pollutants contained in Tables 3 or 4 in Appendix C need only address impact from the inhalation exposure pathway and may use a department supplied screening model to assess human health risk.

(5) The assessment must be performed in accordance with accepted human health risk assessment practices, or state or federal guidelines in effect when the assessment is performed, and must address impacts on sensitive populations. The human health risk must be calculated using the source's potential to emit. Enforceable limits or controls may be considered. The department may approve alternative procedures if site-specific conditions warrant.

(6) The department may impose additional requirements for the assessment, on a case-by-case basis, if the department reasonably determines that the type or amount of material being incinerated, the proximity to sensitive populations, short-term emissions variations, acute health impact, or the local topographical or ventilation conditions require a more detailed assessment to adequately define the potential public health impact. Additional requirements for the assessment may include, but are not limited to, specific emission inventory procedures for determining emissions from the incineration facility, requiring use of more sophisticated air dispersion models or modeling procedures and consideration of additional exposure pathways.

(7) The department shall include a summary of the protocol in the permit analysis. The summary must clearly define the scope of the assessment, must describe the exposure pathways used and must specify any pollutants identified in the emission inventory that were not required to be included in the assessment. The summary must also state whether, and to what extent, the impacts of existing emissions, or the synergistic effect of combined pollutants, were considered in the final human health risk level calculated to determine compliance with the negligible risk standard. The summary must also state that environmental effects unrelated to human health were not considered in determining compliance with the negligible risk standard, but were evaluated in determining compliance with all applicable rules or requirements requiring protection of public health, safety and welfare and the environment.

Subchapter 7 – Wood Waste Burners

Rule 6.701 – Opacity Limits

A person may not cause or authorize to be discharged into the outdoor atmosphere from any wood-waste burner any emissions that exhibit an opacity of twenty percent (20%) or greater averaged over six (6) consecutive minutes. The provisions of this section may not be exceeded for more than sixty (60) minutes in eight consecutive hours for building of fires in wood-waste burners.

Rule 6.702 – Operation

(1) A thermocouple and a recording pyrometer or other temperature measurement and recording device approved by the department must be installed and maintained on each wood-waste burner. The thermocouple must be installed at a location near the center of the opening for the exit gases, or at another location approved by the department.

(2) A minimum temperature of 700°F must be maintained during normal operation of all wood-waste burners. A normal start-up period of one (1) hour is allowed during which the 700°F minimum temperature does not apply. The burner must maintain 700°F operating temperature until the fuel feed is stopped for the day.

(3) The owner or operator of a wood-waste burner shall maintain a daily written log of the wood-waste burner's operation to determine optimum patterns of operations for various fuel and atmospheric conditions. The log must include, but not be limited to, the time of day, draft settings, exit gas temperature, type of fuel, and atmospheric conditions. The log or a copy of it must be submitted to the department within ten (10) days after it is requested.

Rule 6.703 – Fuels

(1) A person may not use a wood-waste burner for the burning of other than normal production process wood-waste transported to the burner by continuous flow conveying methods.

(2) Materials that cannot be disposed of through outdoor burning, as specified in Rule 7.103 (1), (2), (4) and (5), may not be burned in a wood-waste burner.

CHAPTER 8
FUGITIVE PARTICULATE

Subchapter 1 General Provisions

Rule 8.101 - Definitions

For purpose of this Chapter, the following definitions apply:

(1) "Approved deicer" means a magnesium chloride based product or other product with similar dust suppression properties, that is approved for use by the department and the Missoula Valley Water Quality District.

(2) "Area of Regulated Road Sanding Materials" means the area defined by:
T13N R19W Sections 2,8,11,14,15,16,17,20,21,22,23,27,28,29, 32,33,34;
T12N R19W Sections 4,5,6,7; as shown on the attached map, (see Appendix A).

(3) "AASHTO" means the American Association of State and Highway Transportation Officials Test Methods.

(4) "Best available control technology (BACT)" means an emission limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under the 1990 amendments to the Federal Clean Air Act or the Clean Air Act of Montana that would be emitted from any proposed stationary source or modification that the department, on a case by case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event may application of BACT result in emission of any pollutant that would exceed the emissions allowed by the applicable standard under 40 CFR Part 60 and 61. If the department determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice or operational standard or combination thereof, to require the application of BACT. Such standard must, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation and must provide for compliance by means which achieve equivalent results.

(5) "Block pavers" means a block or brick made of hard, durable material designed to handle vehicle traffic. A block paver keeps vehicles off the underlying soils while allowing the growth of vegetation through spaces inside or outside the block or paver.

(6) "Bound recycled glass" means a solid, self-draining surface composed of elastomerically bound recycled glass created by bonding post-consumer glass with a mixture of resins, pigments and binding agents.

(7) "Commercial" means:
(a) any activity related to the purchase, sale, offering for sale, or other transaction involving the handling or disposition of any article, service, or commodity; or

(b) other facilities including but not limited to office buildings, offices, maintenance, recreational or amusement enterprises, churches, schools, trailer courts, apartments, and three or more dwelling units on one parcel.

(8) "Existing source" means a source that was in existence and operating or capable of being operated or had ~~a~~ an air quality permit from the department prior to February 16, 1979.

(9) "Extraordinary circumstance" means when a law officer calls for sanding of a roadway to eliminate an existing unsafe traffic situation when deicer would be inadequate or cannot be applied within a reasonable amount of time, or when the slope of a roadway or thickness of ice prevent the use of deicing materials as an adequate method of providing a safe driving surface within a reasonable amount of time.

(10) "Fugitive particulate" means any particulate matter discharged into the outdoor atmosphere that is not discharged from the normal exit of a stack or chimney for which a source test can be performed in accordance with Method 5 (determination of particulate emissions from stationary sources), Appendix A, Part 60.275 (Test Method and Procedures), Title 40, Code of Federal Regulations [CFR] (Revised July 1, 1977).

(11) "Industrial" means activity related to the manufacture, storage, extraction, fabrication, processing, reduction, destruction, conversion, or wholesaling of any article, substance or commodity or any treatment thereof in such a manner as to change the form, character, or appearance thereof.

(12) "Long-term parking for heavy equipment or semis" means an area where only heavy equipment or semis are parked, and these vehicles are parked there for longer than 48 hour periods. This does not include loading or unloading areas for semis.

(13) "Major arterial" means any roadway eligible for primary or urban funds from the Montana Department of Transportation.

(14) "New source" means a source that was constructed, installed or altered on or after February 16, 1979, unless the source had a permit to construct prior to February 16, 1979.

(15) "Parking lot" or "parking area" means an area where operable vehicles are parked for more than 15 days of a calendar year including but not limited to areas that contain vehicles offered for sale.

(16) "Paved" means having a minimum of two (2) inches of hot mix asphalt or four (4) inches of portland cement concrete with an appropriate base for the soil type. The requirements are for the purpose of minimizing fugitive particulate emissions and do not represent structural standards.

(17) "Private driveway" means a privately owned access or egress that serves two or fewer dwelling units.

(18) "Private road" means a privately owned access or egress that serves three or more dwelling units or that serves one or more non-residential parcels.

(19) "Public road" means a publicly owned or maintained road, a road dedicated to the public, a petitioned road or a prescriptive use road.

(20) "Reasonable precautions" means any reasonable measure to control emissions of airborne particulate matter. The department will determine what is reasonable on a case by case basis taking into account energy, environmental, economic, and other costs.

(21) "Reinforced grids" means a solid material composed of connected patterns designed to handle vehicle traffic. A reinforced grid keeps vehicles off the underlying soils while allowing the growth of vegetation through spaces built into the grid.

(22) "Required deicing zone" means the area within the City limits, bordered in the north by the northern right-of-way boundary of Interstate 90 and in the south by the southern right-of-way boundary of 39th Street and Southwest Higgins Avenue, but also including those portions of Rattlesnake Drive and Van Buren Street that lie inside the City limits.

(23) "Road" means an open way for purposes of vehicular travel including highways, streets, and alleys. A private driveway is considered a new road when its use is increased to serve more than two dwelling units or to serve one or more commercial/industrial sites.

(24) "Utility" means unoccupied equipment sites or facilities, including but not limited to communication antennas and power line right of ways.

(25) "Vehicle" means every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except bicycles and devices moved by animal power or used exclusively upon stationary rails or tracks.

Rule 8.102 - General Requirements

(1) A person may not cause or authorize the production, handling, transportation, or storage of any material unless reasonable precautions to control fugitive particulate are taken.

(2) Fugitive particulate emissions from any source may not exhibit an opacity of twenty (20) percent or greater averaged over six (6) consecutive minutes.

(3) A person may not cause or permit a building or its appurtenances or a road, or a driveway, or an open area to be constructed, used, repaired or demolished without applying all reasonable precautions to prevent fugitive particulate. The department may require reasonable measures to prevent fugitive particulate emissions, including but not limited to, paving or frequent cleaning of road, driveways, and parking lots; applying dust suppressants; applying water; planting and maintaining vegetative ground cover and using a combination of reinforced grids or block pavers with a healthy vegetative cover.

(4) Governmental agencies are subject to the same regulations as commercial enterprises in this chapter.

Rule 8.103 - Stationary Source Requirements

Within any area designated non-attainment for either the primary or secondary NAAQS person who owns or operates:

(1) An existing source of fugitive particulate shall apply reasonably available control technology (RACT);

(2) A new source of fugitive particulate that has a potential to emit less than 100 tons per year of particulate shall apply best available control technology (BACT);

(3) A new source of fugitive particulate that has a potential to emit 100 or more tons per year of particulate shall apply lowest achievable emission rate (LAER).

Rule 8.104 - Construction and Mining Sites

(1) A person in charge of a construction project or mining operation may not cause, suffer or allow dirt, rock, sand and other material from the site to be tracked out onto paved surfaces without taking all reasonable measures to prevent the deposition of the material and/or to promptly clean up the material. Reasonable measures include but are not limited to frequent cleaning of the paved roadway, paving access points, use of dust suppressants, filling and covering trucks so material does not spill in transit and use of a track out control device.

(2) Temporary roads and parking areas at active construction sites and mining operations do not need to be paved and are not subject to the permitting requirements of subchapter 2 of this Chapter. After the project(s) or mining is complete, temporary roads and parking areas must be permanently removed or closed off to traffic.

Rule 8.105 - Agricultural Exemption

The provisions of this Chapter do not apply to fugitive particulate originating from any activity or equipment associated with the use of agricultural land or the planting, production, harvesting, or storage of agricultural crops. (This exemption does not apply to the processing of agricultural products by a commercial business).

Subchapter 2 Paving Requirements in the Air Stagnation Zone

Rule 8.201 - Permits Required

(1) After September 16, 1994, a person may not construct or cause to be constructed a new road, private or commercial driveway or parking lot in the Air Stagnation Zone without having a permit from the department except as provided for in Rule 8.104(2), 8.105 and 8.202(4).

(2) The applicant shall supply plans for the proposed construction at the time of the application for the permit. Plans must be legibly drawn with permanent ink or printed or reproduced by a process guaranteeing a permanent record. The department may require that the plans include the following information:

(a) A complete legal description of the affected parcels and a location map of the proposed construction area.

(b) A scaled plan-view drawing that includes all existing and proposed property boundaries, structures, roads, parking areas and adjoining exterior roads. Proposed construction must be clearly labeled.

(c) The width of proposed roads and driveways and dimensions of proposed parking areas.

(d) The thickness of the base material and the pavement to be used on the proposed construction.

(e) A description of the intended uses of the road, driveway or parking lot, including but not limited to the estimated number and type of vehicles using the road, parking lot or driveway.

(f) A description of adjoining exterior roads, e.g. paved or unpaved, public or private.

(g) Any additional information the department may require to evaluate the application prior to the issuance of a permit.

Rule 8.202 - New Roads in the Air Stagnation Zone

(1) After September 16, 1994, all new roads in the Air Stagnation Zone must be paved, except as provided in (3) through (5) of this rule and in Rule 8.104.

(2) New public and private roads must be paved within 2 years (730 days) after road construction begins or final plat approval, whichever comes first, except that new private roads serving commercial and industrial sites must be paved prior to occupancy.

(3) The department may allow temporary occupancy of a building or use of a road serving a commercial or industrial site before the road is paved if weather prevents paving before occupancy or use. Such an extension may not exceed six months.

(4) Roads used solely for utilities, or solely for agricultural or silvicultural purposes are exempt from paving requirements of Subchapter 8.2, but are subject to dust abatement measures to prevent particulate matter from becoming airborne. If the use of a road changes so that it is no longer used solely for utilities, or solely for agricultural or silvicultural purposes, the road will be considered a new road and all paving regulations pertinent to the new uses on the road must be met.

(5) Temporary roads at landfills do not have to be paved or permitted, but are subject to dust abatement measures. For this rule, a road at a landfill is considered temporary if it exists in the same location less than three years.

Rule 8.203 - New Parking Areas in the Air Stagnation Zone

(1) After September 16, 1994, new public and private parking areas must be paved prior to occupancy, except as provided in (2)-(4) of this rule.

(2) The department may allow temporary occupancy of a building before the parking areas are paved if weather prevents paving before occupancy. Such an extension may not exceed six months.

(3) Exceptions.

(a) The following areas do not have to be paved if they are constructed in accordance with Section (5) of this rule:

(i) Long term parking areas for heavy equipment and semi trucks where the vehicles will be parked for longer than 48 hours at a time and no other vehicular traffic is allowed. (This exemption does not apply to sales lots or loading areas.)

(ii) Long term parking areas for vehicles that will be parked for extended periods of time, if no other vehicular traffic is allowed and if no more than fifteen (15) vehicles travel in or out of the area per day averaged over any three consecutive days. (This exemption does not apply to sales lots for ~~automobiles or RVs~~vehicles)

(iii) Display areas for heavy equipment, where no other vehicles will be displayed or offered for sale and no other vehicular traffic is allowed.

(b) At licensed RV parks, accesses to parking spots must be paved, but parking spots for RVs need not be paved if:

(i) they are constructed in accordance with 4 (a) of this rule; or

(ii) they are constructed using reinforced grids and a healthy vegetative cover is maintained that can handle traffic.

(c) Parking areas used exclusively for the sale or display of light tractors and implements with no other vehicular use need not be paved if:

(i) the area is mowed and maintained with a healthy stand of vegetation adequate to be an effective dust suppressant; or

(ii) the area meets the requirements of 4 (a) of this rule.

(d) Parking areas used exclusively for outdoor recreational/entertainment facilities including, but not limited to, outdoor theatres, fairs or athletic fields, may use vegetation or reinforced grids with vegetation as an alternative to paving if the following conditions are met.

(i) New access road(s) for the parking area will be paved.

(ii) The parking area will be used less than 61 days per calendar year.

(iii) The department has approved a construction plan showing:

(A) that the parking area soils can support a vegetative cover and the proposed vehicular traffic;

(B) that vegetation able to survive and maintain ground cover with the proposed vehicle use is present or that appropriate vegetation will be planted and established prior to use of the parking area; and

(C) that an irrigation system able to maintain the vegetative cover will be installed.

(iv) The department has approved a maintenance plan that:

(A) states that vehicles will not use the parking area when soil conditions are muddy or excessive damage to the vegetation will occur;

(B) states that vehicles will not use the parking area when carry out of dirt or dust onto surrounding paved surfaces will occur;

(C) states that the parking area will be blocked off with a physical barrier that will prevent vehicle access when the parking area is not in use; and

(D) explains how the ground cover vegetation will be maintained by the appropriate use of irrigation, fertilizer, aeration and other necessary measures.
(E) may include rotation of vehicle use around the parking area to reduce impacts on the soil and vegetation. Any use of the parking area counts as one day of use for the entire parking area.

(e) The department may order that an area that qualifies for one of the above exemptions be paved if:

(i) the area is not constructed or maintained as required by this rule.
(ii) particulate emissions exceed those typical of a clean paved surface; or
(iii) carryout of dirt or dust onto surrounding paved surfaces occurs.

(f) If the use of an area changes so that an exemption no longer applies, the area must meet all regulations for new construction applicable to the new uses of the area.

(4) The department may allow self-draining solid surfaces including, but not limited to, block pavers and bound recycled glass for parking areas provided the following conditions are met.

(i) The surface is rated for the vehicular traffic loads projected for that parking area
(ii) Fugitive emissions from the surface will not exceed those from a clean, paved parking area.
(iii) The surface is cleaned regularly to prevent fugitive particulate
(iv) If the surface is disturbed or destroyed it must be paved or rebuilt before continued use.

(5) Construction Specifications for Exemptions.

(a) Unless otherwise specified in this rule, unpaved parking and display areas must consist of a suitable base material topped with a minimum of four inches of ¾ inch minus gravel, that meets the following specifications:

(i)The material must consist of hard, durable particles or fragments of slag, stone or gravel screened and crushed to the required size and grading specified here.

Sieve Designation	Percent Passing, by Weight
¾ inch	100
No. 4	30 – 60
No. 10	20 - 50
No. 200	less than 8

(ii) That portion of the material passing a No. 40 sieve must have a plasticity index of 4 or less, as determined by AASHTO T-91.

(b) To minimize carry-out of material onto the access road, pavement must be placed between unpaved parking areas allowed in (3)(a) of this rule and the paved or unpaved access road as follows:

(i) At least 60 linear feet of paved surface of adequate width must be placed between an unpaved long term parking area for heavy equipment and semi-trucks and the access road. This paved surface must be placed and used so that heavy equipment and semi-trucks cross 60 feet of paved surface before entering the access road.
(ii) At least 20 linear feet of paved surface of adequate width must be placed between unpaved long term parking areas allowed in (3)(a)(ii) of this rule and the access road. This paved surface must be placed and used so that vehicles cross 20 feet of paved surface before entering the access road.
(iii) The paved surface must begin at the edge of the access road.

Rule 8.204 - New Driveways in the Air Stagnation Zone

(1) After September 16, 1994, before occupancy of a residential unit, new private driveways accessing a paved road must be paved or covered with a self-draining solid surface as provided by part (4) of

this rule to a minimum of twenty (20) feet back from the paved road or to the outside boundary of the right of way, whichever is longer.

(2) The department may allow temporary occupancy of a residential unit before the driveway is paved if weather prevents paving before occupancy. Such an extension may not exceed six months.

(3) Private driveways accessing an existing unpaved road do not have to be paved, but must meet the requirements of Rule 8.205.

(4) The department may allow a self-draining solid surface including, but not limited to, block pavers and bound recycled glass in lieu of pavement provided the following conditions are met.

(i) The surface is rated for the vehicular traffic loads projected for that driveway

(ii) Fugitive emissions from the surface will not exceed those from a clean, paved driveway.

(iii) The surface is cleaned regularly to prevent fugitive particulate

(iv) If the surface is disturbed or destroyed it must be paved or rebuilt before continued use.

Rule 8.205 - Unpaved Access Roads

(1) The department may not issue a permit for a new road, commercial site, industrial site, or private driveway in the Air Stagnation Zone accessed by an unpaved road unless:

(a) a waiver of the option to protest an RSID or SID for the paving of the unpaved access road has been recorded at the Clerk and Recorder's Office for the parcel; or

(b) the owner of the real property accessed by the unpaved road executes a deed restriction waiving the option to protest any RSIDs or SIDs for the paving of the unpaved access road using the language set forth below.

> I/We, the undersigned, hereby certify that I/we are the owners of the real property located at (legal description) and hereby waive any option to protest an RSID or SID affecting said property for the purpose of financing the design and construction of a public paved road accessing said property. Further, my/our signatures on this waiver may be used in lieu of my/our signature(s) on an RSID or SID petition for the creation of one or more RSID's or SID petitions for the purpose of financing the design and construction of a public paved road accessing the above-described property.
>
> This waiver runs with the land and is binding on the transferees, successors, and assigns of the owners of the land described herein. All documents of conveyance must refer to and incorporate this waiver.

(2) In the Air Stagnation Zone, property owner who is subdividing land that contains parcels accessing an unpaved road, or whose primary access is an unpaved road, shall waive the option to protest an RSID or SID that upgrades and paves the road and shall include the language set forth in (1)(b)above on the plat.

Rule 8.206 - Maintenance of Pavement Required

(1) All paved roads, driveways, storage areas and parking lots within the Air Stagnation Zone must be cleaned and maintained regularly to prevent fugitive particulate.

(2) Any existing paved surface that is disturbed or destroyed must be re-paved before continued use.

Rule 8.207 - Paving Existing Facilities in the Air Stagnation Zone

(1) The department may require any person owning or operating a commercial establishment which is located on a publicly owned or maintained road which is used by more than 200 vehicles per day averaged over any 3-day period to submit a plan which provides for paving and restricting traffic to paved surfaces for any areas used by said commercial establishment for access, egress, and

parking except where said access, egress, and parking is seasonal and intermittent and the area in which said access, egress and parking is located is not in violation of Ambient Air Quality Standards as listed in ARM 17.8.201 - 17.8.230. The plan must include drawings and other information that the department may require to indicate the adequacy of the plan. The plan must provide reasonable time for construction of paved roads or structures limiting traffic to paved surfaces, but this time may not exceed one year from the date of submittal to the department.

(2) The department may require any person owning, leasing, or managing property containing a road or thoroughfare which is used by more than 50 vehicles per day, averaged over any three day period, to submit a plan which provides for paving or for restricting traffic to paved surfaces. Roads located in areas that do not violate the ambient air quality standards (ARM 17.8.201 - 17.8.230), and which are used seasonally and intermittently are exempt from this requirement. The plan must include drawings and other information that the department may require. A reasonable time will be permitted for the construction of paved roads or structures limiting traffic to paved surfaces, but this time may not exceed one year from the date of submittal of the plan to the department unless an extension is granted by the Control Board.

Subchapter 3 - Road Maintenance Inside the Area of Regulated Road Sanding Materials

Rule 8.301 - Deicer Required

(1) When the ambient temperature is above 10°F. a person may not apply street sanding materials other than an approved deicer to those public roadways in the required deicing zone, except under extraordinary circumstances.

Rule 8.302 - Durability Requirements

(1) A person may not place any sanding or chip sealing materials upon any road or parking lot located inside the area of regulated road sanding materials that has a durability of less than or equal to 80 as defined by AASHTO T-210 procedure B and a silt content passing the #200 sieve of greater than 2.5% as defined by AASHTO T-27 and T-11.

Rule 8.303 - Street Sweeping Requirements

(1) Between December 1 and March 31, when the paved road surface is above 32°F for longer than four hours, political subdivisions shall clean the center line and areas immediately adjacent to the travel lane of any major arterials they maintain inside the area of regulated road sanding materials.

(2) The Control Board hereby incorporates Chapter 10.50 of the Missoula Municipal Codes which requires street sweeping.

Rule 8.304 - Contingency Measure

(1) The area of regulated road sanding materials defined by Rule 8.101(2) is expanded to include Section 1, T12N R20W, Sections 5 and 24, T13N R19W, Sections 19, 24, 25, 30, 31 and 36, T13N R20W.

CHAPTER 15
PENALTIES

Rule 15.101 - General Provisions

(1) Action under this Chapter is not a bar to enforcement of this Program, or regulations or orders made pursuant thereto, by injunction or other appropriate remedy. The Control Board or the department may institute and maintain in the name of the county or the state any and all enforcement proceedings.

(2) All fines collected under this chapter are deposited in the County General Fund.

(3) It is the intention of the Control Board to impose absolute liability upon persons for conduct that violates any part, provision or order issued pursuant to these regulations. Unless otherwise specifically provided, a person may be guilty of an offense without having, with respect to each element of the offense, either knowledge, negligence, or specific intent.

(4) It is the specific intention of the Control Board that these regulations impose liability upon corporations for violations of a part, provision or order issued pursuant to these regulations.

(5) A person is responsible for conduct which is an element of an offense if the conduct is either that of the person himself or that of another and he is legally accountable.

(6) A person is legally accountable for the conduct of another under these regulations when he:
(a) causes another to perform the conduct, regardless of the legal capacity or mental state of the other person; or

(b) either before or during the commission of an offense with the purpose to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid such other person in the planning or commission of the offense.

Rule 15.102 - Criminal Penalties

(1) Except as provided for in Rule 15.104, a person who violates a provision, regulation, or rule enforced under this Program, or an order made pursuant to this Program, is guilty of an offense and upon conviction subject to a fine not to exceed ten thousand dollars ($10,000.00). Each day of the violation constitutes a separate offense.

Rule 15.103 - Civil Penalties

(1) Except as provided in Rule 15.104, a person who violates a provision, rule or order under this Program, after notice thereof has been given by the department is subject to a civil penalty not to exceed ten thousand dollars ($10,000) per violation. Each day a violation continues constitutes a separate violation. Upon request of the department the county attorney may petition the district court to impose, assess and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided in Rule 15.102.

Rule 15.104 - Solid Fuel Burning Device Penalties

(1) Notwithstanding the provisions of Rule 15.102, a person who violates a provision of Chapter 9 (Solid Fuel Burning Devices) is guilty of a criminal offense and subject, upon conviction, to a fine not to exceed five hundred dollars ($500.00). Each day a violation continues constitutes a separate offense.

(2) Notwithstanding the provisions of Rule 15.103, any person who violates any of the provisions of Chapter 9 is subject to a civil penalty not to exceed five hundred dollars ($500.00). Each day a violation continues constitutes a separate violation. The civil penalty is in lieu of the criminal penalty provided for in Rule 15.102, and may be pursued in any court of competent jurisdiction.

(3) (a) The civil penalty or criminal fine for a violation of the same provision of Rules ~~9.104, 9.105 and 9.106~~ 9.103, 9.104, and 9.302 during any burning season as defined in Chapter 9 is:

First Violation - Fifty Dollars ($50)
Second Violation - Two Hundred Fifty Dollars ($250)
Third or Subsequent Violation - Five Hundred ($500)

(b) Penalties for violations of Rule ~~9.108~~ 9.202 must not be less than five hundred dollars ($500.00) per offense.

Rule 15.105 - Non-Compliance Penalties

(1) Except as provided in Section (2), the department shall assess and collect a noncompliance penalty from any person who owns or operates:
(a) a stationary source (other than a primary nonferrous smelter that has received a nonferrous smelter order under 42 U.S.C. 7419), that is not in compliance with any emission limitation specified in an order of the department, emission standard, or compliance schedule under the state implementation plan approved by the EPA;

(b) a stationary source that is not in compliance with an emission limitation, emission standard, standard of performance, or other requirement under 42 U.S.C. 7411, 7412, 7477, or 7603;

(c) a stationary source that is not in compliance with any other requirement under this Program or any requirement of subchapter V of the FCAA, 42, U.S.C. 7661, et seq.; or

(d) any source referred to in Sections (1)(a) – (c) that has been granted an exemption, extension, or suspension under Subsection (2) or that is covered by a compliance order, or a primary nonferrous smelter that has received a primary nonferrous smelter order under 42 U.S.C. 7419, if such source is not in compliance under such extension, order or suspension.

(2) Notwithstanding the requirements of Section (1), the department may, after notice and opportunity for a public hearing, exempt any source from the requirements of Section (1) through Section (14) with respect to a particular instance of noncompliance that:
(a) the department finds is de minimis in nature and in duration;

(b) is caused by conditions beyond the reasonable control of the source and is of no demonstrable advantage to the source; or

(c) is exempt under 42 USC 7420(a)(2)(B) of the Federal Clean Air Act.

(3) Any person who is jointly or severally adversely affected by the department's decision may request, within 15 days after the department renders its decision, upon affidavit setting forth the grounds therefor, an administrative review as provided for in Chapter 14.

(4) The amount of the penalty that shall be assessed and collected with respect to any source under Section (1) through Section (14) shall be equal to:

(a) the amount determined in accordance with the rules adopted by the Control Board, which shall be no less than the economic value which a delay in compliance after July 1, 1987, may have for the owner of such source, including the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period not to exceed 10 years, operation and maintenance costs foregone as a result of noncompliance, and any additional economic value which such a delay may have for the owner or operator of such source; minus

(b) the amount of any expenditure made by the owner or operator of that source during any such quarter for the purpose of bringing that source into and maintaining compliance with such

requirement, to the extent that such expenditures have not been taken into account in the calculation of the penalty under Section (4)(a).

(5) To the extent that any expenditure under Section (4)(b) made during any quarter is not subtracted for such quarter from the costs under Section (4)(a), such expenditure may be subtracted for any subsequent quarter from such costs. In no event may the amount paid be less than the quarterly payment minus the amount attributed to actual cost of construction.

(6) If the owner or operator of any stationary source to whom notice is issued under Section (10) does not submit a timely petition under Section (10)(a)(ii) or submits a petition which is denied and if the owner or operator fails to submit a calculation of the penalty assessment, a schedule for payment, and the information necessary for independent verification thereof, the department may enter into a contract with any person who has no financial interest in the matter to assist in determining the amount of the penalty assessment or payment schedule with respect to such source. The cost of carrying out such contract may be added to the penalty to be assessed against the owner or operator of such source.

(7) Any person who fails to pay the amount of any penalty assessed under this rule on a timely basis shall be required to pay an additional quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be equal to 20% of the aggregate amount of such person's penalties and nonpayment penalties with respect to such source which are unpaid as of the beginning of such quarter.

(8) Any non-compliance penalty required under this rule shall be paid in quarterly installments for the period of covered noncompliance. After the first payment, all quarterly payments shall be equal and determined without regard to any adjustment or any subtraction under Section (4)(b).
(a) The first payment shall be due 6 months after the date of issuance of the notice of noncompliance under Section (10) with respect to any source. Such first payment shall be in the amount of the quarterly installment for the upcoming quarter, plus the amount owed for the preceding period within the period of covered noncompliance for such source.

(b) For the purpose of this rule, "period of covered noncompliance" means the period which begins on the date of issuance of the notice of noncompliance under Section (10) and ends on the date on which such source comes into, or, for the purpose of establishing the schedule of payments, is estimated to come into compliance with such requirement.

(9) The department shall adjust the amount of the penalty or the payment schedule proposed by such owner or operator under Section (10)(a)(i) if the department finds after notice and opportunity for a hearing that the penalty or schedule does not meet the requirements of this rule.
(a) Upon determination that a source is in compliance and is maintaining compliance with the applicable requirement, the department shall review the actual expenditures made by the owner or operator of such source for the purpose of attaining and maintaining compliance and shall make a final adjustment of the penalty within 180 days after such source comes into compliance and:
(i) provide reimbursement with interest to be paid by the county at appropriate prevailing rates for overpayment by such person; or
(ii) assess and collect an additional payment with interest at appropriate prevailing rates for any underpayment by such person.

(10) The department shall give a brief but reasonably specific notice of noncompliance to each person who owns or operates a source subject to Section (1) which is not in compliance as provided in that section, within thirty (30) days after the department has discovered the noncompliance.
(a) Each person to whom notice has been given pursuant to Section (10) shall:
(i) calculate the amount of penalty owed (determined in accordance with Section (4)(a) and (b) and the schedule of payments (determined in accordance with Section (8) for each source), and within forty-five (45) days after issuance of the notice of noncompliance, submit that calculation and proposed schedule, together with the information necessary

for an independent verification thereof, to the department; or
(ii) submit to the Control Board a petition within forty-five (45) days after the issuance of such notice, challenging such notice of noncompliance or alleging entitlement to an exemption under Section (2) with respect to a particular source.

(b) Each person to whom notice of noncompliance is given shall pay the department the amount determined under Section (4) as the appropriate penalty unless there has been a final determination granting a petition filed pursuant to Section (10)(a)(ii).

(11) The Control Board shall provide a hearing on the record and make a decision (including findings of fact and conclusions of law) not later than ninety (90) days after the receipt of any petition under Section (10)(a)(ii) with respect to such source. If the petition is denied, the petitioner shall submit the material required by Section (10)(a)(i) to the department within forty-five (45) days of the date of the decision.

(12) All noncompliance penalties collected by the department pursuant to this rule shall be deposited in a county special revenue fund until a final determination and adjustment have been made as provided in Section (10) and amounts have been deducted by the department for costs attributable to implementation of this rule and for contract costs incurred pursuant to Section (6), if any. After a final determination has been made and additional payments or refunds have been made, the penalty money remaining shall be transferred to the County General Fund.

(13) In the case of any emission limitation, emission standard, or other requirement approved or adopted by the Control Board under this Program after July 1, 1979, and approved by the EPA as an amendment to the state implementation plan, which is more stringent than the emission limitation or requirement for the source in effect prior to such approval or promulgation, or where there was no emission limitation, emission standard, or other requirement approved or adopted before July 1, 1979, the date for imposition of the noncompliance penalty under Rule 15.102 (Criminal Penalties) and Rule 15.103 (Civil Penalties) shall be the date on which the source is required to be in full compliance with such emission limitation, emission standard, or other requirement or 3 years after the approval or promulgation of such emission limitation or requirement, whichever is sooner.

(14) Any orders, payments, sanctions, or other requirements under this rule shall be in addition to any other permits, orders, payments, sanctions, or other requirements established under this Program and shall in no way affect any civil or criminal enforcement proceedings brought under Rule 15.102 (Criminal penalties) or Rule 15.103 (Civil penalties). The noncompliance penalties collected pursuant to this rule are intended to be cumulative and in addition to other remedies, procedures and requirements authorized by this Program.

CLEAN VERSION OF MISSOULA CITY-COUNTY AIR POLLUTION CONTROL PROGRAM RULE REVISIONS APPROVED BY MISSOULA CITY-COUNTY AIR POLLUTION CONTROL BOARD ON OCTOBER 17, 2013

CHAPTER 3
FAILURE TO ATTAIN STANDARDS

Rule 3.101 - Purpose
As required by 42 USC 7410(a)(2)(G) of the FCAA, this chapter outlines what the department will do in the event that either non-attainment areas fail to attain the NAAQS or to make reasonable progress in reducing emissions.

Rule 3.102 - Particulate Matter Contingency Measures
(1) Within sixty (60) days after being notified by the DEQ and EPA that the area has failed to attain the PM_{10} NAAQS or make reasonable further progress in reducing emissions, the department will select and implement one of the following contingency measures:
(a) If the major contributing source is re-entrained road dust, then the department will implement Rule 8.304.

(b) If the major contributing source is wood burning, then the department will implement Rules 4.113 and 9.601.

(2) The department will determine what source is the significant contributor to the violation using chemical or microscopic analysis of exposed PM_{10} filters.

(3) If neither wood burning nor re-entrained road dust is the major contributing source, the department will still implement one of the contingency measures listed in (1) of this rule.

Rule 3.103 - Carbon Monoxide Contingency Measures
Within sixty (60) days of notification by the DEQ and the EPA that the area has failed to attain the carbon monoxide NAAQS or make reasonable further progress in reducing emissions, the department will implement Rules 9.119 and if the department determines that motor vehicles are greater than 40 percent of the cause, the department will implement Rule 10.110.

Rule 3.104 - Early Implementation of Contingency Measures
Early implementation of a contingency measure will not result in the requirement to implement additional moderate area contingency measures if the area fails to attain the NAAQS or make reasonable further progress in reducing emissions. However, if the area is redesignated as serious, additional control measures including Best Available Control Measures and serious area contingency measures will be necessary.

CHAPTER 6
STANDARDS FOR STATIONARY SOURCES

Subchapter 1 – Air Quality Permits for Air Pollutant Sources

Rule 6.101 – Definitions

For the purpose of this subchapter the following definitions apply:

(1) "Air Quality Permit" or "permit" means a permit issued by the department for the construction, installation, alteration, or operation of any air pollution source. The term includes annual operating and construction permits issued prior to November 17, 2000.

(2) "Commencement of construction" means the owner or operator has either:

(a) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(3) "Construct or Construction" means on-site fabrication, modification, erection or installation of a source or control equipment, including a reasonable period for startup and shakedown.

(4) "Existing Source" means a source or stack associated with a source that is in existence and operating or capable of being operated or that had an air quality permit from the department or the Control Board on March 16, 1979.

(5) "Major Emitting Facility" means a stationary source or stack associated with a source that directly emits, or has the potential to emit, 100 tons per year of any air pollutant, including fugitive emissions, regulated under the Clean Air Act of Montana.

(6) "New or Altered Source" means a source or stack (associated with a source) constructed, installed or altered on or after March 16, 1979.

(7) "Owner or Operator" means the owner of a source or the authorized agent of the owner, or the person who is responsible for the overall operation of the source.

(8) "Portable source" means a source which is not stationary or fixed to a single location, and which is not fully self propelled. The term may include, but is not limited to, portable asphalt plants, portable gravel crushers and portable wood chippers

(9) "Potential to Emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, must be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a source.

(10) "Source" means a "stationary source" as defined by Rule 2.101(45).

Rule 6.102 – Air Quality Permit Required

(1) A person may not construct, install, alter, operate or use any source without having a valid permit from the department when required by this rule to have a permit.

(2) A permit is required for the following:

(a) any source that has the potential to emit 25 tons or more of any pollutant per year;

(b) Incinerators; asphalt plants; concrete plants; and rock crushers without regard to size;

(c) Solid fuel burning equipment with the heat input capacity of 1,000,000 BTU/hr or more;

(d) A new stack or source of airborne lead pollution with a potential to emit five tons or more of lead per year;

(e) An alteration of an existing stack or source of lead pollution that increases the maximum potential of the source to emit airborne lead by 0.6 tons or more per year.

(3) A portable source with a Montana Air Quality Permit issued pursuant to the Administrative Rules of Montana Title 17, Chapter 8, subchapter 7 may apply for a Temporary Missoula City-County Air Quality Permit. The department may issue a Temporary Missoula City-County Air Quality Permit to a source if the following conditions are met:

(a) The applicant sends written notice of intent to transfer location to the department. Such notice must include documentation that the applicant has published a notice of the intended transfer in a legal publication in a newspaper of general circulation in the area into which the permit transfer is to be made. The notice must include the statement that the department will accept public comments for fifteen days after the date of publication; and

(b) The applicant has submitted a complete Missoula City-County Air Quality Permit application to the department prior to submitting an application for a Temporary Missoula City-County Air Quality Permit.

(4) A source with a Temporary Missoula City-County Air Quality Permit is subject to the following conditions:

(a) The emission control requirements of the Montana Air Quality Permit issued to the portable source are transferred verbatim, without augmentation, revision, or redaction to the Temporary Missoula City-County Air Quality Permit excluding conditions and addendums specific to PM_{10} nonattainment areas. Missoula City-County Health Department air quality permitting policies and conditions for the Missoula Air Stagnation Zone replace the Montana Air Quality Permit addendums specific to PM_{10} nonattainment areas; and

(b) The source may locate and operate in Missoula County after the department has approved the permit transfer; and

(c) A Temporary Missoula City-County Air Quality Permit expires in 180 days or upon completion of the Missoula City-County air quality permitting process required by Rule 6.102(3)(b), whichever occurs first; and

(d) The Department may revoke a Temporary Missoula City-County Air Quality Permit prior to the expiration of the time period set forth in 6.102(4)(c) if the portable source violates any provision of the Temporary Missoula City-County Air Quality Permit.

(5) An air quality permit is not required for the following, except when the Control Board determines an air quality permit is necessary to insure compliance with the NAAQS and other provisions of this Program:

(a) Any major stationary source or modification, as defined in 40 CFR 51.165 or 51.166, which is required to obtain an air quality permit from the MT DEQ in conjunction with ARM Title 17, Chapter 8, Subchapters 8, 9 or 10 <u>that does not have the potential to emit 250 tons a year or more of any pollutant subject to regulation under Title 75, Chapter 2, MCA, including fugitive emissions;</u>

(b) Residential, institutional, and commercial fuel burning equipment of less than l0,000,000 BTU/hr heat input if burning liquid or gaseous fuels, or 1,000,000 BTU/hr input if burning solid fuel;

(c) Residential and commercial fireplaces, barbecues and similar devices for recreational, cooking or heating use;

(d) motor vehicles, trains, aircraft or other such self-propelled vehicles;

(e) agricultural and forest prescription fire activities;

(f) emergency equipment installed in hospitals or other public institutions or buildings for use when the usual sources of heat, power and lighting are temporarily unattainable;

(g) routine maintenance or repair of equipment;

(h) public roads; and

(i) any activity or equipment associated with the planting, production or harvesting of agricultural crops.

(6) A source that is exempt from obtaining an air quality permit by Rule 6.102(5) is subject to all other applicable provisions of this program, including but not limited to those regulations concerning outdoor burning, odors, motor vehicles, fugitive particulate and solid fuel burning devices.

(7) A source not otherwise required to obtain an air quality permit may obtain such a permit for the purpose of establishing federally enforceable limits on its potential to emit.

Rule 6.103 – General Conditions

(1) An air quality permit must contain and permit holders must adhere to the following provisions:

(a) requirements and conditions applicable to both construction and subsequent use including, but not limited to, applicable emission limitations imposed by subchapter 5 of this chapter, the Clean Air Act of Montana and the FCAA.

(b) such conditions as are necessary to assure compliance with all applicable provisions of this Program and the Montana SIP.

(c) a condition that the source shall submit information necessary for updating annual emission inventories.

(d) a condition that the permit must be available for inspection by the department at the location for which the permit is issued.

(e) a statement that the permit does not relieve the source of the responsibility for complying with any other applicable City, County, federal or Montana statute, rule, or standard not contained in the permit.

(2) An air quality permit is valid for five years, unless:

(a) additional construction that is not covered by an existing construction and operating permit begins on the source;

(b) a change in the method of operation that could result in an increase of emissions begins at the source;

(c) the permit is revoked or modified as provided for in Rules 6.108 and 6.109; or

(d) the permit clearly states otherwise.

(3) A source whose permit has expired may not operate until it receives another valid permit from the department.

(4) An air quality permit for a new or altered source expires 36 months from the date of issuance if the construction, installation, or alteration for which the permit was issued is not completed within that time. Another permit is required pursuant to the requirements of this subchapter for any subsequent construction, installation, or alteration by the source.

(5) A new or altered source may not commence operation, unless the owner or operator demonstrates

that construction has occurred in compliance with the permit and that the source can operate in compliance with applicable conditions of the permit, provisions of this Program, and rules adopted under the Clean Air Act of Montana and the FCAA and any applicable requirements contained in the Montana SIP.

(6) Commencement of construction or operation under a permit containing conditions is deemed acceptance of all conditions so specified, provided that this does not affect the right of the permittee to appeal the imposition of conditions through the Control Board hearing process as provided in Chapter 14.

(7) Having an air quality permit does not affect the responsibility of a source to comply with the applicable requirements of any control strategy contained in the Montana SIP.

Rule 6.104 – Reserved

Rule 6.105 – Air Quality Permit Application Requirements

(1) The owner or operator of a new or altered source shall, not later than 180 days before construction begins, or if construction is not required not later than 120 days before installation, alteration~~,~~ or use begins, submit an application for an air quality permit to the department on forms provided by the department.

(a) An application submitted by a corporation must be signed by a principal executive officer of at least the level of vice president, or an authorized representative, if that representative is responsible for the overall operation of the source;

(b) An application submitted by a partnership or a sole proprietorship must be signed by a general partner or the proprietor respectively;

(c) An application submitted by a municipal, state, federal or other public agency must be signed by either a principal executive officer, appropriate elected official or other duly authorized employee; and

(d) An application submitted by an individual must be signed by the individual or his or her authorized agent.

(2) The application must include the following:

(a) A map and diagram showing the location of the proposed new or altered source and each stack associated with the source, the property involved, the height and outline of the buildings associated with the new or altered source, and the height and outline of each stack associated with the new or altered source;

(b) A description of the new or altered source including data on maximum design production capacity, raw materials and major equipment components;

(c) A description of the control equipment to be installed;

(d) A description of the composition, volume and temperatures of the effluent stream, including the nature and extent of air pollutants emitted, quantities and means of disposal of collected pollutants, and the air quality relationship of these factors to conditions created by existing sources or stacks associated with the new or altered source;

(e) Normal and maximum operating schedules;

(f) Adequate drawings, blueprints, specifications or other information to show the design and operation of the equipment involved;

(g) Process flow diagrams containing material balances;

(h) A detailed schedule of construction or alteration of the source;

(i) A description of the shakedown procedures and time frames that will be used at the source;

(j) Other information requested by the department that is necessary to review the application and determine whether the new or altered source will comply with applicable provisions of this Program; including but not limited to information concerning compliance with environmental requirements at other facilities;

(k) Documentation showing the city or county zoning office was notified in writing by the applicant that the proposed use requires an air quality permit;

(l) A valid city or county zoning compliance permit for the proposed use;

(3) The department may waive the requirement that any of the above information must accompany a permit application.

(4) When renewing an existing permit, the owner or operator of a source is not required to submit information already on file with the department. However, the department may require additional information to ensure the source will comply with all applicable requirements.

(5) An application for a solid or hazardous waste incinerator must include the information specified in Rule 6.605.

(6) An owner or operator of a new or altered source proposing construction or alteration within any area designated as nonattainment in 40 CFR 81.327 for any regulated air pollutant shall demonstrate that all major emitting facilities located within Montana and owned or operated by such persons, or by an entity controlling, controlled by, or under common control with, such persons, are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable air quality emission limitations and standards contained in ARM Title 17, Chapter 8.

(7) The owner or operator of a new or altered source shall, before construction is scheduled to end as specified in the permit, submit additional information on a form provided by the department. The information to be submitted must include the following:

(a) Any information relating to the matters described in Section (2) of this rule that has changed or is no longer applicable; and

(b) A certification by the applicant that the new or altered source has been constructed in compliance with the permit.

(8) An application is deemed complete on the date the department received it unless the department notifies the applicant in writing within thirty (30) days thereafter that it is incomplete. The notice must list the reasons why the application is considered incomplete and must specify the date by which any additional information must be submitted. If the information is not submitted as required, the application is considered withdrawn unless the applicant requests in writing an extension of time for submission of the additional information. The application is complete on the date the required additional information is received.

Rule 6.106 – Public Review of Air Quality Permit Application

(1) The applicant shall notify the public, by means of legal publication in a newspaper of general circulation in the area affected by the application of its application for an air quality permit. The notice must be published not sooner than ten (10) days prior to submittal of an application nor later than ten (10) days after submittal of an application. The applicant shall use the department's format for the notice. The notice must include:

(a) the name and the address of the applicant;

(b) address and phone number of the premises at which interested persons may obtain further information, may inspect and may obtain a copy of the application;

(c) the date by which the department must receive written public comment on the application. The public must be given at least 30 days from the date the notice is published to comment on the application.

(2) The department shall notify the public of its preliminary determination by means of legal publication in a newspaper of general circulation in the area affected by the application and by sending written notice to any person who commented on the application during the initial 30-day comment period. Each notice must specify:

(a) whether the department intends on issuing, issuing with conditions, or denying the permit;

(b) address and phone number of the premises at which interested persons may obtain further information, may inspect and may obtain a copy of the proposed permit;

(c) the date by which the department must receive written public comment on the application. The public must be given at least 15 days from the date the notice is published to comment on the application.

(3) A person who has submitted written comments and who is adversely affected by the department's final decision may request, in writing, a hearing before the Control Board within fifteen (15) days after the department's final decision. The request for hearing must state specific grounds why the permit should not be issued, should be issued, or why it should be issued with particular conditions. Department receipt of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing process.

(4) Permit renewals are subject to this rule.

Rule 6.107 – Issuance or Denial of an Air Quality Permit

(1) A permit may not be issued to a new or altered source unless the applicant demonstrates that the source:

(a) can be expected to operate in compliance with:

(i) the conditions of the permit,

(ii) the provisions of this Program;

(iii) rules adopted under the Clean Air Act of Montana) and the FCAA.; and

(iv) any applicable control strategies contained in the Montana SIP.

(b) will not cause or contribute to a violation of a Montana or NAAQS.

(2) An air quality permit for a new or altered source may be issued in an area designated as nonattainment in 40 CFR 81.327 only if the applicable SIP approved in 40 CFR Part 52, Subpart BB is being carried out for that nonattainment area.

(3) The department shall make a preliminary determination as to whether the air quality permit should be issued or denied within forty (40) days after receipt of a completed application.

(4) The department shall notify the applicant in writing of its final decision within sixty (60) days after receipt of the completed application.

(5) If the department's final decision is to issue the air quality permit, the department may not issue the permit until:

(a) fifteen (15) days have elapsed since the final decision and no request for a hearing before the Control Board has been received; or

(b) the end of the Control Board Hearing process as provided for in Chapter 14, if a request for a Control Board Hearing was received.

(6) If the department denies the issuance of an air quality permit it shall notify the applicant in writing of the reasons why the permit is being denied and advise the applicant of his or her right to request a hearing before the Control Board within fifteen (15) days after receipt of the department's notification of denial of the permit.

Rule 6.108 – Revocation or Modification of an Air Quality Permit

(1) An air quality permit may be revoked for any violation of:

(a) A condition of the permit;

(b) A provision of this Program;

(c) An applicable regulation, rule or standard adopted pursuant to the FCAA;

(d) A provision of the Clean Air Act of Montana; or

(f) any applicable control strategies contained in the Montana SIP.

(2) An air quality permit may be modified for the following reasons:

(a) Changes in any applicable provisions of this Program adopted by the Control Board, or rules adopted under the Clean Air Act of Montana;

(b) Changed conditions of operation at a source that do not result in an increase of emissions

(c) When the department or Control Board determines modifications are necessary to insure compliance with the provisions of this Program or an implementation plan approved by the Control Board.

(3) The department shall notify the permittee in writing of its intent to revoke or modify the permit. The permit is deemed revoked or modified in accordance with the department's notice unless the permittee makes a written request for a hearing before the Control Board within fifteen (15) days of receipt of the department's notice. Departmental receipt of a written request initiates the appeals process outlined in Chapter 14 of this Program and postpones the effective date of the department's decision to revoke or modify the permit until the conclusion of the hearing process.

Rule 6.109 – Transfer of Permit

(1) An air quality permit may not be transferred from one location to another or from one piece of equipment to another, except as allowed in (2) of this rule.

(2) An air quality permit may be transferred from one location to another if:

(a) written notice of intent to transfer location is sent to the department, along with documentation that the permittee has published notice of the intended transfer by means of a legal publication in a newspaper of general circulation in the area to which the transfer is to be made. The notice must include the statement that public comment will be accepted by the department for fifteen days after the date of publication;

(b) the source will operate in the new location for a period of less than one year; and

(c) the source is expected to operate in compliance with:

(i) this Program;

(ii) the standards adopted pursuant to the Clean Air Act of Montana, including the Montana ambient air quality standards;

(iii) applicable regulations and standards promulgated pursuant to the FCAA, including the NAAQS; and

(iv) any control strategies contained in the Montana state implementation plan.

(d) the source has a valid city or county zoning compliance permit for the proposed use at the new location; and

(e) the source pays the transfer fee listed in Attachment A.

(3) An air quality permit may be transferred from one person to another if written notice of intent to transfer, including the names of the transferor and the transferee, is sent to the department.

(4) The department will approve or disapprove a permit transfer within 30 days after receipt of a complete notice of intent as described in (2) or (3) of this rule.

Subchapters 2, 3, 4 – *reserved*

Subchapter 5 – Emission Standards

Rule 6.501 – Emission Control Requirements

(1) For the purpose of this rule, Best Available Control Technology (BACT)" means an emission limitation (including a visible emission standard), based on the maximum degree of reduction for each pollutant subject to regulation under the FCAA or the Clean Air Act of Montana, that would be emitted from any proposed stationary source or modification that the department, on a case by case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event may application of BACT result in emission of any pollutant that would exceed the emissions allowed by any applicable standard under Rules 6.506 or 6.507. If the department determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice or operational standard or combination thereof, to require the application of BACT. Such standard must, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation and must provide for compliance by means which achieve equivalent results.

(2) The owner or operator of a new or altered source for which an air quality permit is required by subchapter 1 of this Chapter shall install on that source the maximum air pollution control capability that is technically practicable and economically feasible, except that:

(a) best available control technology must be used; and

(b) the lowest achievable emission rate must be met when required by the FCAA.

(3) The owner or operator of any air pollution source for which an air quality permit is required by subchapter 1 of this Chapter shall operate all equipment to provide the maximum air pollution control for which it was designed.

(4) The department may establish emission limits on a source based on an approved state implementation plan or maintenance plan to keep emissions with in a budget.

Rule 6.502 – Particulate Matter from Fuel Burning Equipment

(1) For the purpose of this rule "new fuel burning equipment" means any fuel burning equipment constructed or installed after November 23, 1968.

(2) The following emission limits apply to solid fuel burning equipment constructed or installed after May 14, 2010 with a heat input capacity from 1,000,000 BTU/hr up to and including 10,000,000 BTU/hr.

(a) Inside the Air Stagnation Zone, solid fuel burning equipment must meet LAER and a person may not cause or allow particulate matter emissions in excess of 0.1 pounds per million BTU heat input to be discharged from any stack, opening or chimney into the atmosphere.

(b) Outside the Air Stagnation Zone, solid fuel burning equipment must meet BACT and a person may not cause or allow particulate matter emissions in excess of 0.20 lbs per million BTU heat input to be discharged from any stack, opening or chimney into the atmosphere.

(3) For devices or operations not covered in Rule 6.502(2), a person may not cause or allow particulate matter caused by the combustion of fuel to be discharged from any stack or chimney into the atmosphere in excess of the hourly rates set forth in the following table:

Heat Input (million BTUs/hr)	Maximum Allowable Emissions of Particulate Matter (lbs/million BTU's)	
	Existing Fuel Burning Equipment	New Fuel Burning Equipment
≤ 10	0.60	0.60
100	0.40	0.35
1,000	0.28	0.20
≥ 10,000	0.19	0.12

(4) For a heat input between any two consecutive heat inputs stated in the preceding table, maximum allowable emissions of particulate matter are shown for existing fuel burning equipment on Figure 1 and for new fuel burning equipment on Figure 2. For the purposes hereof, heat input is calculated as the aggregate heat content of all fuels (using the upper limit of their range of heating value) whose products of combustion pass through the stack or chimney.

(5) When two or more fuel burning units are connected to a single stack, the combined heat input of all units connected to the stack may not exceed that allowable for the same unit connected to a single stack.

(6) This rule does not apply to:

(a) emissions from residential solid fuel combustion devices, such as fireplaces and wood and coal stoves with heat input capacities less than 1,000,000 BTU per hour; and

(b) new stationary sources subject to Rule 6.506 for which a particulate emission standard has been promulgated.

FIGURE 1
Maximum Emission of Particulate Matter from Existing Fuel Burning Installations

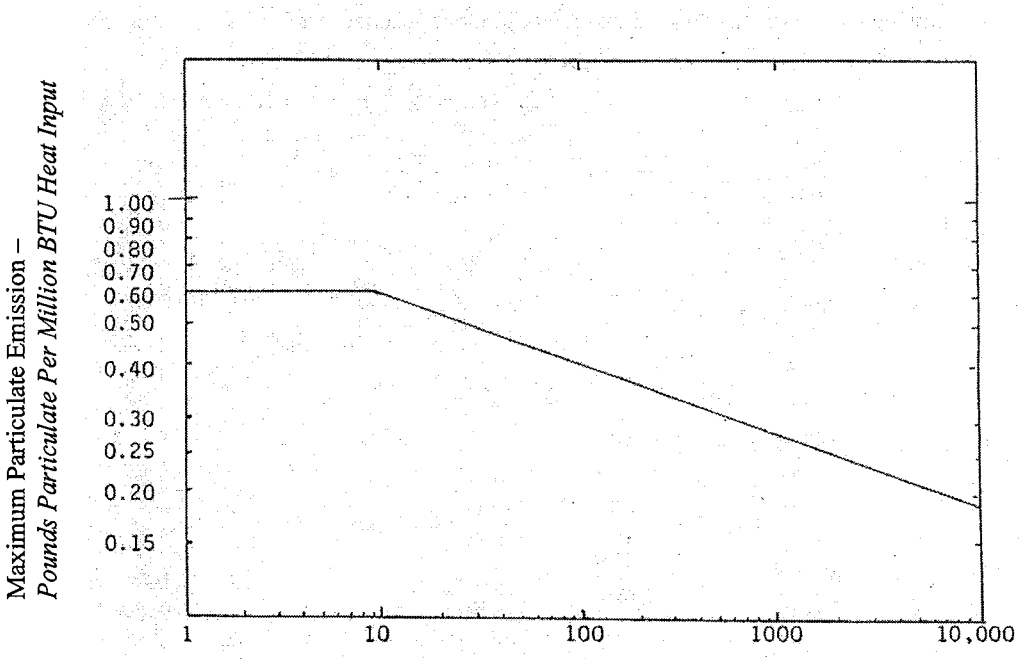
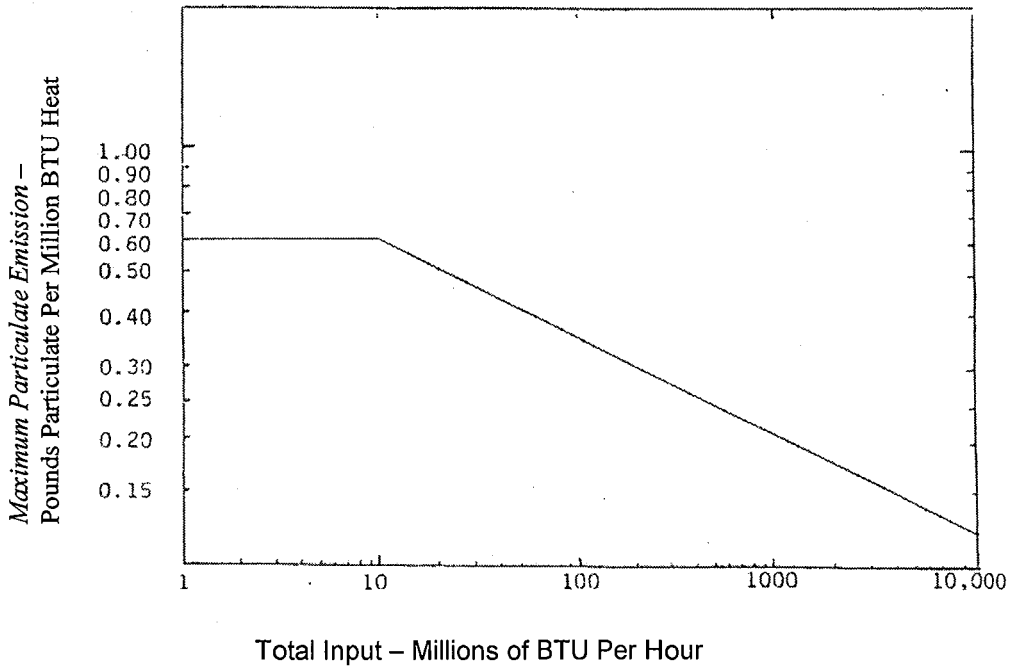


FIGURE 2
Maximum Emission of Particulate Matter from New Fuel Burning Installations



Rule 6.503 – Particulate Matter from Industrial Processes

(1) A person may not cause or allow particulate matter in excess of the amount shown in the following table to be discharged into the outdoor atmosphere from any operation, process or activity.

Process (lb/hr)	Weight Rate (tons/hr)	Rate of Emission (lb/hr)
100	0.0	0.551
200	0.10	0.877
400	0.20	1.40
600	0.30	1.83
800	0.40	2.22
1,000	0.50	2.58
1,500	0.75	3.38
2,000	1.00	4.10
2,500	1.25	4.76
3,000	1.50	5.38
3,500	1.75	5.96
4,000	2.00	6.52
5,000	2.50	7.58
6,000	3.00	8.56
7,000	3.50	9.49
8,000	4.00	10.4
9,000	4.50	11.2
10,000	5.00	12.0
12,000	6.00	13.6
16,000	8.00	16.5
18,000	9.00	17.9
20,000	10.00	19.2
30,000	15.00	25.2
40,000	20.00	30.5
50,000	25.00	35.4
60,000	30.00	40.0
70,000	35.00	41.3
80,000	40.00	42.5
90,000	45.00	43.6
100,000	50.00	44.6
120,000	60.00	46.3
140,000	70.00	47.8
160,000	80.00	49.0
200,000	100.00	51.2
1,000,000	500.00	69.0
2,000,000	1,000.00	77.6
6,000,000	3,000.00	92.7

(2) When the process weight rate falls between two values in the table, or exceeds 3,000 tons per hour, the maximum hourly allowable emissions of particulate are calculated using the following equations:

(a) for process weight rates up to 60,000 pounds per hour:

$$E = 4.10\ P^{0.67}$$

(b) for process weight rates in excess of 60,000 pounds per hour:

$$E = 55.0\ P^{0.11} - 40$$

Where E = rate of emission in pounds per hour and P = process weight rate in tons per hour.

(3) This rule does not apply to particulate matter emitted from:

(a) the reduction cells of a primary aluminum reduction plant,

(b) those new stationary sources listed in Rule 6.506 for which a particulate emission standard has been promulgated,

(c) fuel burning equipment, and

(d) incinerators.

Rule 6.504 – Visible Air Pollutants

(1) A person may not cause or allow emissions that exhibit an opacity of forty percent (40%) or greater averaged over six consecutive minutes to be discharged into the outdoor atmosphere from any source installed on or before November 23, 1968, the provisions of this rule do not apply to transfer of molten metals or emissions from transfer ladles.

(2) A person may not cause or authorize emissions to be discharged into the outdoor atmosphere from any source installed after November 23, 1968, that exhibit an opacity of twenty percent (20%) or greater averaged over six consecutive minutes.

(3) During the building of new fires, cleaning of grates, or soot blowing, the provisions of Sections (1) and (2) apply, except that a maximum average opacity of sixty percent (60%) is permissible for not more than one four minute period in any 60 consecutive minutes. Such a four-minute period means any four consecutive minutes.

(4) This rule does not apply to emissions from:

(a) wood-waste burners;

(b) incinerators;

(c) motor vehicles;

(d) those new stationary sources listed in ARM 17.8.340 for which a visible emission standard has been promulgated; or

(e) residential solid-fuel burning devices.

Rule 6.505 – Fluoride Emissions

(1) A person may not cause or allow to be discharged into the outdoor atmosphere from any phosphate rock or phosphorate processing equipment or equipment used in the production of elemental phosphorous, enriched phosphates, phosphoric acid, defluorinated phosphates, phosphate fertilizers or phosphate concentrates or any equipment used in the processing of fluorides or wastewater enriched flourides, in a gaseous or particulate form or any combination of gaseous or particulate forms in excess of 0.3 pounds per ton of P_2O_5 (phosphorous pentoxide) introduced into the process of any calcining, nodulizing, defluorinating or acidulating process or any combination of the foregoing, or any other process, except aluminum reduction, capable of causing a release of fluorides in the form or forms indicated in this rule.

(2) Pond emissions:

(a) A person may not cause or allow fluorides in excess of 108 micrograms per square centimeter per 28 days (µg/cm2/28 days) to be released into the outdoor atmosphere from any storage pond, settling basin, ditch, liquid holding tank or other liquid holding or

conveying device from operations outlined in Section (1). The concentration of fluorides is to be determined using the calcium formate paper method. Papers must be exposed in a standard Montana Box located not less than 18 inches or more than 48 inches above the level of the liquid in the devices herein enumerated and not more than 16 inches laterally from the liquid's edge. Other locations may be permitted if approved by the department.

(b) At least four such sampling stations must be placed at locations designated by the department. Two or more calcium formate papers, as designated by the department, must be exposed in the standard Montana Box for a period designated by the department. Regardless of the duration of the sampling period, the values determined must be corrected to 28 days.

(c) A minimum of two calcium formate papers for each sampling period from each sample box must be provided to the department, if requested, within ten days from the date of the request.

(3) Preparation, exposure and analysis:

(a) Preparation of calcium formate papers:

(i) Soak Whatman #2, 11 cm. filter papers in a 10 percent solution of calcium formate for five minutes.

(ii) Dry in a forced air oven at 80°C. Remove immediately when dryness is reached.

(b) Exposure of calcium formate papers:

(i) Two papers, or more, if directed, are suspended in a standard Montana Box on separate hangers at least two inches apart.

(ii) Exposure must be for 28 days + 3 days unless otherwise indicated by the department.

(iii) Calcium formate papers must be kept in an air tight container both before and after exposure until the time of analysis.

(c) Analysis of calcium formate papers is adapted from Standard Methods for the Examination of Water and Waste Water; using Willard-Winter perchloric acid distillations and the Spadns-Zirconium Lake method for fluoride determination.

Rule 6.506 – New Source Performance Standards

(1) For the purpose of this rule, the following definitions apply:

(a) "Administrator", as used in 40 CFR Part 60, means the department, except in the case of those duties that cannot be delegated to the local program by the state and the EPA, in which case "administrator" means the administrator of the EPA.

(b) "Stationary source" means any building, structure, facility, or installation that emits or may emit any air pollutant subject to regulation under the Federal Clean Air Act.

(2) The terms and associated definitions specified in 40 CFR 60.2, apply to this rule, except as specified in subsection (1)(a) above.

(3) The owner and operator of any stationary source or modification, as defined and applied in 40 CFR Part 60, shall comply with the standards and provisions of 40 CFR Part 60.

(4) For the purpose of this rule, the Control Board hereby adopts and incorporates by reference 40 CFR Part 60, which pertains to standards of performance for new stationary sources and modifications.

Rule 6.507 – Hazardous Air Pollutants

(1) For the purpose of this rule, the terms and associated definitions specified in 40 CFR 61.02 apply, except that:

(a) "Administrator", as used in 40 CFR Part 61, means the department, except in the case of those duties that cannot be delegated to the local program by the state and the EPA in which case "administrator" means the administrator of the EPA.

(2) The owner or operator of any existing or new stationary source, as defined and applied in 40 CFR Part 61, shall comply with the standards and provisions of 40 CFR Part 61.

(3) For the purpose of this rule, the Control Board hereby adopts and incorporates by reference 40 CFR Part 61, which pertains to emission standards for hazardous air pollutants.

Rule 6.508 – Hazardous Air Pollutants for Source Categories

(1) For this rule, the following definitions apply:

(a) "112(g) exemption" means a document issued by the department on a case-by-case basis, finding that a major source of HAP meets the criteria contained in 40 CFR 63.41 [definition of "construct a major source", (2)(i) through (vi)], and is thus exempt from the requirements of 42 USC 7412(g).

(b) "Beginning actual construction" means, in general, initiation of physical on-site construction activities of a permanent nature. Such activities include, but are not limited to, installing building supports and foundations, laying underground pipework, and constructing permanent storage structures.

(c) "Construct a major source of HAP" means:

(i) to fabricate, erect, or install a major source of HAP; or

(ii) to reconstruct a major source of HAP, by replacing components at an existing process or production unit that in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, whenever:

(A) the fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable process or production unit; and

(B) it is technically and economically feasible for the reconstructed major source to meet the applicable MACT emission limitation for new sources established under 40 CFR 63 subpart B.

(d) "Greenfield site" means a contiguous area under common control that is an undeveloped site.

(e) "MACT standard" means a standard that has been promulgated pursuant to 42 USC 7412(d), (h), or (j).

(f) "Major source of HAP" means:

(i) at any greenfield site, a stationary source or group of stationary sources that is located within a contiguous area and under common control and emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP; or

(ii) at any developed site, a new process or production unit which in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP.

(g) "Maximum achievable control technology" or "MACT" means the emission limitation that is not less stringent than the emission limitation achieved in practice by the best controlled similar source, and that reflects the maximum degree of reduction in emissions that the department, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by the constructed or reconstructed major source of HAP.

(h) "Notice of MACT approval" means a document issued by the department containing all federally enforceable conditions necessary to enforce MACT or other control technologies such that the MACT emission limitation is met.

(i) "Process or production unit" means any collection of structures and/or equipment, that processes, assembles, applies or otherwise uses material inputs to produce or store an intermediate or final product. A single facility may contain more than one process or production unit.

(2) The owner or operator of any affected source, as defined and applied in 40 CFR Part 63, shall comply with the requirements of 40 CFR 63, incorporated by reference in this rule. All references in 40 CFR 63, Subpart B to "permitting authority" refers to the department.

(3) Any owner or operator who constructs a major source of HAP is required to obtain from the department a notice of MACT approval or a 112(g) exemption pursuant to this rule, prior to beginning actual construction, unless:

(a) the major source has been specifically regulated or exempted from regulation under a MACT standard issued pursuant to 42 USC 7412(d), (h) or (j) and incorporated into 40 CFR Part 63;

(b) the owner or operator of the major source has already received all necessary air quality permits for such construction as of (the effective date of this rule); or

(c) the major source has been excluded from the requirements of 42 USC 7412(g) under 40 CFR 63.40(c), (e) or (f).

(4) Unless granted a 112(g) exemption under (6) below, at least 180 days prior to beginning actual construction, an owner or operator who constructs a major source of HAP shall apply to the department for a notice of MACT approval. The application must be made on forms provided by the department, and must include all information required under 40 CFR 63.43(e).

(5) When acting upon an application for a notice of MACT approval, the department shall comply with the principles of MACT determination specified in 40 CFR 63.43(d).

(6) The owner or operator of a new process or production unit that in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, may apply to the department for a 112(g) exemption, if the process or production unit meets the criteria contained in 40 CFR 63.41 [definition of "construct a major source" (2)(i) through (vi)]. Application must be made on forms provided by the department, at least 180 days prior to beginning actual construction. The application must include such information as may be necessary to demonstrate that the process of production unit meets the criteria referenced herein.

(7) As further described below, and except as expressly modified by this rule, the procedural requirements of Chapter 6, subchapter 1 apply to an application for a notice of MACT approval or 112(g) exemption. For the purpose of this rule:

(a) all references in applicable provisions of Chapter 6, subchapter 1 to "permit", or "air quality permit" mean "notice of MACT approval" or "112(g) exemption," as appropriate;

(b) all references in applicable provisions of Chapter 6, subchapter 1 to "new or altered source" mean "major source of HAP."

(8) The following rules govern the application, review and final approval or denial of a notice of MACT approval or 112 (g) exemption: Rules 5.112, 6.103(2), 6.103(4)-(7), 6.106, 6.107(1) and

6.107(6);

(9) The department shall notify the applicant in writing of any final approval or denial of an application for a notice of MACT approval or 112(g) exemption.

(10) A notice of MACT approval must contain the elements specified in 40 CFR 63.43(g). The notice expires if fabrication, erection, installation or reconstruction has not commenced within 18 months of issuance, except that the department may grant an extension which may not exceed an additional 12 months.

(11) An owner or operator of a major source of HAP that receives a notice of MACT approval or a 112(g) exemption from the department shall comply with all conditions and requirements contained in the notice of MACT approval or 112(g) exemption.

(12) If a MACT standard is promulgated before the date an applicant has received a final and legally effective determination for a major source of HAP subject to the standard, the applicant shall comply with the promulgated standard.

(13) The department may revoke a notice of MACT approval or 112(g) exemption if it determines that the notice or exemption is no longer appropriate because a MACT standard has been promulgated. In pursuing revocation, the department shall follow the procedures specified in Rule 6.108. A revocation under this section may not become effective prior to the date an owner or operator is required to be in compliance with a MACT standard, unless the owner or operator agrees in writing otherwise.

Subchapter 6 – Incinerators

Rule 6.601 – Minimum Standards

(1) A person may not cause or authorize to be discharged into the outdoor atmosphere from any incinerator, particulate matter in excess of 0.10 grains per standard cubic foot of dry flue gas, adjusted to twelve percent (12%) carbon dioxide and calculated as if no auxiliary fuel had been used.

(2) A person may not cause or authorize to be discharged into the outdoor atmosphere from any incinerator emissions that exhibit an opacity of ten percent (10%) or greater averaged over six consecutive minutes.

(3) An incinerator may not be used to burn solid or hazardous waste unless the incinerator is a multiple chamber incinerator or has a design of equal effectiveness approved by the department prior to installation or use.

(4) The department or Control Board shall place additional requirements on the design, testing and operation of incinerators constructed after March 20, 1992. This requirement does not apply to incinerators that burn paper waste or function as a crematorium or are in compliance with Lowest Achievable Emission Rate as defined in Rule 2.101(25) for all regulated air pollutants.

Rule 6.602 – Hours of Operation

(1) The department may, for purposes of evaluating compliance with this rule, direct that a person may not operate or authorize the operation of any incinerator at any time other than between the hours of 8:00 AM and 5:00 PM, except that incinerators that burn only gaseous materials will not be subject to this restriction.

(2) When the operation of incinerators is prohibited by the department, the owner or operator of the incinerator shall store the solid or hazardous waste in a manner that will not create a fire hazard or arrange for the removal and disposal of the waste in a manner consistent with ARM Title 17, Chapter 50, Subchapter 5.

Rule 6.603 – Performance Tests

(1) The provisions of this chapter apply to performance tests for determining emissions of particulate matter from incinerators. All performance tests must be conducted while the affected facility is operating at or above the maximum refuse charging rate at which such facility will be operated and the material burned must be representative of normal operation and under such other relevant conditions as the department shall specify based on representative performance of the affected facility. Test methods set forth in 40 CFR, Part 60, or equivalent methods approved by the department must be used.

Rule 6.604 – Hazardous Waste Incinerators

Effective March 20, 1992, a new permit may not be issued to incinerate hazardous wastes as listed in ARM Title 17, Chapter 54, Subchapter 3, inside the Air Stagnation Zone.

Rule 6.605 – Additional Air Quality Permit Requirements

(1) In addition to the permitting requirements of Chapter 6, subchapter 1, an application for an air quality permit for a solid or hazardous waste incinerator must include the following:

(a) A human health risk assessment protocol (hereafter "protocol") detailing the human health risk assessment procedures; and

(b) A human health risk assessment (hereafter "assessment") that shows that ambient concentrations of pollutants from emissions constitute no more than a negligible risk to the public health, safety, and welfare and to the environment.

(2) The protocol must include, at a minimum, methods used in compiling the emission inventory, ambient dispersion models and modeling procedures used, toxicity values for each pollutant, exposure pathways and assumptions, any statistical analysis applied and any other information necessary for the department to review the adequacy of the assessment.

(3) The assessment must include, at a minimum, the following:

(a) a list of potential emissions of all pollutants specified in the federal Clean Air Act Hazardous Air Pollutants List (as defined in section 112(b) of the FCAA) from the following sources;

(i) emitting unit(s) to be permitted;

(ii) existing incineration unit(s) at the facility;

(iii) new or existing emitting units solely supporting any incineration unit at the facility (such as fugitive emissions from fuel storage); and

(iv) existing units that partially support the incineration unit if the type or amount of any emissions under an existing permit will be changed. If an existing emitting unit, wholly or partially supporting the incineration facility, increases the types or amount of its emissions, so that a permit alteration is required, that portion of the emissions increase attributable to the support of the incineration facility must be considered in the human health risk assessment.

(b) a characterization of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from any existing emission source at the facility; and

(c) an assessment of impacts of all pollutants inventoried in (a) above, except pollutants may be excluded if the department determines that exposure from inhalation is the only appropriate pathway to consider and if:

(i) the potential to emit the pollutant is less than 1.28×10^{-13} grams per second; the source has a stack height of at least 2 meters, a stack velocity of at least 0.645 meters per second, and a stack exit temperature of at least 800°F; and the stack is at least 5 meters from the property boundary; or

(ii) the ambient concentrations of the pollutants (calculated using the potential to emit; enforceable limits or controls may be considered) are less than the levels specified in ARM 17.8.770 (See Tables 1 and 2 in Appendix C).

(4) The assessment must address risks from all appropriate pathways. Incineration facilities that do not emit or emit only minute amounts of hazardous air pollutants contained in Tables 3 or 4 in Appendix C need only address impact from the inhalation exposure pathway and may use a department supplied screening model to assess human health risk.

(5) The assessment must be performed in accordance with accepted human health risk assessment practices, or state or federal guidelines in effect when the assessment is performed, and must address impacts on sensitive populations. The human health risk must be calculated using the source's potential to emit. Enforceable limits or controls may be considered. The department may approve alternative procedures if site-specific conditions warrant.

(6) The department may impose additional requirements for the assessment, on a case-by-case basis, if the department reasonably determines that the type or amount of material being incinerated, the proximity to sensitive populations, short-term emissions variations, acute health impact, or the local topographical or ventilation conditions require a more detailed assessment to adequately define the potential public health impact. Additional requirements for the assessment may include, but are not limited to, specific emission inventory procedures for determining emissions from the incineration facility, requiring use of more sophisticated air dispersion models or modeling procedures and consideration of additional exposure pathways.

(7) The department shall include a summary of the protocol in the permit analysis. The summary must clearly define the scope of the assessment, must describe the exposure pathways used and must specify any pollutants identified in the emission inventory that were not required to be included in the assessment. The summary must also state whether, and to what extent, the impacts of existing emissions, or the synergistic effect of combined pollutants, were considered in the final human health risk level calculated to determine compliance with the negligible risk standard. The summary must also state that environmental effects unrelated to human health were not considered in determining compliance with the negligible risk standard, but were evaluated in determining compliance with all applicable rules or requirements requiring protection of public health, safety and welfare and the environment.

Subchapter 7 – Wood Waste Burners

Rule 6.701 – Opacity Limits

A person may not cause or authorize to be discharged into the outdoor atmosphere from any wood-waste burner any emissions that exhibit an opacity of twenty percent (20%) or greater averaged over six (6) consecutive minutes. The provisions of this section may not be exceeded for more than sixty (60) minutes in eight consecutive hours for building of fires in wood-waste burners.

Rule 6.702 – Operation

(1) A thermocouple and a recording pyrometer or other temperature measurement and recording device approved by the department must be installed and maintained on each wood-waste burner. The thermocouple must be installed at a location near the center of the opening for the exit gases, or at another location approved by the department.

(2) A minimum temperature of 700°F must be maintained during normal operation of all wood-waste burners. A normal start-up period of one (1) hour is allowed during which the 700°F minimum temperature does not apply. The burner must maintain 700°F operating temperature until the fuel feed is stopped for the day.

(3) The owner or operator of a wood-waste burner shall maintain a daily written log of the wood-waste burner's operation to determine optimum patterns of operations for various fuel and atmospheric conditions. The log must include, but not be limited to, the time of day, draft settings, exit gas temperature, type of fuel, and atmospheric conditions. The log or a copy of it must be submitted to the department within ten (10) days after it is requested.

Rule 6.703 – Fuels

(1) A person may not use a wood-waste burner for the burning of other than normal production process wood-waste transported to the burner by continuous flow conveying methods.

(2) Materials that cannot be disposed of through outdoor burning, as specified in Rule 7.103 (1), (2), (4) and (5), may not be burned in a wood-waste burner.

CHAPTER 8
FUGITIVE PARTICULATE

Subchapter 1 General Provisions

Rule 8.101 - Definitions

For purpose of this Chapter, the following definitions apply:

(1) "Approved deicer" means a magnesium chloride based product or other product with similar dust suppression properties, that is approved for use by the department and the Missoula Valley Water Quality District.

(2) "Area of Regulated Road Sanding Materials" means the area defined by:
T13N R19W Sections 2,8,11,14,15,16,17,20,21,22,23,27,28,29, 32,33,34;
T12N R19W Sections 4,5,6,7; as shown on the attached map, (see Appendix A).

(3) "AASHTO" means the American Association of State and Highway Transportation Officials Test Methods.

(4) "Best available control technology (BACT)" means an emission limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under the 1990 amendments to the Federal Clean Air Act or the Clean Air Act of Montana that would be emitted from any proposed stationary source or modification that the department, on a case by case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event may application of BACT result in emission of any pollutant that would exceed the emissions allowed by the applicable standard under 40 CFR Part 60 and 61. If the department determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice or operational standard or combination thereof, to require the application of BACT. Such standard must, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation and must provide for compliance by means which achieve equivalent results.

(5) "Block pavers" means a block or brick made of hard, durable material designed to handle vehicle traffic. A block paver keeps vehicles off the underlying soils while allowing the growth of vegetation through spaces inside or outside the block or paver.

(6) "Bound recycled glass" means a solid, self-draining surface composed of elastomerically bound recycled glass created by bonding post-consumer glass with a mixture of resins, pigments and binding agents.

(7) "Commercial" means:
(a) any activity related to the purchase, sale, offering for sale, or other transaction involving the handling or disposition of any article, service, or commodity; or

(b) other facilities including but not limited to office buildings, offices, maintenance, recreational or amusement enterprises, churches, schools, trailer courts, apartments, and three or more dwelling units on one parcel.

(8) "Existing source" means a source that was in existence and operating or capable of being operated or had ~~a~~ an air quality permit from the department prior to February 16, 1979.

(9) "Extraordinary circumstance" means when a law officer calls for sanding of a roadway to eliminate an existing unsafe traffic situation when deicer would be inadequate or cannot be applied within a reasonable amount of time, or when the slope of a roadway or thickness of ice prevent the use of deicing materials as an adequate method of providing a safe driving surface within a reasonable amount of time.

(10) "Fugitive particulate" means any particulate matter discharged into the outdoor atmosphere that is not discharged from the normal exit of a stack or chimney for which a source test can be performed in accordance with Method 5 (determination of particulate emissions from stationary sources), Appendix A, Part 60.275 (Test Method and Procedures), Title 40, Code of Federal Regulations [CFR] (Revised July 1, 1977).

(11) "Industrial" means activity related to the manufacture, storage, extraction, fabrication, processing, reduction, destruction, conversion, or wholesaling of any article, substance or commodity or any treatment thereof in such a manner as to change the form, character, or appearance thereof.

(12) "Long-term parking for heavy equipment or semis" means an area where only heavy equipment or semis are parked, and these vehicles are parked there for longer than 48 hour periods. This does not include loading or unloading areas for semis.

(13) "Major arterial" means any roadway eligible for primary or urban funds from the Montana Department of Transportation.

(14) "New source" means a source that was constructed, installed or altered on or after February 16, 1979, unless the source had a permit to construct prior to February 16, 1979.

(15) "Parking lot" or "parking area" means an area where operable vehicles are parked for more than 15 days of a calendar year including but not limited to areas that contain vehicles offered for sale.

(16) "Paved" means having a minimum of two (2) inches of hot mix asphalt or four (4) inches of portland cement concrete with an appropriate base for the soil type. The requirements are for the purpose of minimizing fugitive particulate emissions and do not represent structural standards.

(17) "Private driveway" means a privately owned access or egress that serves two or fewer dwelling units.

(18) "Private road" means a privately owned access or egress that serves three or more dwelling units or that serves one or more non-residential parcels.

(19) "Public road" means a publicly owned or maintained road, a road dedicated to the public, a petitioned road or a prescriptive use road.

(20) "Reasonable precautions" means any reasonable measure to control emissions of airborne particulate matter. The department will determine what is reasonable on a case by case basis taking into account energy, environmental, economic, and other costs.

(21) "Reinforced grids" means a solid material composed of connected patterns designed to handle vehicle traffic. A reinforced grid keeps vehicles off the underlying soils while allowing the growth of vegetation through spaces built into the grid.

(22) "Required deicing zone" means the area within the City limits, bordered in the north by the northern right-of-way boundary of Interstate 90 and in the south by the southern right-of-way boundary of 39th Street and Southwest Higgins Avenue, but also including those portions of Rattlesnake Drive and Van Buren Street that lie inside the City limits.

(23) "Road" means an open way for purposes of vehicular travel including highways, streets, and alleys. A private driveway is considered a new road when its use is increased to serve more than two dwelling units or to serve one or more commercial/industrial sites.

(24) "Utility" means unoccupied equipment sites or facilities, including but not limited to communication antennas and power line right of ways.

(25) "Vehicle" means every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except bicycles and devices moved by animal power or used exclusively upon stationary rails or tracks.

Rule 8.102 - General Requirements

(1) A person may not cause or authorize the production, handling, transportation, or storage of any material unless reasonable precautions to control fugitive particulate are taken.

(2) Fugitive particulate emissions from any source may not exhibit an opacity of twenty (20) percent or greater averaged over six (6) consecutive minutes.

(3) A person may not cause or permit a building or its appurtenances or a road, or a driveway, or an open area to be constructed, used, repaired or demolished without applying all reasonable precautions to prevent fugitive particulate. The department may require reasonable measures to prevent fugitive particulate emissions, including but not limited to, paving or frequent cleaning of road, driveways, and parking lots; applying dust suppressants; applying water; planting and maintaining vegetative ground cover and using a combination of reinforced grids or block pavers with a healthy vegetative cover.

(4) Governmental agencies are subject to the same regulations as commercial enterprises in this chapter.

Rule 8.103 - Stationary Source Requirements

Within any area designated non-attainment for either the primary or secondary NAAQS person who owns or operates:

(1) An existing source of fugitive particulate shall apply reasonably available control technology (RACT);

(2) A new source of fugitive particulate that has a potential to emit less than 100 tons per year of particulate shall apply best available control technology (BACT);

(3) A new source of fugitive particulate that has a potential to emit 100 or more tons per year of particulate shall apply lowest achievable emission rate (LAER).

Rule 8.104 - Construction and Mining Sites

(1) A person in charge of a construction project or mining operation may not cause, suffer or allow dirt, rock, sand and other material from the site to be tracked out onto paved surfaces without taking all reasonable measures to prevent the deposition of the material and/or to promptly clean up the material. Reasonable measures include but are not limited to frequent cleaning of the paved roadway, paving access points, use of dust suppressants, filling and covering trucks so material does not spill in transit and use of a track out control device.

(2) Temporary roads and parking areas at active construction sites and mining operations do not need to be paved and are not subject to the permitting requirements of subchapter 2 of this Chapter. After the project(s) or mining is complete, temporary roads and parking areas must be permanently removed or closed off to traffic.

Rule 8.105 - Agricultural Exemption

The provisions of this Chapter do not apply to fugitive particulate originating from any activity or equipment associated with the use of agricultural land or the planting, production, harvesting, or storage of agricultural crops. (This exemption does not apply to the processing of agricultural products by a commercial business).

Subchapter 2 Paving Requirements in the Air Stagnation Zone

Rule 8.201 - Permits Required

(1) After September 16, 1994, a person may not construct or cause to be constructed a new road, private or commercial driveway or parking lot in the Air Stagnation Zone without having a permit from the department except as provided for in Rule 8.104(2), 8.105 and 8.202(4).

(2) The applicant shall supply plans for the proposed construction at the time of the application for the permit. Plans must be legibly drawn with permanent ink or printed or reproduced by a process guaranteeing a permanent record. The department may require that the plans include the following information:

(a) A complete legal description of the affected parcels and a location map of the proposed construction area.

(b) A scaled plan-view drawing that includes all existing and proposed property boundaries, structures, roads, parking areas and adjoining exterior roads. Proposed construction must be clearly labeled.

(c) The width of proposed roads and driveways and dimensions of proposed parking areas.

(d) The thickness of the base material and the pavement to be used on the proposed construction.

(e) A description of the intended uses of the road, driveway or parking lot, including but not limited to the estimated number and type of vehicles using the road, parking lot or driveway.

(f) A description of adjoining exterior roads, e.g. paved or unpaved, public or private.

(g) Any additional information the department may require to evaluate the application prior to the issuance of a permit.

Rule 8.202 - New Roads in the Air Stagnation Zone

(1) After September 16, 1994, all new roads in the Air Stagnation Zone must be paved, except as provided in (3) through (5) of this rule and in Rule 8.104.

(2) New public and private roads must be paved within 2 years (730 days) after road construction begins or final plat approval, whichever comes first, except that new private roads serving commercial and industrial sites must be paved prior to occupancy.

(3) The department may allow temporary occupancy of a building or use of a road serving a commercial or industrial site before the road is paved if weather prevents paving before occupancy or use. Such an extension may not exceed six months.

(4) Roads used solely for utilities, or solely for agricultural or silvicultural purposes are exempt from paving requirements of Subchapter 8.2, but are subject to dust abatement measures to prevent particulate matter from becoming airborne. If the use of a road changes so that it is no longer used solely for utilities, or solely for agricultural or silvicultural purposes, the road will be considered a new road and all paving regulations pertinent to the new uses on the road must be met.

(5) Temporary roads at landfills do not have to be paved or permitted, but are subject to dust abatement measures. For this rule, a road at a landfill is considered temporary if it exists in the same location less than three years.

Rule 8.203 - New Parking Areas in the Air Stagnation Zone

(1) After September 16, 1994, new public and private parking areas must be paved prior to occupancy, except as provided in (2)-(4) of this rule.

(2) The department may allow temporary occupancy of a building before the parking areas are paved if weather prevents paving before occupancy. Such an extension may not exceed six months.

(3) Exceptions.

(a) The following areas do not have to be paved if they are constructed in accordance with Section (5) of this rule:

(i) Long term parking areas for heavy equipment and semi trucks where the vehicles will be parked for longer than 48 hours at a time and no other vehicular traffic is allowed. (This exemption does not apply to sales lots or loading areas.)

(ii) Long term parking areas for vehicles that will be parked for extended periods of time, if no other vehicular traffic is allowed and if no more than fifteen (15) vehicles travel in or out of the area per day averaged over any three consecutive days. (This exemption does not apply to sales lots for vehicles)

(iii) Display areas for heavy equipment, where no other vehicles will be displayed or offered for sale and no other vehicular traffic is allowed.

(b) At licensed RV parks, accesses to parking spots must be paved, but parking spots for RVs need not be paved if:

(i) they are constructed in accordance with 4 (a) of this rule; or

(ii) they are constructed using reinforced grids and a healthy vegetative cover is maintained that can handle traffic.

(c) Parking areas used exclusively for the sale or display of light tractors and implements with no other vehicular use need not be paved if:

(i) the area is mowed and maintained with a healthy stand of vegetation adequate to be an effective dust suppressant; or

(ii) the area meets the requirements of 4 (a) of this rule.

(d) Parking areas used exclusively for outdoor recreational/entertainment facilities including, but not limited to, outdoor theatres, fairs or athletic fields, may use vegetation or reinforced grids with vegetation as an alternative to paving if the following conditions are met.

(i) New access road(s) for the parking area will be paved.

(ii) The parking area will be used less than 61 days per calendar year.

(iii) The department has approved a construction plan showing:

(A) that the parking area soils can support a vegetative cover and the proposed vehicular traffic;

(B) that vegetation able to survive and maintain ground cover with the proposed vehicle use is present or that appropriate vegetation will be planted and established prior to use of the parking area; and

(C) that an irrigation system able to maintain the vegetative cover will be installed.

(iv) The department has approved a maintenance plan that:

(A) states that vehicles will not use the parking area when soil conditions are muddy or excessive damage to the vegetation will occur;

(B) states that vehicles will not use the parking area when carry out of dirt or dust onto surrounding paved surfaces will occur;

(C) states that the parking area will be blocked off with a physical barrier that will prevent vehicle access when the parking area is not in use; and

(D) explains how the ground cover vegetation will be maintained by the appropriate use of irrigation, fertilizer, aeration and other necessary measures.
(E) may include rotation of vehicle use around the parking area to reduce impacts on the soil and vegetation. Any use of the parking area counts as one day of use for the entire parking area.

(e) The department may order that an area that qualifies for one of the above exemptions be paved if:

(i) the area is not constructed or maintained as required by this rule.
(ii) particulate emissions exceed those typical of a clean paved surface; or
(iii) carryout of dirt or dust onto surrounding paved surfaces occurs.

(f) If the use of an area changes so that an exemption no longer applies, the area must meet all regulations for new construction applicable to the new uses of the area.

(4) The department may allow self-draining solid surfaces including, but not limited to, block pavers and bound recycled glass for parking areas provided the following conditions are met.

(i) The surface is rated for the vehicular traffic loads projected for that parking area
(ii) Fugitive emissions from the surface will not exceed those from a clean, paved parking area.
(iii) The surface is cleaned regularly to prevent fugitive particulate
(iv) If the surface is disturbed or destroyed it must be paved or rebuilt before continued use.

(5) Construction Specifications for Exemptions.

(a) Unless otherwise specified in this rule, unpaved parking and display areas must consist of a suitable base material topped with a minimum of four inches of ¾ inch minus gravel, that meets the following specifications:

(i)The material must consist of hard, durable particles or fragments of slag, stone or gravel screened and crushed to the required size and grading specified here.

Sieve Designation	Percent Passing, by Weight
¾ inch	100
No. 4	30 – 60
No. 10	20 - 50
No. 200	less than 8

(ii) That portion of the material passing a No. 40 sieve must have a plasticity index of 4 or less, as determined by AASHTO T-91.

(b) To minimize carry-out of material onto the access road, pavement must be placed between unpaved parking areas allowed in (3)(a) of this rule and the paved or unpaved access road as follows:

(i) At least 60 linear feet of paved surface of adequate width must be placed between an unpaved long term parking area for heavy equipment and semi-trucks and the access road. This paved surface must be placed and used so that heavy equipment and semi-trucks cross 60 feet of paved surface before entering the access road.
(ii) At least 20 linear feet of paved surface of adequate width must be placed between unpaved long term parking areas allowed in (3)(a)(ii) of this rule and the access road. This paved surface must be placed and used so that vehicles cross 20 feet of paved surface before entering the access road.
(iii) The paved surface must begin at the edge of the access road.

Rule 8.204 - New Driveways in the Air Stagnation Zone

(1) After September 16, 1994, before occupancy of a residential unit, new private driveways accessing a paved road must be paved or covered with a self-draining solid surface as provided by part (4) of

this rule to a minimum of twenty (20) feet back from the paved road or to the outside boundary of the right of way, whichever is longer.

(2) The department may allow temporary occupancy of a residential unit before the driveway is paved if weather prevents paving before occupancy. Such an extension may not exceed six months.

(3) Private driveways accessing an existing unpaved road do not have to be paved, but must meet the requirements of Rule 8.205.

(4) The department may allow a self-draining solid surface including, but not limited to, block pavers and bound recycled glass in lieu of pavement provided the following conditions are met.

(i) The surface is rated for the vehicular traffic loads projected for that driveway

(ii) Fugitive emissions from the surface will not exceed those from a clean, paved driveway.

(iii) The surface is cleaned regularly to prevent fugitive particulate

(iv) If the surface is disturbed or destroyed it must be paved or rebuilt before continued use.

Rule 8.205 - Unpaved Access Roads

(1) The department may not issue a permit for a new road, commercial site, industrial site, or private driveway in the Air Stagnation Zone accessed by an unpaved road unless:
(a) a waiver of the option to protest an RSID or SID for the paving of the unpaved access road has been recorded at the Clerk and Recorder's Office for the parcel; or

(b) the owner of the real property accessed by the unpaved road executes a deed restriction waiving the option to protest any RSIDs or SIDs for the paving of the unpaved access road using the language set forth below.

> I/We, the undersigned, hereby certify that I/we are the owners of the real property located at (legal description) and hereby waive any option to protest an RSID or SID affecting said property for the purpose of financing the design and construction of a public paved road accessing said property. Further, my/our signatures on this waiver may be used in lieu of my/our signature(s) on an RSID or SID petition for the creation of one or more RSID's or SID petitions for the purpose of financing the design and construction of a public paved road accessing the above-described property.
>
> This waiver runs with the land and is binding on the transferees, successors, and assigns of the owners of the land described herein. All documents of conveyance must refer to and incorporate this waiver.

(2) In the Air Stagnation Zone, property owner who is subdividing land that contains parcels accessing an unpaved road, or whose primary access is an unpaved road, shall waive the option to protest an RSID or SID that upgrades and paves the road and shall include the language set forth in (1)(b)above on the plat.

Rule 8.206 - Maintenance of Pavement Required

(1) All paved roads, driveways, storage areas and parking lots within the Air Stagnation Zone must be cleaned and maintained regularly to prevent fugitive particulate.

(2) Any existing paved surface that is disturbed or destroyed must be re-paved before continued use.

Rule 8.207 - Paving Existing Facilities in the Air Stagnation Zone

(1) The department may require any person owning or operating a commercial establishment which is located on a publicly owned or maintained road which is used by more than 200 vehicles per day averaged over any 3-day period to submit a plan which provides for paving and restricting traffic to paved surfaces for any areas used by said commercial establishment for access, egress, and

parking except where said access, egress, and parking is seasonal and intermittent and the area in which said access, egress and parking is located is not in violation of Ambient Air Quality Standards as listed in ARM 17.8.201 - 17.8.230. The plan must include drawings and other information that the department may require to indicate the adequacy of the plan. The plan must provide reasonable time for construction of paved roads or structures limiting traffic to paved surfaces, but this time may not exceed one year from the date of submittal to the department.

(2) The department may require any person owning, leasing, or managing property containing a road or thoroughfare which is used by more than 50 vehicles per day, averaged over any three day period, to submit a plan which provides for paving or for restricting traffic to paved surfaces. Roads located in areas that do not violate the ambient air quality standards (ARM 17.8.201 - 17.8.230), and which are used seasonally and intermittently are exempt from this requirement. The plan must include drawings and other information that the department may require. A reasonable time will be permitted for the construction of paved roads or structures limiting traffic to paved surfaces, but this time may not exceed one year from the date of submittal of the plan to the department unless an extension is granted by the Control Board.

Subchapter 3 - Road Maintenance Inside the Area of Regulated Road Sanding Materials

Rule 8.301 - Deicer Required

(1) When the ambient temperature is above 10°F. a person may not apply street sanding materials other than an approved deicer to those public roadways in the required deicing zone, except under extraordinary circumstances.

Rule 8.302 - Durability Requirements

(1) A person may not place any sanding or chip sealing materials upon any road or parking lot located inside the area of regulated road sanding materials that has a durability of less than or equal to 80 as defined by AASHTO T-210 procedure B and a silt content passing the #200 sieve of greater than 2.5% as defined by AASHTO T-27 and T-11.

Rule 8.303 - Street Sweeping Requirements

(1) Between December 1 and March 31, when the paved road surface is above 32°F for longer than four hours, political subdivisions shall clean the center line and areas immediately adjacent to the travel lane of any major arterials they maintain inside the area of regulated road sanding materials.

(2) The Control Board hereby incorporates Chapter 10.50 of the Missoula Municipal Codes which requires street sweeping.

Rule 8.304 - Contingency Measure

(1) The area of regulated road sanding materials defined by Rule 8.101(2) is expanded to include Section 1, T12N R20W, Sections 5 and 24, T13N R19W, Sections 19, 24, 25, 30, 31 and 36, T13N R20W.

CHAPTER 15
PENALTIES

Rule 15.101 - General Provisions

(1) Action under this Chapter is not a bar to enforcement of this Program, or regulations or orders made pursuant thereto, by injunction or other appropriate remedy. The Control Board or the department may institute and maintain in the name of the county or the state any and all enforcement proceedings.

(2) All fines collected under this chapter are deposited in the County General Fund.

(3) It is the intention of the Control Board to impose absolute liability upon persons for conduct that violates any part, provision or order issued pursuant to these regulations. Unless otherwise specifically provided, a person may be guilty of an offense without having, with respect to each element of the offense, either knowledge, negligence, or specific intent.

(4) It is the specific intention of the Control Board that these regulations impose liability upon corporations for violations of a part, provision or order issued pursuant to these regulations.

(5) A person is responsible for conduct which is an element of an offense if the conduct is either that of the person himself or that of another and he is legally accountable.

(6) A person is legally accountable for the conduct of another under these regulations when he:
(a) causes another to perform the conduct, regardless of the legal capacity or mental state of the other person; or

(b) either before or during the commission of an offense with the purpose to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid such other person in the planning or commission of the offense.

Rule 15.102 - Criminal Penalties

(1) Except as provided for in Rule 15.104, a person who violates a provision, regulation, or rule enforced under this Program, or an order made pursuant to this Program, is guilty of an offense and upon conviction subject to a fine not to exceed ten thousand dollars ($10,000.00). Each day of the violation constitutes a separate offense.

Rule 15.103 - Civil Penalties

(1) Except as provided in Rule 15.104, a person who violates a provision, rule or order under this Program, after notice thereof has been given by the department is subject to a civil penalty not to exceed ten thousand dollars ($10,000) per violation. Each day a violation continues constitutes a separate violation. Upon request of the department the county attorney may petition the district court to impose, assess and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided in Rule 15.102.

Rule 15.104 - Solid Fuel Burning Device Penalties

(1) Notwithstanding the provisions of Rule 15.102, a person who violates a provision of Chapter 9 (Solid Fuel Burning Devices) is guilty of a criminal offense and subject, upon conviction, to a fine not to exceed five hundred dollars ($500.00). Each day a violation continues constitutes a separate offense.

(2) Notwithstanding the provisions of Rule 15.103, any person who violates any of the provisions of Chapter 9 is subject to a civil penalty not to exceed five hundred dollars ($500.00). Each day a violation continues constitutes a separate violation. The civil penalty is in lieu of the criminal penalty provided for in Rule 15.102, and may be pursued in any court of competent jurisdiction.

(3) (a) The civil penalty or criminal fine for a violation of the same provision of Rules 9.103, 9.104, and 9.302 during any burning season as defined in Chapter 9 is:

First Violation - Fifty Dollars ($50)
Second Violation - Two Hundred Fifty Dollars ($250)
Third or Subsequent Violation - Five Hundred ($500)

(b) Penalties for violations of Rule 9.202 must not be less than five hundred dollars ($500.00) per offense.

Rule 15.105 - Non-Compliance Penalties

(1) Except as provided in Section (2), the department shall assess and collect a noncompliance penalty from any person who owns or operates:
(a) a stationary source (other than a primary nonferrous smelter that has received a nonferrous smelter order under 42 U.S.C. 7419), that is not in compliance with any emission limitation specified in an order of the department, emission standard, or compliance schedule under the state implementation plan approved by the EPA;

(b) a stationary source that is not in compliance with an emission limitation, emission standard, standard of performance, or other requirement under 42 U.S.C. 7411, 7412, 7477, or 7603;

(c) a stationary source that is not in compliance with any other requirement under this Program or any requirement of subchapter V of the FCAA, 42, U.S.C. 7661, et seq.; or

(d) any source referred to in Sections (1)(a) – (c) that has been granted an exemption, extension, or suspension under Subsection (2) or that is covered by a compliance order, or a primary nonferrous smelter that has received a primary nonferrous smelter order under 42 U.S.C. 7419, if such source is not in compliance under such extension, order or suspension.

(2) Notwithstanding the requirements of Section (1), the department may, after notice and opportunity for a public hearing, exempt any source from the requirements of Section (1) through Section (14) with respect to a particular instance of noncompliance that:
(a) the department finds is de minimis in nature and in duration;

(b) is caused by conditions beyond the reasonable control of the source and is of no demonstrable advantage to the source; or

(c) is exempt under 42 USC 7420(a)(2)(B) of the Federal Clean Air Act.

(3) Any person who is jointly or severally adversely affected by the department's decision may request, within 15 days after the department renders its decision, upon affidavit setting forth the grounds therefor, an administrative review as provided for in Chapter 14.

(4) The amount of the penalty that shall be assessed and collected with respect to any source under Section (1) through Section (14) shall be equal to:

(a) the amount determined in accordance with the rules adopted by the Control Board, which shall be no less than the economic value which a delay in compliance after July 1, 1987, may have for the owner of such source, including the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period not to exceed 10 years, operation and maintenance costs foregone as a result of noncompliance, and any additional economic value which such a delay may have for the owner or operator of such source; minus

(b) the amount of any expenditure made by the owner or operator of that source during any such quarter for the purpose of bringing that source into and maintaining compliance with such

requirement, to the extent that such expenditures have not been taken into account in the calculation of the penalty under Section (4)(a).

(5) To the extent that any expenditure under Section (4)(b) made during any quarter is not subtracted for such quarter from the costs under Section (4)(a), such expenditure may be subtracted for any subsequent quarter from such costs. In no event may the amount paid be less than the quarterly payment minus the amount attributed to actual cost of construction.

(6) If the owner or operator of any stationary source to whom notice is issued under Section (10) does not submit a timely petition under Section (10)(a)(ii) or submits a petition which is denied and if the owner or operator fails to submit a calculation of the penalty assessment, a schedule for payment, and the information necessary for independent verification thereof, the department may enter into a contract with any person who has no financial interest in the matter to assist in determining the amount of the penalty assessment or payment schedule with respect to such source. The cost of carrying out such contract may be added to the penalty to be assessed against the owner or operator of such source.

(7) Any person who fails to pay the amount of any penalty assessed under this rule on a timely basis shall be required to pay an additional quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be equal to 20% of the aggregate amount of such person's penalties and nonpayment penalties with respect to such source which are unpaid as of the beginning of such quarter.

(8) Any non-compliance penalty required under this rule shall be paid in quarterly installments for the period of covered noncompliance. After the first payment, all quarterly payments shall be equal and determined without regard to any adjustment or any subtraction under Section (4)(b).
(a) The first payment shall be due 6 months after the date of issuance of the notice of noncompliance under Section (10) with respect to any source. Such first payment shall be in the amount of the quarterly installment for the upcoming quarter, plus the amount owed for the preceding period within the period of covered noncompliance for such source.

(b) For the purpose of this rule, "period of covered noncompliance" means the period which begins on the date of issuance of the notice of noncompliance under Section (10) and ends on the date on which such source comes into, or, for the purpose of establishing the schedule of payments, is estimated to come into compliance with such requirement.

(9) The department shall adjust the amount of the penalty or the payment schedule proposed by such owner or operator under Section (10)(a)(i) if the department finds after notice and opportunity for a hearing that the penalty or schedule does not meet the requirements of this rule.
(a) Upon determination that a source is in compliance and is maintaining compliance with the applicable requirement, the department shall review the actual expenditures made by the owner or operator of such source for the purpose of attaining and maintaining compliance and shall make a final adjustment of the penalty within 180 days after such source comes into compliance and:
(i) provide reimbursement with interest to be paid by the county at appropriate prevailing rates for overpayment by such person; or
(ii) assess and collect an additional payment with interest at appropriate prevailing rates for any underpayment by such person.

(10) The department shall give a brief but reasonably specific notice of noncompliance to each person who owns or operates a source subject to Section (1) which is not in compliance as provided in that section, within thirty (30) days after the department has discovered the noncompliance.
(a) Each person to whom notice has been given pursuant to Section (10) shall:
(i) calculate the amount of penalty owed (determined in accordance with Section (4)(a) and (b) and the schedule of payments (determined in accordance with Section (8) for each source), and within forty-five (45) days after issuance of the notice of noncompliance, submit that calculation and proposed schedule, together with the information necessary

for an independent verification thereof, to the department; or
(ii) submit to the Control Board a petition within forty-five (45) days after the issuance of such notice, challenging such notice of noncompliance or alleging entitlement to an exemption under Section (2) with respect to a particular source.

(b) Each person to whom notice of noncompliance is given shall pay the department the amount determined under Section (4) as the appropriate penalty unless there has been a final determination granting a petition filed pursuant to Section (10)(a)(ii).

(11) The Control Board shall provide a hearing on the record and make a decision (including findings of fact and conclusions of law) not later than ninety (90) days after the receipt of any petition under Section (10)(a)(ii) with respect to such source. If the petition is denied, the petitioner shall submit the material required by Section (10)(a)(i) to the department within forty-five (45) days of the date of the decision.

(12) All noncompliance penalties collected by the department pursuant to this rule shall be deposited in a county special revenue fund until a final determination and adjustment have been made as provided in Section (10) and amounts have been deducted by the department for costs attributable to implementation of this rule and for contract costs incurred pursuant to Section (6), if any. After a final determination has been made and additional payments or refunds have been made, the penalty money remaining shall be transferred to the County General Fund.

(13) In the case of any emission limitation, emission standard, or other requirement approved or adopted by the Control Board under this Program after July 1, 1979, and approved by the EPA as an amendment to the state implementation plan, which is more stringent than the emission limitation or requirement for the source in effect prior to such approval or promulgation, or where there was no emission limitation, emission standard, or other requirement approved or adopted before July 1, 1979, the date for imposition of the noncompliance penalty under Rule 15.102 (Criminal Penalties) and Rule 15.103 (Civil Penalties) shall be the date on which the source is required to be in full compliance with such emission limitation, emission standard, or other requirement or 3 years after the approval or promulgation of such emission limitation or requirement, whichever is sooner.

(14) Any orders, payments, sanctions, or other requirements under this rule shall be in addition to any other permits, orders, payments, sanctions, or other requirements established under this Program and shall in no way affect any civil or criminal enforcement proceedings brought under Rule 15.102 (Criminal penalties) or Rule 15.103 (Civil penalties). The noncompliance penalties collected pursuant to this rule are intended to be cumulative and in addition to other remedies, procedures and requirements authorized by this Program.

Section 2

Missoula City-County Air Pollution Control Board

From: Ben Schmidt
To: Ahleah Rohs; Ann O'Hagan; Annie Hull; Barry Stang; Becky Winnick; Ben Schmidt; Bert Chessin (bchessin@aol.com); Beth Berlin (bethberlin@climatesolutions.org); Bill Flanery (beflanery@yahoo.com); Bob Giordano; Bob-Seeley; Branine, Allen; Brennan Skrutvold; Bruce Ammons; Calnan Cory <CCalnan@mt.gov>; Carolina McCready; Caroline Jenkins; Casey Ryan; Chelsi Moy; Christine Johnson; Chuck Bridgeman; Cory Claussen; Crystal Loesch; Dan Cottrell (cottrell07@yahoo.com); Danette Christiansen; Deb Wolfe; Derek Goldman; Diane Lorenzen; ER Schade; Ellen Leahy; Ellen Porter; Garon C. Smith (garon.smith@umontana.edu); Geoff Gilbert; George Heart (mghart@bresnan.net); Guy Hanson; Habeck, Bob; Hal Leadlay; Heidi Underberg; Ian Lange; Jan Hoem (haroldandjan@gmail.com); Jane Derleth; Jeff Chaffee; Jennifer Wambach; Jim Carlson; Jim Habeck; Jim McKinny; John Crouch; John Frakie; John Garberson (ptm4146@blackfoot.net); John VanDerwalker; John Waverek; John Williams; Judy Barker; Kai Puhrmann; Karen Antles; Karen Wilson; Kathy Tonnessen; Kentwla; Kim Davitt; Kim Latrelle; Lance Collister; Larry Dunham; LarryWeinberger; Leslie Lot; Linda Ito; Mark Kersting; Mark Loeffelbein; Mary Lou Wilton; Michael & Elaine Behner; Michael Moore; Michael Smith; Michael Webster; Michelle Frodey-Hutchins; Missoula Chamber of Commerce; Nate McConnell; Neal Marxer; Norm Myers; Patricia Hogan (phogan@mt.gov); Rich Winters; Rick Flacco; Rissa Cloud; Robert Hart; Robert Olsen; Robin Moore; Robin Saha; Rogueee; Ron Pihl; Ryan Gustafson; Sam Sill; Sandra Morris; Sarah Coefield; Sean Scally; Shannon Therriault; Steve Earle; Steve Hutchings; Sue Hadnot; Sue Spanke (konyadesigns@gmail.com); Susan Morgan; Tony Ward; Tova Sardot (Avott1@hotmail.com); Travis Ross; Woodland Restoration; ZenMax; carolkay51@gmail.com; casper@engr.wisc.edu; jkies; seeleyfirechief@blackfoot.net
Date: 9/26/2013 3:05 PM
Subject: Proposed Rule Changes to Air Pollution Control Program
Attachments: Ch 3 Failure to Attain Standards_2013.09.19.doc; CH 6 Standards for Stationary Sources_2013.09.19(2).doc; Ch 8 Fugitive Particulate_2013.09.19.doc; Ch 15 Penalties_2013.09.19.doc

To: Missoula City-County Air Quality Interested Parties List

Date: September 26, 2013

The Missoula City-County Air Pollution Control Board will hold a public hearing on proposed changes to the Missoula City-County Air Pollution Control Program on Thursday, October 17, 2013 at 12:15 p.m. or soon thereafter. The Board meets in the second floor conference room at the Health Department at 301 West Alder in Missoula. The Air Board will consider proposed changes to Chapter 3 "Failure to Attain Standards"; Chapter 6 "Standards for Stationary Sources"; Chapter 8 "Fugitive Particulate"; and Chapter 15 "Penalties." Some of the proposed rule changes include correct reference errors in Chapter 3; clarify the temporary permitting process for portable industrial sources in Chapter 6; clarify the sales parking lot paving rules in Chapter 8; and correct reference errors in Chapter 15.

The Air Board will take public comments at the hearing before making a decision. Written comments may be submitted on or before noon on October 17, 2013 by mailing them to Air Comments, MCCHD, 301 W Alder St., Missoula, MT 59802; faxing them to (406) 258-4781 or emailing them to bschmidt@co.missoula.mt.us . For more information, a copy of the proposed regulations or to sign up for the Interested Parties mailing list, visit www.co.missoula.mt.us/airquality or call 258-4755.

Copies of the proposed rule changes are attached to this email.

The Air Quality Advisory Committee will have this item on their agenda for their October 1, 2013 meeting at 6:30 PM. The Air Quality Advisory Committee meets at the top floor of the Missoula City-County Health Department at 301 W. Alder Street, Missoula, Montana.

Applicability of 75-2-301 Findings
For Rule Changes Proposed to the Missoula City-County Air Pollution Control Program

MCA 75-2-301(3)(b) requires the Air Pollution Control Board to fulfill the provisions of MCA 75-2-301(4) when adopting an ordinance or local law that is more stringent than the comparable state law.

MCA 75-2-301(4) allows the Board to adopt a rule more stringent than comparable state law if they make a written finding after a public hearing and public comment and based on evidence that the proposed local standard or requirement:

(A) protects public health or the environment of the area;
(B) can mitigate harm to the public health or the environment; and
(C) is achievable with current technology.

The written finding must reference information and peer-reviewed scientific studies contained in the record that form the basis for the board's or the local air pollution control program's conclusion. The written finding must also include information from the

hearing record regarding costs to the regulated community that are directly attributable to the proposed local standard or requirement.

If Missoula's Program includes a rule that is currently more stringent than state rules, and the amendments do not make the rule even more strict, MCA 75-2-301(4) does not apply. In addition, if an amendment is purely clarifying an existing rule, it is not subject to MCA 75-2-301(4).

This document identifies which proposed changes to the Missoula City-County Air Pollution Control Program are more stringent than comparable state law and therefore subject to MCA 75-2-301(4).

Chapter 3 – Failure To Attain Standards

1. Rule 3.102(1)(b) – Particulate Matter Contingency Measures
Reference errors are fixed.
MCA 75-2-301(4) does not apply.

Chapter 6- Standards for Stationary Sources

1. Rule 6.102 (4) – Air Quality Permit Required
The rule change in 6.102(4)(a) clarifies that the Missoula City-County Health Department air quality permitting policies and conditions for the Missoula Air Stagnation Zone replace the Montana Air Quality Permit addendums specific to PM_{10} nonattainment areas. A reference omission is also fixed in Rule 6.102(4)(d).
MCA 75-2-301(4) does not apply.

2. Rule 6.102(5)(a) – Air Quality Permit Required
6.102(5)(a) may conflict with state law. Removal of 6.102(5)(a) makes it clear that there is no conflict. Area of Jurisdiction Rule 1.104 already specifies that local industrial permits do not apply to larger industrial facilities and so Rule 6.102(5)(a) is not needed.
MCA 75-2-301(4) does not apply.

3. Rule 6.102(6) – Air Quality Permit Required
A reference error is fixed.
MCA 75-2-301(4) does not apply.

Chapter 8 – Fugitive Particulate

There are no comparable state requirements to the Chapter 8 rules and the proposed changes clarify existing rules. MCA 75-2-301(4) does not apply.

1. Rule 8.203(3)(a)(ii) clarifies that long term parking area exemptions do not apply to sales lots for vehicles.

Chapter 15 – Penalties

1. Rule 15.104(3)(a and b) – Solid Fuel Burning Device Penalties
Reference errors are fixed.
MCA 75-2-301(4) does not apply.

Benjamin Schmidt, MS, RS
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FREE THINKING

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Affidavit of Publication

State of Montana

County of Missoula

Tami Allen, being first duly sworn, Deposes that she is a Classified Advertising Representative of the Missoula Independent, a newspaper of general circulation, published in Missoula, Missoula County, Montana and printed in Great Falls, Cascade County, Montana, and that the attached notice has been correctly published in the regular and entire issue of every number of said paper for 2 (two) successive weeks, commencing on the 3rd day of October 2013 and published on the following dates thereafter: 10/10 2013.

Signed: Tami Allen

Subscribed and sworn before me this 10th day of October 2013.

Tami Rustvold
LORIE RUSTVOLD

Notary Public for the State of Montana, residing at Missoula, Montana. My commission expires 10/1/2014

NOTARIAL SEAL

The Missoula City-County Air Pollution Control Board will hold a public hearing on proposed changes to the Missoula City-County Air Pollution Control Program on Thursday, October 17, 2013 at 12:15 p.m. or soon thereafter. The Board meets in the second floor conference room at the Health Department at 301 West Alder in Missoula. The Air Board will consider proposed changes to Chapter 3 "Failure to Attain Standards"; Chapter 6 "Standards for Stationary Sources"; Chapter 8 "Fugitive Particulate"; and Chapter 15 "Penalties." Some of the proposed rule changes include correct reference errors in Chapter 3; clarify the temporary permitting process for portable industrial sources in Chapter 6; clarify the sales parking lot paving rules in Chapter 8; and correct reference errors in Chapter 15. The Air Board will take public comments at the hearing before making a decision. Written comments may be submitted on or before noon on October 17, 2013 by mailing them to Air Comments, MCCHD, 301 W Alder St., Missoula, MT 59802; faxing them to (406) 258-4781 or emailing them to bschmidt@co.missoula.mt.us . For more information, a copy of the proposed regulations or to sign up for the Interested Parties mailing list, visit www.co.missoula.mt.us/airquality or call 258-4755.

Missoula Public Health
City-County Health Department

MISSOULA CITY-COUNTY HEALTH, AIR POLLUTION CONTROL, & WATER QUALITY DISTRICT BOARDS

September 19, 2013 – 12:15 p.m. to 3:00 p.m.
Missoula City-County Health Department
2nd Floor - Health Board Conference Room
301 West Alder, Missoula, MT 59802

AGENDA

BOARD OF HEALTH (BOH)

Approval of the August 15, 2013 minutes is deferred to the October meeting

1. Journal report; identify volunteer for October report ..... Debbie Johnston
2. **Set hearing for proposed changes to Health Code, Reg. 5, Drinking Water Well Protection** ..... Shannon Therriault
3. Staff update on the Healthy Montana Families Project grant ..... Kate Siegrist
4. Finalize FY 2014 (Year Two) Work Plan for Implementing the FY 2013-2015 Strategic Plan ..... Ellen Leahy
5. Director's report and accreditation update ..... Ellen Leahy
6. Public comments on items not on the agenda ..... Chair
7. Board and staff comments on items not on the agenda ..... Chair

AIR POLLUTION CONTROL BOARD (APCB)

1. **Approve August 15, 2013 minutes** ..... Dr. Garon Smith
2. **Set hearing for proposed changes to Air Pollution Control Program, Chapter 6, Standards for Stationary Sources, and Chapter 8, Fugitive Particulate, to revise and add Applicability of Montana Code Annotated 75-2-301 Findings documents and to revise Written Findings** ..... Ben Schmidt, Jim Carlson
3. **Possible action on proposal for the board to send a letter to encourage the Montana Department of Environmental Quality to guard public health by retaining the Montana Air Quality Index for issuing health advisories** ..... Jan Hoem, Sarah Coefield
4. Air Quality Advisory Council update ..... Jan Hoem
5. Transportation Policy Coordinating Committee update ..... Dr. Garon Smith
6. Public comments on items not on the agenda ..... Dr. Garon Smith
7. Board and staff comments on items not on the agenda ..... Dr. Garon Smith

WATER QUALITY DISTRICT BOARD (WQDB)

1. **Approve August 15, 2013 minutes** ..... Dr. Garon Smith
2. Water Quality Advisory Council update ..... Travis Ross
3. Public comments on items not on the agenda ..... Dr. Garon Smith
4. Board and staff comments on items not on the agenda ..... Dr. Garon Smith

ADDITIONAL INFORMATION

Agenda items and their order are subject to change. For the current agenda, call the Health Department at 258-4770 or go to the website for the three Boards as noted below. To receive the agenda monthly by e-mail, send an e-mail request to JMohr@co.missoula.mt.us and provide your e-mail address. Unless the meeting schedule is adjusted, the agenda is posted on the 2nd Thursday of the month via the Internet at http://www.co.missoula.mt.us/healthboards/boardagendas.htm.

If you need special assistance to attend this meeting, please provide notice 48 hours in advance by calling the Health Department at 258-4770 or e-mail your request to JMohr@co.missoula.mt.us.

Published 09/11/13; Revised and published 09/17/13

Missoula City-County Air Pollution Control Board
September 19, 2013

Board Members Present: Dr. Garon Smith (Chair), Ross Miller (Vice Chair), Jean Curtiss, Debbie Johnston, Teresa Henry, Ed Childers

Board Members Excused: Dr. Tom Roberts

Staff Members Present: Administration: Ellen Leahy and Kathy Potwin; Environmental Health: Jim Carlson, Sarah Coefield, Ben Schmidt and Shannon Therriault

Legal Counsel Present: Marnie McClain (Chief Civil Deputy County Attorney)

Others Present: Jan Hoem, (Air Quality Advisory Council); Nicholas White; Kendra (Camera Operator, Missoula Community Access Television) Christy Buttler-Nelson (Assistant Teaching Professor, MSU College of Nursing) and MSU College of Nursing students: Kelci Apland, Julia Bechtold, Jasmine Blaney, Doljinsuren Bold, Nate Conneran, Marcy Craythorn, Alexis Czorny, Elizabeth Evangel, Shannon Frederick, Jordan Going, Ian Jennings, Kelsey Johnson-Schilling, Margaret Keating, David Knapp, Alea Kost, Thea Olsen, Daniel Rodewald, Christina Rupprecht, Melanie Schliebe, Jordan Smith, Leigh Torcoletti and Katlin VanMeel

MEETING CALLED TO ORDER

Dr. Smith called the meeting to order at 1:39 p.m.

ITEM 1 APPROVE AUGUST 15, 2013 MINUTES

Minutes were unanimously approved as circulated.

ITEM 2 SET HEARING FOR PROPOSED CHANGES TO AIR POLLUTION CONTROL PROGRAM, CHAPTER 6, STANDARDS FOR STATIONARY SOURCES, AND CHAPTER 8, FUGITIVE PARTICULATE, TO REVISE AND ADD APPLICABILITY OF MONTANA CODE ANNOTATED 75-2-301 FINDINGS DOCUMENTS AND TO REVISE WRITTEN FINDINGS

- **Attachment A**, "Air Pollution Control Program Rule Changes: Chapters 6 and 8: Air Pollution Control Board – September 19, 2013" (PowerPoint presentation)
- **Attachment B**, "Applicability of 75-2-301 Findings for Rule Changes Proposed to the Missoula City-County Air Pollution Control Program – September 19, 2013" (Corrects November 8, 2012 Document)
- **Attachment C**, "75-2-301 Written Findings for Rule Changes Proposed to the Missoula City-County Air Pollution Control Program – September 19, 2013" (Corrects reference error found in November 15, 2012 Document)
- **Attachment D**, "Missoula City-County Air Pollution Control Program – Chapter 3 Failure to Attain Standards – September 19, 2013"
- **Attachment E**, "Missoula City-County Air Pollution Control Program – Chapter 6 Standards for Stationary Sources – September 19, 2013"
- **Attachment F**, "Missoula City-County Air Pollution Control Program – Chapter 8 Fugitive Particulate – September 19, 2013"

- **Attachment G**, "Missoula City-County Air Pollution Control Program – Chapter 15 Penalties - September 19, 2013)"
- **Attachment H**, "Applicability of 75-2-301 Findings for Rule Changes Proposed to the Missoula City-County Air Pollution Control Program – September 19, 2013"

Staff Request to Set Hearing: Ben Schmidt (Air Quality Specialist, Environmental Health Division) gave the presentation. (See **Attachment A.**) He reminded the board that they approved changes to the Air Pollution Control Program rules in November 2012, which were then sent to the city council and to the county commissioners for approval. Since then, the proposed changes were reviewed by the Montana Department of Environmental Quality (DEQ) and they have provided comments to identify reference errors and to identify areas that require changes for clarification.

Thus, the health department recommends that the board set a hearing for the following purposes:

- to go through the public process again to revise the rules to correct the reference errors made in the revisions approved in November 2012;
- to revise the rules to provide necessary clarifications for the revisions approved in 2012; and
- to correct the Applicability Findings and Written Findings documents that were approved in 2012 because they include reference errors.

In addition, Mr. Schmidt asked the board to amend the proposed action to set a hearing to also include making revisions to Chapters 3 and 15.

If the board conducts a hearing to revise the rules by correcting reference errors and by providing clarifications, then the changes will be merged with the documents that were submitted and approved on November 15, 2012. Mr. Schmidt reminded the board that when changes to the Air Pollution Control Program are proposed, staff must prepare an Applicability Findings document. If they find that any of the changes proposed are more stringent than state law (Montana Code Annotated), they must also prepare a Written Findings document. Some of the reference errors made during last year's rule revisions also appear in the Applicability Findings and Written Findings documents (**Attachments B** and **C**), which is why the board is being asked to revise them.

Regarding the request to amend the proposed action and also make reference corrections to Chapters 3 and 15, this has come about because staff went back through the rules to see if there are any other inconsistencies to be found. Since the health department is also working on a limited maintenance plan for PM_{10}, they also looked at what rules need to be in place in order to move forward with that project. There are 2 items that could potentially affect their efforts in delivering the maintenance plan. For now they are not controversial—it is a matter of fixing reference errors.

The recommended revisions correct reference errors, correct the related Applicability Findings and Written Findings documents, and ensure that correct language is in place that relates to establishing a limited maintenance plan for PM_{10}. As found in **Attachment A**, the changes are as follows:

1. Correct references in Chapter 6 (**Attachment E**) and clarify industrial Air Stagnation Zone authority.
2. Correct the vehicle sales lot rule re-write. (See **Attachment F**.)
3. Correct the Applicability Findings document (**Attachment B**) references from November 15, 2012.
4. Correct the Written Findings document (**Attachment C**) references from November 15, 2012
5. Approve a new Applicability Findings document (**Attachment H**).

Chapter 6, Rule 6.102(4)(a): Technically, the information as written in Chapter 6 (**Attachment E**) is correct but DEQ commented that the way the rule is written for temporary Missoula City-County Air Quality permits is not clear about which rules apply in the Air Stagnation Zone. Mr. Schmidt explained the intent of the language, which will be revised to read, "Missoula City-County Health Department air quality permitting policies and conditions for the Missoula Air Stagnation Zone replace the Montana Air Quality Permit addendums specific to PM_{10} nonattainment areas; and..."

Chapter 8, Rule 8.203(3)(a)(ii): As part of the control strategy for PM_{10} in air stagnation areas, sales lots for vehicles must be paved. Previously, in Chapter 8, Rule 8.203 (**Attachment F**), we tried to define and clarify what a sales lot is, with regard to a new parking area. The change reads, "(This exemption does not apply to sales lots for automobiles or RVs)" but the clarification actually creates confusion. The rules already provide the definition of "vehicle". The wording "automobiles or RVs" needs to be replaced with "vehicles"—otherwise people could use the language to create loopholes to use gravel parking lots. This is part of our State Implementation Plan (SIP): we do not want to allow for any backsliding potential, which would be difficult to justify to the Environmental Protection Agency (EPA).

2012 Applicability Findings Document: The Applicability Findings document (**Attachment B**) approved last year must be corrected to eliminate reference number errors.

2012 Written Findings Document: Per Montana Code Annotated, we are required in the document (**Attachment C**) to justify why Rule 6.102(45) is more stringent than the state rule. The rule allows the Air Pollution Control Board to require a source to obtain a Missoula City-County Air Quality Permit if the Air Pollution Control Board determines that a permit is needed to ensure compliance with the National Ambient Air Quality Standards (NAAQs). The reference error also needs to be corrected.

Chapter 3, Rule 3.102(1)(b) and Chapter 15, Rule15.104(3)(a) and (b): As part of their review of the rules, staff have identified that Chapters 3 (**Attachment D**) and 15 (**Attachment G**) refer to the wrong references, as far as the contingency measures that are incorporated. Mr. Schmidt explained the purpose of those portions of the rules and the reference errors.

Mr. Childers and Ms. Henry asked that in the draft version (**Attachment G**) showing changes with strikeouts and underlining, a space should be added in Rule 15.104(3)(a) to clarify where the portion to strike out begins and ends. The extra space should not be included in the final

approved language because the required space is already included: it appears immediately following "...the same provision of Rule".

In Chapter 9, fines are assigned when there are violations: the blanket rule is that if you have violated a provision of the Air Pollution Control Program, you can be fined up to $10,000 a day. However, when an air quality alert is called, we do not want to impose a fine of up to $10,000 per day on a home owner that has been using a woodstove. Chapter 15 (**Attachment G**) identifies the appropriate level of fine for that type of violation but refers to the wrong portions of Chapter 9.

Chapter 6, Rule 6.102(5)(a): Chapter 6 (**Attachment E**) includes the rules for industrial sources. In the 2012 re-write, we added the following line. "An air quality permit is not required for the following, except when the Control Board determines an air quality permit is necessary to insure compliance with the NAAQS and other provisions of this Program:". DEQ is concerned that Rule 6.102(5)(a) reads as though we are trying to give ourselves the ability to permit large facilities. Chapter 1 of our program states that we do not have jurisdiction over these facilities and our rules cannot trump state law. Permits are not required in Chapter 6 for industrial sources. We are allowed in another chapter to regulate woodstoves. Mr. Schmidt explained that the precise revision to make has not yet been determined but will be before the date that is set for the proposed hearing. The department is waiting for feedback from DEQ's attorneys.

Jim Carlson (Director, Environmental Health Division) said that staff members were frustrated when DEQ's legal staff did not provided comments on the proposed changes to the rules, which were adopted in 2012. Because the changes must be approved by the state's Board of Environmental Review (BER), DEQ's attorneys are finally providing comments. However, as Mr. Schmidt indicated, the permit clarification needed here is still under discussion. We are not receiving timely feedback.

New Applicability Findings Document: Mr. Schmidt explained that, as we repeat the process to revise the regulations, another Applicability Findings document (**Attachment H**) must be prepared for errors that should not have been made, such as in Chapter 8. However, we should not have to prepare a new Written Findings document for those particular changes.

Hearing Deadline: Mr. Schmidt requested that the board set the hearing for their October 17, 2013 meeting. The state has finally scheduled review of the 2012 rules changes by the BER at their meeting on December 5, 2013. In order for the recommended revisions and corrections to be merged with the 2012 changes, which must take place before the BER review, the Air Pollution Control Board must set and hold the public hearing and approve the changes. Then, the city council and county commissioners must hold a joint hearing to approve changes. We cannot take 2012 changes to the BER without making the recommended revisions. They would have serious issues with approving the 2012 changes while they still contain some significant reference errors.

Dr. Smith called for questions and comments from the board. There were none. Mr. Childers made the motion for board action.

Public Comments: No comments were given.

Motion: The Air Pollution Control Board unanimously approved Mr. Childers' motion to set a public hearing on October 17, 2013 for proposed revisions and corrections to Chapters 6 and 8 of the Air Pollution Control program, to revise Applicability Findings and Written Findings documents originally approved in November 2012 to make the changes and corrections discussed, to amend the requested action to include proposed changes to Chapters 3 and 15, and to approve the new Applicability Findings document that is needed. The motion carried as follows: Ayes – 6 (Childers, Curtiss, Henry, Johnston, Miller and Dr. Smith); Nays – 0; Excused – 1 (Dr. Roberts).

ITEM 3 POSSIBLE ACTION ON PROPOSAL FOR THE BOARD TO SEND A LETTER TO ENCOURAGE THE MT DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) TO GUARD PUBLIC HEALTH BY RETAINING THE MONTANA AIR QUALITY INDEX FOR ISSUING HEALTH ADVISORIES

- **Attachment I**, "The Air Quality Index and Health Advisories—Implications for Montana Residents During High Particulate Events – September 19, 2013" (PowerPoint presentation)
- **Attachment J**, "September 3, 2013 Letter from the Air Quality Advisory Council: Request for the Air Pollution Control Board to Send Letter of Recommendation to Montana Department of Environmental Quality to Retain Current Protective Health Advisories and Not Match the National Environmental Protection Agency Air Quality Index"
- **Attachment K**, "September 18, 2013 Letter from John A. Coefield: Comments to Support State Retention of Current Protective Health Advisories and Not Match the National Environmental Protection Agency Air Quality Index"

Staff Request to Send a Letter of Support: Sarah Coefield (Air Quality Specialist, Environmental Health Division) gave the presentation. (See **Attachment I**.) On June 25, 2013, at a Wildfire Smoke Stakeholders meeting, the Montana Department of Environmental Quality (DEQ) announced that they plan to transition their current "Today's Air" website to match the Environmental Protection Agency's (EPA's) national Air Quality Index (AQI). They are doing this largely because the "Today's Air" website is antiquated and unsupported and they lack funding to maintain it. Thus, there are some valid reasons to use EPA's AQI. However, from the perspective of health department staff and the Air Quality Advisory Council, the national AQI does not adequately protect public health in instances where air quality is affected by wildfire smoke. Both parties recommend that the board submit a letter to DEQ to support retention of the state's current protective health advisories and to not match EPA's AQI.

AQI Summary: Ms. Coefield provided a summary (**Attachment I**) to explain what the AQI consists of and how it works, why Montana has not used it in the past and how what is said in the health advisories issued during wildfire season differ when using the national versus the state's indices. AQI is an all-covering index that assigns values for air quality on a scale of 0 to 500 for monitored criteria pollutants. In an area that monitors for carbon monoxide, ozone and particulate, for example, whichever of those pollutants has the highest AQI value is reported for the day. This makes sense for many areas that have multiple pollutants of concern. The health advisory issued to the public when air quality is bad due to an increased level of any of these

pollutants is similar: stay inside, avoid air exposure and limit outdoor activities. The National Ambient Air Quality Standard (NAAQS) is assigned the 100 value.

Ms. Coefield displayed screen shots for "AirNow"—EPA's main website: it has a portal for the AQI across the entire U.S. Links are provided to access websites for local jurisdictions. She also provided a screen shot for the website for Colorado's Active Air Monitoring Sites.

AQI Concerns:

- It is based on the assumption that the 24-hour $PM_{2.5}$ NAAQS (35ug/m3) is always protective of public health.
    - Studies have shown there is no threshold of effect for $PM_{2.5}$. The new annual NAAQS (12 ug/m3) is more protective of human health precisely because it limits the number of days an area can have concentrations that meet or exceed the daily standard.
- The AQI is based on the regulatory standard for pollutants, which means the daily $PM_{2.5}$ AQI represents the previous day's 24-hour average.
    - There are short term breakpoints provided in recent guidance, but they are less protective than Montana's current health advisory levels.
- AQI provides an index that assigns a single value for multiple air pollutants.
    - Montana monitoring stations, in general, only monitor PM.
    - The AQI will therefore replace an actual concentration with an index value.
- Wildfire smoke particulates are smaller than $PM_{2.5}$ (0.5 ug/m3).
    - There is no current regulatory standard.

Wildfire Smoke Guidance for Public Health Officials: Ms. Coefield reviewed Table 3. Recommended Actions for Public Health Officials, which is taken from the 2012 "Wildfire Smoke: A Guide for Public Health Officials" guidance. It is widely used. AQI categories are listed (Good, Moderate, Unhealthy for Sensitive Groups, etc.), which show the corresponding range of AQI values. The chart also lists AQI values for 1- to 3-hour, 8-hour and 24-hour averages and for visibility ranges. Recommended actions identify the types of information to provide to the public.

AQI Methodology: Washington and Montana do not use national AQI values because we have more protective indices. Ms. Coefield showed how recommendations for those state indices compare with the AQI's recommendations. The AQI is based on the assumption that 35 ug/m3 is good enough. There are a lot of studies that this is not good enough. In Montana, we use DEQ's smoke advisory system to provide adequate public health advisories during wildfire smoke episodes. The methodology used to create the national AQI renders it inadequate for these types of episodes. It is calculated on a 24-hour average, whereas wildfire smoke may vary from hour to hour. The smoke may be horrible in the morning and the air may be clear by afternoon. If air quality is good in the morning and during the previous day, in the afternoon the AQI will still report air quality as being good—even though air quality has changed and visibility is less than 5 miles. The official AQI is based from midnight to midnight, which is not useful.

In addition, the AQI covers multiple pollutants, reporting the value for whichever pollutant is highest in a given period. In Missoula County, we really only monitor $PM_{2.5}$ specifically.

Missoula no longer has a carbon monoxide monitor. Ms. Coefield thinks we are the only party in the state that currently has an ozone monitor, which is part of a pilot program. Montana is the only state that has a nonattainment area where the only pollutant reported is particulate matter. The AQI takes a concentration and assigns a new value to it. Using DEQ's current methodology, we report the actual concentration. Another problem when using the national AQI is that it is based on NAAQS. The only NAAQs that applies to smoke incursions is the 24-hour $PM_{2.5}$ NAAQS but forest fire smoke is not $PM_{2.5}$. Wildfire smoke particles are smaller (0.5 microns). There is no regulatory standard for $PM_{0.5}$ so there is no guidance available to provide a basis for the health advisories that need to be issued for particulate that is this small. The odds are that advice given in health advisories based on the 24-hour $PM_{2.5}$ standard will not be accurate.

Ms. Curtiss asked whether we have a way to measure particulate smaller than $PM_{2.5}$. Ms. Coefield said that monitoring PM_{10} is also measuring $PM_{2.5}$ but the standards are very different since PM_{10} has a higher volume of particulate.

How Montana Issues Health Advisories:

- Montana's advisories are based on the Washington Air Quality Advisory (WAQA).
- It was developed in 2006 when EPA did not update its AQI to correspond with the new NAAQS.
    - WAQA is based on literature reviews, reviews of Washington-specific health studies, staff toxicologist recommendations, etc.
    - Washington decided 21ug/m3 is a more satisfactory goal for a 24-hour average. Short-term break points in the health advisories are calculated based on this value.
- WAQA was adopted by Montana in 2007. DEQ staff made an internal decision that the AQI was not protective and did not present a realistic portrayal of wildfire smoke conditions.
- Advisories are also issued using visibility guidelines developed by DEQ staff.

$PM_{2.5}$ Health Effects: The health effects of short term exposures include increases in respiratory symptoms, emergency room visits and hospitalizations; decreased lung function in children; school absences; lost work days; restricted activity days and increased medication use. The health effects of long term exposure include increased chronic respiratory illness; decreased lung function in children (predisposes children to COPD as adults) and the overall death rate increases (not just in individuals near death). Ms. Coefield explained the health effect levels for $PM_{2.5}$ concentrations and showed the differences between WAQA and AQI. Using WAQA, air quality is shown as becoming unhealthy sooner than is shown when using the national AQI. Thus, there are those who believe that the WAQA information provided to the public about air pollution is more accurate; therefore, those in the public who are at risk are better able to take action to protect their health.

Actions for "Unhealthy" Air Designations: Ms. Coefield explained what actions are taken by public health officials when air is designated as "Unhealthy" in an advisory and listed potential health effects. She also showed the differences in 1-hour to 24-hour $PM_{2.5}$ health advisories for WAQA (used by Oregon and Montana/Washington) versus the AQI. She provided information on Montana's decision-making recommendations for outdoor sporting events during the wildfire season, based on visibility and air quality, and current recommendations from Idaho's

Department of Health & Welfare for schools and others responsible for children during wildfire smoke events. Data reporting websites for Montana, Colorado and Idaho were shown. Ms. Coefield discussed the differences between each air monitoring system and the site information for detailed air quality summaries.

The issue at hand is that using consistent messaging and protecting public health is important. If the AQI is not protective of public health during wildfires, what can we do to promote a message that is consistent and effective and do the best we can with the information that we have?

Summary: Ms. Coefield asked the board to review the recommendations made in letters (**Attachments J** and **K**) drafted by the Air Quality Advisory Council (for their own use) and by John Coefield (former DEQ meteorologist), which support retention by DEQ of Montana's current protective health advisories. Mr. Coefield had a key role in helping to develop DEQ's current system. He is now retired. Ms. Coefield last spoke with DEQ in July and was told that the decision has already been made. However, she believes there is potential for discussion about how they really want to present information to the public for health protection.

Board and Staff Discussion: In response to questions from Ms. Curtiss, Ms. Carlson and Dr. Smith gave the following replies:

- AQI obtains data for Montana from monitors that are located around the state.
- DEQ did not make a ruled decision in order to switch to use of the national AQI. The decision was made based on department policy, not upon regulations. DEQ says that the transition will likely occur in the next calendar year.
- DEQ's new director is Tracy Stone-Manning.
- The decision to use the AQI is driven by funding—it was not based on workload issues. EPA's AirNow website already exists and was built with the framework to work with data reported to the EPA in order to present AQI results. The state does not have money to maintain DEQ's "Today's Air" obsolete site but funding is available to transition to use of the "AirNow" site.

Mr. Carlson said that DEQ made the decision to switch to the AQI unilaterally. Apparently, they did not discuss the change outside of their division. In a conversation he had with DEQ, it was apparent this problem partly relates to the fact that the state health department and DEQ—the environmental regulatory department—were split over a decade ago. Also, at DEQ, they do not feel that they have resources to evaluate the health impacts. There are not significant issues related to Montana's use of the federal website. The issue is about the process. AQI data comes from monitoring urban data over the years, going hand in hand with epidemiologic studies about the impacts on public health. The same has not taken place with data for smoke from wildfires. With the AQI, the larger health impact is an indicator that is based on the average particulate in an average city in the U.S. Mr. Carlson said that if Montana wants to protect children, athletes and other parties at risk, he thinks it is appropriate to be more protective, rather than using a national index that is not based on data that is applicable to our situation. Ms. Coefield confirmed that she and a member of the advisory council asked DEQ if they have considered the health impacts of the decision and, like Mr. Carlson, were told that they lack the personnel to review health impacts.

Ms. Henry indicated that she supports having the board submit the requested letter to DEQ.

Advisory Council Request to Send a Letter of Support: Jan Hoem (Chair, Air Quality Advisory Council) said that she hears the same concerns being expressed today that are held by the advisory council, which they noted their letter (**Attachment J**) drafted to submit to DEQ.

- The reasons for having and retaining more stringent standards have not changed. If anything they are more serious now because our wildfire season is longer and more intense. In particular, health impacts on children and others who spend time outdoors during the wildfire season vary from the health impacts experienced due to winter air quality issues caused by inversions.
- On behalf of the advisory council, she asked the board to send a letter to DEQ to encourage the state to continue guarding public health by retaining the current protective health advisories.
- In the third paragraph of the advisory council's letter, the second sentence says that the state of Washington developed the WAQA in 2006 and 2007 after examining health study recommendations from EPA staff and the EPA's Clean Air Scientific Advisory Committee, Canada's $PM_{2.5}$ standards and recommendations from staff toxicologists. She does not think that this information has changed.
- The absence of stricter health advisories could have significant public health ramifications. The proposed letter from the board should express these concerns.

Questions/Comments: Dr. Smith called for questions and comments. A member of the public asked for the address for DEQ. Ms. Hoem did not have the address with her but suggested to look for it online.

Ms. Curtiss said that the board should submit a letter to DEQ. The advisory council's letter contains good information but the letter from the board could be made stronger. The board could authorize staff to make the improvements and could authorize Dr. Smith (Chair) to sign it. It should include the following points:

- If DEQ lacks the resources to evaluate the health impacts associated with switching to the national AQI, they should talk to parties who are able to do so.
- DEQ should reconsider continued use of WAQA since epidemiologic evidence was reviewed as part of the process to develop that system.

Along with addressing health issues, Director Leahy said the letter should address the impact the change could have on the health department's and the board's credibility with the public and ability to operate correctly. She noted that the change may impact the quality of information provided in health advisories and lead to confusion, for example, when superintendents of schools need to make decisions about calling off sports events. Ms. Curtiss added that the public's expectation is to be able to call us and it is our job to provide information that is protective of public health.

Dr. Smith commented on timing issues: he recommended that the board ask staff to draft the board's letter to DEQ, that the board authorize him to sign it without waiting for review by the entire board in October—as long as the contents are within the purview of what has been noticed. He recommended that the board take action also to authorize the advisory council to

send their own letter to DEQ after rewriting the content of the letter they presented today—excluding the board's advice. Ms. Coefield recommended that either the board's letter or the advisory council's letter should include a copy of John Coefield's letter since it carries additional information and clout. Dr. Smith concurred.

Ms. Curtiss indicated that it would be good for the board's letter to also express concern that the health department would be changing a policy that affects public health without public process having taken place. Director Leahy agreed. Dr. Smith said that he does not like the "disconnect" between DEQ and state health personnel. It is not to our advantage. If DEQ does not have money for their staff to review health consequences, there is a large staff of people available to them within walking distance. Ms. Curtiss added that we all work for the same people. She made the motion for board action. Multiple members of the board made an additional motion to authorize the advisory council to submit their own separate letter to DEQ.

Motion: The Air Pollution Control Board unanimously approved the motion to submit a letter from the board to DEQ to support retention of the state's current protective health advisories and to not match EPA's national Air Quality Index. The board authorized staff members to prepare this letter by amending and strengthening—as discussed—a version of the draft letter prepared by the advisory council for their own use. The board authorized Dr. Smith to sign the letter once available from staff and to attach John Coefield's letter.

Motion: The Air Pollution Control Board unanimously approved the motion to authorize the Air Quality Advisory Council to revise their draft letter provided today—in the manner recommended by Dr. Smith—and to then send it to DEQ.

Both motions carried as follows: Ayes – 6 (Childers, Curtiss, Henry, Johnston, Miller and Dr. Smith); Nays – 0; Excused – 1 (Dr. Roberts).

ITEM 4 AIR QUALITY ADVISORY COUNCIL UPDATE

Jan Hoem gave a brief update on the advisory council's latest meeting. Bert Chessin provided the journal report about the book "**Fevered: Why a Hotter Planet Will Hurt Our Health -- and How We Can Save Ourselves**" It discusses the health impacts from our warming world. Council members also discussed some contingency measures to reduce $PM_{2.5}$ emissions in Missoula. The item will be carried over to next month's agenda. They also discussed how to make enforcement feasible when burning is prohibited during Stage 2 alerts.

A public comment given during their meeting expressed concern about the increased dust on the roads. The annual sweeps are down from four to two. Ms. Curtiss commented to the board, Ms. Coefield and the public that the decrease in sweeping has to do with the budget.

The scoping hearing in Spokane, Washington for the Longview Coal Export Terminal is scheduled on September 25, 2013. A shuttle will leave Missoula at approximately 1 p.m. It may depart from the courthouse. If you are interested in taking the shuttle to attend the hearing, please call Jan Hoem or the Northern Plains Resource Council.

ITEM 5 TRANSPORTATION POLICY COORDINATING COMMITTEE (TPCC) UPDATE

Sarah Coefield gave the update for Dr. Smith. The committee approved the fiscal year 2014 Unified Planning Work Program (UPWP) for transportation planning activities. They also discussed how to focus the efforts of the Transportation Technical Advisory Council (TTAC) subcommittee to achieve the urban core vision that Missoula has had for a while. They discussed potential funding sources, such as urban renewal districts. The state reminded them that any projects that use federal funds must be included in the Long Range Transportation Plan (LRTP). It is a fairly lengthy process to add projects to that plan before looking at how to develop them. Parties who sit on the subcommittee pointed out that they already are holistic in their approach. They will try to continue to focus more on the vision for the urban core and to identify the kinds of projects that are more supportive of that vision.

ITEM 6 PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

No comments given.

ITEM 7 BOARD AND STAFF COMMENTS ON ITEMS NOT ON THE AGENDA

Ben Schmidt provided an update on the Seeley Lake Woodstove Change-out Project. As of this week, they have met their goal for changing out woodstoves in Seeley Lake. Two individuals with whom he has been working for over a year have finally agreed to participate in the program. One uses an outdoor wood boiler. Although the initial grant money is mostly spent, there is still a little bit of money left from Roseburg to address the change-outs in high priority areas. Ms. Curtiss asked if that wood boiler is close to the grocery store and he confirmed that it is.

Director Leahy reported that she followed up with Air Quality personnel about the concern Ron Scholl expressed at a prior meeting about dust from monster truck races that were held at the county fairgrounds. Staff did not receive any other complaints from the public. She will ask Mr. Jim Carlson to work with staff to orient the new fair manager on ways to do more to control fugitive dust particles at those types of events.

Sarah Cofield asked if the board would be willing to look at Chapter 9 enforcement revisions based on the Air Quality Advisory Council's report. Ms. Curtiss asked if she meant adding it to the October 17, 2013 board meeting. Ms. Johnston replied that they should advise the Air Quality Advisory Council to review it and bring a proposal back to the board. Ms. Curtiss agreed. Mr. Miller said that he thinks they are talking about the county attorney accepting the service of process.

Marnie McClain (legal counsel) said that no, there was a case that was referred for prosecution, which she declined because there was not adequate information for her to file it as a criminal complaint. She believes that what she needs to do is to attend an Air Quality Advisory Council meeting. She can discuss this with the members and explain further what is required before criminal complaints can be filed. It is not a matter of just adjusting the Air Pollution Control regulations. Adjustments would also have to be made in the criminal justice system, which you are not going to be able to do. Mr. Carlson said that they cannot arrest a house or a chimney and put it in jail. A person must be identified as the party who has committed the crime, which is known by staff at the department. If there is confusion, this would in part be his fault for not communicating that matter. Mr. Miller said it is not necessarily a rule rewrite. Ms. Curtiss

replied that it comes back to how to make things fair. Director Leahy asked if it was fair to say to the audience that part of this involves the distinction between what is a civil matter versus a criminal matter. Ms. McClain said that is correct—a very high standard of proof is required.

ADJOURNMENT: Dr. Smith adjourned the meeting at 2:51 p.m.

Respectfully submitted,

Ellen Leahy
Health Officer

Air Pollution Control Program Rule Changes: Chapters 3, 6, 8 and 15

Air Pollution Control Board Hearing
October 17, 2013

Benjamin Schmidt

Hearing Approval Request:

1. Correct Applicability Findings Document from November 15, 2012.
2. Correct Findings Document from November 15, 2012.
3. Approve Rule Changes to Air Pollution Control Program Chapters 3, 6, 8 and 15.
4. Approve new Applicability Findings Document.

1. Correct 2012 Applicability Findings Document References

3. Rule 6.102(3 and 4) – Air Quality Permit Required

This rule change allows portable industrial sources with a valid State of Montana Air Quality Permit to operate under a temporary Missoula City-County Air Quality Permit while the portable source pursues a permanent Missoula City-County Air Quality Permit. New regulations are no more stringent than the current requirements.
MCA 75-2-301(4) does not apply.

4. Rule 6.102(45) – Air Quality Permit Required

Clarifies that the air board may require an air quality permit if a permit is needed to protect the National Ambient Air Quality Standards. Maintaining air pollutant levels below the National Ambient Air Quality Standards is one of the main purposes of the Air Pollution Control Program and has been shown to protect public health (see EPA NAAQS summary online at http://www.epa.gov/air/criteria.html).
MCA 75-2-301(4) justification will be in written findings document.

2. Correct 2012 Findings Document References

Rule 6.102(4-5) – Air Quality Permits Required

This rule allows the Air Pollution Control Board to require a source to get a Missoula City-County Air Quality Permit if the Air Board determines that a permit is needed to ensure compliance with the National Ambient Air Quality Standards (NAAQS). (This rule is therefore more stringent than the comparable state regulation.)

Chapter 3 Reference Fix

Rule 3.102 - Particulate Matter Contingency Measures

(1) Within sixty (60) days after being notified by the DEQ and EPA that the area has failed to attain the PM_{10} NAAQS or make reasonable further progress in reducing emissions, the department will select and implement one of the following contingency measures:

(a) If the major contributing source is re-entrained road dust, then the department will implement Rule 8.304.

(b) If the major contributing source is wood burning, then the department will implement Rules 4.112 4.113 and 9.119 9.601.

Chapter 6 Rule Clarification and Reference Fixes

Rule 6.102 – Air Quality Permit Required

(4) A source with a Temporary Missoula City-County Air Quality Permit is subject to the following conditions:

(a) The emission control requirements of the Montana Air Quality Permit issued to the portable source are transferred verbatim, without augmentation, revision, or redaction to the Temporary Missoula City-County Air Quality Permit excluding conditions and addendums specific to PM_{10} nonattainment areas. Missoula City-County Health Department air quality permitting policies and conditions for the Missoula Air Stagnation Zone replace the Montana Air Quality Permit addendums specific to PM_{10} nonattainment areas; and

(b) The source may locate and operate in Missoula County after the department has approved the permit transfer; and

(c) A Temporary Missoula City-County Air Quality Permit expires in 180 days or upon completion of the Missoula City-County air quality permitting process required by Rule 6.102(3)(b), whichever occurs first; and

(d) The Department may revoke a Temporary Missoula City-County Air Quality Permit prior to the expiration of the time period set forth in 6.102(4)(c) if the portable source violates any provision of the Temporary Missoula City-County Air Quality Permit.

(6) A source that is exempt from obtaining an air quality permit by Rule 6.102(35) is subject to all other applicable provisions of this program, including but not limited to those regulations concerning outdoor burning, odors, motor vehicles, fugitive particulate and solid fuel burning devices.

Chapter 6 Permit Clarification

Add language that removes conflict with state law.

Rule 6.102 – Air Quality Permit Required

- (5) An air quality permit is not required for the following, except when the Control Board determines an air quality permit is necessary to insure compliance with the NAAQS and other provisions of this Program:
  - (a) Any major stationary source or modification, as defined in 40 CFR 51.165 or 51.166, which is required to obtain an air quality permit from the MT DEQ in conjunction with ARM Title 17, Chapter 8, Subchapters 8, 9 or 10 that does not have the potential to emit 250 tons a year or more of any pollutant subject to regulation under Title 75, Chapter 2, MCA, including fugitive emissions;

Chapter 8 Vehicle Clarification

Rule 8.101 - Definitions

(25) "Vehicle" means every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except bicycles and devices moved by animal power or used exclusively upon stationary rails or tracks.

Rule 8.203 - New Parking Areas in the Air Stagnation Zone

(3) Exceptions.

(a) The following areas do not have to be paved if they are constructed in accordance with Section (5) of this rule:

(i) Long term parking areas for heavy equipment and semi trucks where the vehicles will be parked for longer than 48 hours at a time and no other vehicular traffic is allowed. (This exemption does not apply to sales lots or loading areas.)

(ii) Long term parking areas for vehicles that will be parked for extended periods of time, if no other vehicular traffic is allowed and if no more than fifteen (15) vehicles travel in or out of the area per day averaged over any three consecutive days. (This exemption does not apply to sales lots for ~~automobiles or RVs~~ vehicles).

(iii) Display areas for heavy equipment, where no other vehicles will be displayed or offered for sale and no other vehicular traffic is allowed.

Chapter 15 Reference Fixes

Rule 15.104 - Solid Fuel Burning Device Penalties

(1) Notwithstanding the provisions of Rule 15.102, a person who violates a provision of Chapter 9 (Solid Fuel Burning Devices) is guilty of a criminal offense and subject, upon conviction, to a fine not to exceed five hundred dollars ($500.00). Each day a violation continues constitutes a separate offense.

(2) Notwithstanding the provisions of Rule 15.103, any person who violates any of the provisions of Chapter 9 is subject to a civil penalty not to exceed five hundred dollars ($500.00). Each day a violation continues constitutes a separate violation. The civil penalty is in lieu of the criminal penalty provided for in Rule 15.102, and may be pursued in any court of competent jurisdiction.

(3) (a) The civil penalty or criminal fine for a violation of the same provision of Rules ~~9.104, 9.105~~ and ~~9.106~~ 9.103, 9.104 and 9.302 during any burning season as defined in Chapter 9 is:

First Violation - Fifty Dollars ($50)
Second Violation - Two Hundred Fifty Dollars ($250)
Third or Subsequent Violation - Five Hundred ($500)

(b) Penalties for violations of Rule ~~9.108~~ 9.202 must not be less than five hundred dollars ($500.00) per offense.

4. Approve New Applicability Findings Document

- No proposed rule changes are stricter than existing state law, so a Findings Document is not required.

MISSOULA
COUNTY

MISSOULA CITY-COUNTY HEALTH DEPARTMENT
ENVIRONMENTAL HEALTH DIVISION
301 WEST ALDER
MISSOULA, MONTANA 59802-4123
(406) 258-4755 FAX # (406) 258-4781

Missoula City-County Health Department Response to Comments

No public comments for the proposed changes to the Missoula City-County Air Pollution Control Program were received by the Missoula City-County Health Department.

Missoula Public Health
City-County Health Department

MISSOULA CITY-COUNTY HEALTH, AIR POLLUTION CONTROL, & WATER QUALITY DISTRICT BOARDS

October 17, 2013 – 12:15 p.m. to 3:00 p.m.
Missoula City-County Health Department
2nd Floor - Health Board Conference Room
301 West Alder, Missoula, MT 59802

AGENDA

BOARD OF HEALTH (BOH)

1. Accept Missoula Lions Club donation of vision screener to the health department ..... David V. Gray (Eye Sight Chairman), David Tyrell (Treasurer), Sue Olinger (Eyeglass Chairwoman), and Patrick Claytor (Past President)
2. **Hearing and possible action on B. Page's request for a variance from Health Code, Regulation 1, [scheduled at 12:15 p.m. or shortly thereafter]** ..... Jim Erven
3. **Approve September 19, 2013 minutes** ..... Ross Miller
4. **Hearing and possible action on proposed changes to variance criteria in the administrative section of the Health Code and to Regulation 5 [scheduled at 1:00 p.m. or shortly thereafter]** ..... Shannon Therriault

Adjourn temporarily

AIR POLLUTION CONTROL BOARD (APCB)

Approval of the September 19, 2013 minutes is deferred to the November meeting

1. **Hearing and possible action to revise Air Pollution Control Program: Chapters 3, 6, 8 and 15; to revise and add Applicability of Montana Code Annotated 75-2-301 Findings documents; and to revise Written Findings [scheduled at 1:30 p.m. or shortly thereafter]** ..... Ben Schmidt, Jim Carlson
2. Air Quality Advisory Council update ..... Kim Davitt
3. Transportation Policy Coordinating Committee update ..... Sarah Coefield
4. Public comments on items not on the agenda ..... Ross Miller
5. Board and staff comments on items not on the agenda ..... Ross Miller

WATER QUALITY DISTRICT BOARD (WQDB)

Approval of the September 19, 2013 minutes is deferred to November.

1. Water Quality Advisory Council update ..... Ian Magruder
2. Public comments on items not on the agenda ..... Ross Miller
3. Board and staff comments on items not on the agenda ..... Ross Miller

BOARD OF HEALTH (BOH), Reconvened

5. Journal report; identify volunteer for November report ..... Ross Miller
6. **Approve FY 2014 (Year Two) Work Plan for Implementing the FY 2013-2015 Strategic Plan** ..... Ellen Leahy
7. Review process to submit survey for Director Leahy's performance review (to be conducted in Nov.) ... Julie Mohr
8. Maternal Child Health Advisory Council update ..... Teresa Henry
9. Director's report and accreditation update ..... Ellen Leahy
10. Public comments on items not on the agenda ..... Ross Miller
11. Board and staff comments on items not on the agenda ..... Ross Miller

ADDITIONAL INFORMATION

Agenda items and their order are subject to change. For the current agenda, call the Health Department at 258-4770 or go to the website for the three Boards as noted below. To receive the agenda monthly by e-mail, send an e-mail request to JMohr@co.missoula.mt.us and provide your e-mail address. Unless the meeting schedule is adjusted, the agenda is posted on the 2nd Thursday of the month via the Internet at http://www.co.missoula.mt.us/healthboards/boardagendas.htm.

If you need special assistance to attend this meeting, please provide notice 48 hours in advance by calling the Health Department at 258-4770 or e-mail your request to JMohr@co.missoula.mt.us.

Published 10/10/13; revised and published 10/11/13 and again on 10/17/13

Missoula City-County Air Pollution Control Board
October 17, 2013

Board Members Present: Ross Miller (Vice Chair), Jean Curtiss, Teresa Henry (through 2:45 p.m.) Debbie Johnston, and Dr. Tom Roberts

Excused: Dr. Garon Smith (Chair), Ed Childers (left during Board of Health meeting after 1:30 p.m.) and Teresa Henry (left after 2:45 p.m.)

Staff Members Present: Administration: Ellen Leahy, Julie Mohr and Kathy Potwin; Environmental Health: Jim Carlson, Ben Schmidt, and Sarah Coefield

Legal Counsel Present: Marnie McClain (Chief Civil Deputy County Attorney)

Others Present: Kim Davitt (Member, Air Quality Advisory Council) and Ron Scholl (Cameraman, Missoula Community Access TV)

MEETING CALLED TO ORDER

Dr. Smith called the meeting to order at 2:36 p.m.

ITEM 1 APPROVE SEPTEMBER 19, 2013 MINUTES

The minutes were deferred to the next board meeting.

ITEM 2 HEARING AND POSSIBLE ACTION TO REVISE AIR POLLUTION CONTROL PROGRAM: CHAPTERS 3, 6, 8 AND 15; TO REVISE AND ADD APPLICABILITY OF MONTANA CODE ANNOTATED 75-2-301 FINDINGS DOCUMENTS: AND TO REVISE WRITTEN FINDINGS

- **Attachment A**, "Air Pollution Control Program Rule Changes: Chapters 3, 6 and 8 and 15: Air Pollution Control Board Hearing – October 17, 2013" (PowerPoint presentation)
- **Attachment B**, "Applicability of 75-2-301 Findings for Rule Changes Proposed to the Missoula City-County Air Pollution Control Program – September 19, 2013 (Corrects November 8, 2012 Document)"
- **Attachment C**, "75-2-301 Written Findings for Rule Changes Proposed to the Missoula City-County Air Pollution Control Program – September 19, 2013 (Corrects Reference Error Found in November 15, 2012 Document)"
- **Attachment D**, "Missoula City-County Air Pollution Control Program – Chapter 3 Failure to Attain Standards – September 19, 2013"
- **Attachment E**, "Missoula City-County Air Pollution Control Program – Chapter 6 Standards for Stationary Sources"
- **Attachment F**, "Missoula City-County Air Pollution Control Program – Chapter 8 Fugitive Particulate"
- **Attachment G**, "Missoula City-County Air Pollution Control Program – Chapter 15 Penalties"
- **Attachment H**, "Applicability of 75-2-301 Findings for Rule Changes Proposed to the Missoula City-County Air Pollution Control Program – October 17, 2013"

Ross Miller (Vice Chair) convened the hearing to accept public comments and for possible action by the Air Pollution Control Board to approved proposed changes to the Air Pollution Control Program rules and related changes to additional documents.

Staff Recommendation: Ben Schmidt (Air Quality Specialist, Environmental Health Division) indicated that the health department received questions from two individuals but did not receive any written or verbal comments from the public regarding proposed changes to the Air Pollution Control Program (APCP) and related documents. Mr. Schmidt recommended that the board take action to approve the following:

- Correct reference errors related to Chapter 6 Standards for Stationary Sources in the Applicability Findings Document for November 8, 2012. See **Attachment A, Slide 3** and **Attachment B, Pg. 2.**

  3. Rule 6.102 (3 and 4) – Air Quality Permit Required
     This rule change allows portable industrial sources with a valid State of Montana Air Quality Permit to operate under a temporary Missoula City-County Air Quality Permit while the portable source pursues a permanent Missoula City-County Air Quality Permit. New regulations are no more stringent than the current requirements.
     MCA 75-2-301(4) does not apply.

  4. Rule 6.102(4-5) – Air Quality Permit Required
     Clarifies that the air board may require an air quality permit if a permit is needed to protect the National Ambient Air Quality Standards. Maintaining air pollutant levels below the National Ambient Air Quality Standards is one of the main purposes of the Air Pollution Control Program and has been shown to protect public health (see EPA NAAQS summary online at http://www.epa.gov/air/criteria.html).
     MCA 75-2-301(4) justification will be in written findings document.

- Correct the reference error related to Rule 6.102 in the Written Findings Document for November 15, 2012. See **Attachment A, Slide 4** and **Attachment C, Pg. 1.**

  Rule 6.102(45) – Air Quality Permits Required
  This rule allows the Air Pollution Control Board to require a source to get a Missoula City-County Air Quality Permit if the Air Board determines that a permit is needed to ensure compliance with the National Ambient Air Quality Standards (NAAQS). (This rule is therefore more stringent than the comparable state regulation.)

- Correct reference errors in Rule 3.102 of Chapter 3 Failure to Attain Standards in the Air Pollution Control Program. See **Attachment A, Slide 5** and **Attachment D, Pg. 1.**

  Rule 3.102 - Particulate Matter Contingency Measures

  (1) Within sixty (60) days after being notified by the DEQ and EPA that the area has failed to attain the PM_{10} NAAQS or make reasonable further progress in reducing emissions, the department will select and implement one of the following contingency measures:

  (b) If the major contributing source is wood burning, then the department will implement Rules ~~4.112~~4.113 and ~~9.1199~~9.601.

- In Chapter 6 Standards for Stationary Sources, clarify Rule 6.102(4)(a) and correct reference errors. See below and **Attachment A, Slide 6** and **Attachment E, Pg. 2.**

  Rule 6.102 – Air Quality Permit Required

  (4) A source with a Temporary Missoula City-County Air Quality Permit is subject to the following conditions:

(a) The emission control requirements of the Montana Air Quality Permit issued to the portable source are transferred verbatim, without augmentation, revision, or redaction to the Temporary Missoula City-County Air Quality Permit excluding conditions and addendums specific to PM_{10} nonattainment areas. Missoula City-County Health Department air quality permitting policies and conditions for the Missoula Air Stagnation Zone replace the Montana Air Quality Permit addendums specific to PM_{10} nonattainment areas; and

(d) The Department may revoke a Temporary Missoula City-County Air Quality Permit prior to the expiration of the time period set forth in 6.102(4)(c) if the portable source violates any provision of the Temporary Missoula City-County Air Quality Permit.

- Add language to Rule 6.102(5)(a) that removes conflict with state law. See below and **Attachment A, Slide 7** and **Attachment E, Pg. 2.**

Rule 6.102 – Air Quality Permit Required

(5) An air quality permit is not required for the following, except when the Control Board determines an air quality permit is necessary to insure compliance with the NAAQS and other provisions of this Program:

(a) Any major stationary source or modification, as defined in 40 CFR 51.165 or 51.166, which is required to obtain an air quality permit from the MT DEQ in conjunction with ARM Title 17, Chapter 8, Subchapters 8, 9 or 10 that does not have the potential to emit 250 tons a year or more of any pollutant subject to regulation under Title 75, Chapter 2, MCA, including fugitive emissions;

- In Chapter 8 Fugitive Particulate, revise Rule 8.203(i)(a) to provide clarification regarding vehicles. See **Attachment A, Slide 8** and **Attachment F, Pg. 5.**

Rule 8.203 - New Parking Areas in the Air Stagnation Zone

(3) Exceptions.

(a) The following areas do not have to be paved if they are constructed in accordance with Section (5) of this rule:
(i) Long term parking areas for heavy equipment and semi trucks where the vehicles will be parked for longer than 48 hours at a time and no other vehicular traffic is allowed. (This exemption does not apply to sales lots or loading areas.)
(ii) Long term parking areas for vehicles that will be parked for extended periods of time, if no other vehicular traffic is allowed and if no more than fifteen (15) vehicles travel in or out of the area per day averaged over any three consecutive days. (This exemption does not apply to sales lots for ~~automobiles or RVS~~vehicles)
(iii) Display areas for heavy equipment, where no other vehicles will be displayed or offered for sale and no other vehicular traffic is allowed.

- In Chapter 15 Penalties, correct reference errors in Rule 15.104(3). See **Attachment A, Slide 9,** and **Attachment G, Pg. 2.**

Rule 15.104 - Solid Fuel Burning Device Penalties

(3) (a) The civil penalty or criminal fine for a violation of the same provision of Rules ~~9.104, 9.105 and 9.106~~9.103, 9.104, and 9.302 during any burning season as defined in Chapter 9 is:

First Violation - Fifty Dollars ($50)
Second Violation - Two Hundred Fifty Dollars ($250)
Third or Subsequent Violation - Five Hundred ($500)

(b) Penalties for violations of Rule ~~9.108~~9.202 must not be less than five hundred dollars ($500.00) per offense.

- Approve a new Applicability Findings Document. No action is needed. None of the proposed rules changes are stricter than existing law; thus, an Applicability Findings Document is not required. See **Attachment A, Slide 10.**

Jean Curtis asked Mr. Schmidt whether a pellet stove can be installed in a home in the Air Stagnation Zone (ASZ) after a woodstove that does not meet requirements is removed. He said that a pellet stove can be installed because it is on the approved list. Dr. Roberts made the motion for board action.

Public Comments: No comments were given.

Motion: The Air Pollution Control Board unanimously approved the following changes presented by Mr. Schmidt (listed above and in detail in Attachments A through H):

- **Correct reference errors related to Chapter 6 Standards for Stationary Sources in the Applicability Findings Document for November 8, 2012.**
- **Correct the reference error related to Rule 6.102 in the Written Findings Document for November 15, 2012.**
- **Revise and correct the Air Pollution Control Program in Chapters 3, 6, 8 and 15 as specified.**
- **No action is required to approve a new Applicability Findings Document. It is not required: none of the proposed rule changes are stricter than existing law.**

The motion carried as follows: Ayes – 5 (Curtiss, Henry, Johnston, Miller and Dr. Roberts); Nays – 0; Excused Absences – 2 (Childers and Dr. Smith).

ITEM 3 AIR QUALITY ADVISORY COUNCIL UPDATE

Kim Davitt (Member, Air Quality Advisory Council) provided the update. She works for the American Lung Association. The advisory council discussed the proposed changes to the Air Pollution Control Program rules, which the board just approved. They also discussed the Environmental Protection Agency's (EPA's) carbon pollution standard and the national Air Quality Index. The council voted to send a letter to the Montana Department of Environmental Quality (DEQ) to oppose the State's use of the national Air Quality Index to report air pollution.

Marnie McClain (Chief Civil Deputy County Attorney) and Ben Schmidt attended the meeting and discussed how to foster realtor participation to complete certificate of compliance forms when woodstoves must be removed from homes in the Air Stagnation Zone (ASZ) when the houses are sold. They reviewed technology challenges to track complete and track forms, issues related to real estate agent involvement, and other challenges related to enforcement.

At the conclusion of Ms. Davitt's update, Debbie Johnston asked Ms. McClain about an enforcement issue discussed previously at another meeting, inquiring if staff members are now clear as to what needs to be done. Ms. McClain said that she thinks they are: there is always an ongoing effort to manage enforcement, referrals and questions. She commented on the challenges presented by burning violations for woodstove use. Director Leahy commented to clarify that certain communication responsibilities are held by staff—not Ms. McClain.

ITEM 4 TRANSPORTATION POLICY COORDINATING COMMITTEE UPDATE (TPCC)

Sarah Coefield (Air Quality Specialist, Environmental Health Division) attended the TPCC meeting on Dr. Garon Smith's behalf. The committee looked at the transportation demand model and a recent update. Their current goal is to start collecting data from all parties that receive Congestion Mitigation and Air Quality Improvement (CMAQ) Program money and other funds in order to see which parameters should be reviewed and to determine how to set performance management measures for programs such as Bike-Walk-Bus Week, Missoula in Motion and for the Mountain Line transit system. They want to be able to make assessments to determine which programs are working and which are not. The main goal at present is to establish a baseline for single occupancy vehicles in order to see if they are actually achieving some of their goals.

ITEM 5 PUBLIC COMMENTS

No comments were given.

ITEM 6 BOARD AND STAFF COMMENTS

No comments were given.

ADJOURNMENT: Dr. Smith adjourned the meeting at 2:53 p.m.

Respectfully submitted,

Ellen Leahy
Health Officer

Section 3

Joint Missoula City Council & Board of County Commissioners Hearing

AFFIDAVIT OF PUBLICATION
THE MISSOULIAN

500 S. Higgins Ave.
Missoula, MT 59801
Phone: (406) 523-5236 Fax: (406) 523-5221

Ad Number: 20132433

Chris Arvish, being first duly sworn, deposes and says. That she is the principal clerk of The Missoulian, a newspaper of general circulation published daily in the City of Missoula, in the County of Missoula, State of Montana, and has charge of the Advertisements thereof.

That the legal regarding:

Notice of Public Hearing

a true copy of which is hereto annexed, was published in said newspaper on the following dates: via:

December 6 & 8, 2013

Making all 2 publication(s)

On this day of Dec. 10, 2013 before me, the undersigned, a Notary Public for the State of Montana, personally appeared Chris Arvish known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed same. IN WITNESS WHERFOF, I have hereunto set my hand and affixed my notarial seal the day and year first above written.

KAY LACY
NOTARY PUBLIC for the
State of Montana
Residing at Lolo, Montana
My Commission Expires
May 20, 2017

Venue: Montana, County of Missoula

Page	:	1 of 1 12/09/2013 11:00:56	Ad Number	:	11056467
			Ad Key	:	
Order Number	:	20322433	Salesperson	:	MT1 - Mindy Tweet
PO Number	:		Publication	:	Missoulian
Customer	:	60015105 CITY CLERKS OFFICE	Section	:	Classified
Contact	:		Sub Section	:	Legals
Address1	:	435 RYMAN	Category	:	399 Legals
Address2	:		Dates Run	:	12/01/2013-12/08/2013
City St Zip	:	Missoula MT 59801	Days	:	2
Phone	:	(406) 523-4752	Size	:	2 x 2.19, 24 lines
Fax	:		Words	:	175
	:		Ad Rate	:	City of Missoula
Printed By	:	misarvic	Ad Price	:	22.00
Entered By	:	misarvic	Amount Paid	:	0.00
			Amount Due	:	22.00
Keywords	:	NOTICE OF PUBLIC HEARING The Missoula City Council			
Notes	:				
Zones	:				

NOTICE OF PUBLIC HEARING

The Missoula City Council and Missoula Board of County Commissioners will hold a joint public hearing on December 9, 2013, at 7:00 p.m. in the City Council Chambers, 140 West Pine, Missoula, Montana to consider a joint resolution of Missoula County and the City of Missoula to support new Missoula City-County air pollution control program rules changes to Chapter 3 "Failure to Attain Standards"; Chapter 6 "Standards for Stationary Sources"; Chapter 8 "Fugitive Particulate"; and Chapter 15 "Penalties." Some of the proposed rule changes include correct reference errors in Chapter 3; clarify the temporary permitting process for portable industrial sources in Chapter 6; clarify the sales parking lot paving rules in Chapter 8; and correct reference errors in Chapter 15.

A copy of the resolution is on file at the City Clerk office. For further information, contact Ben Schmidt, Health Department at (406) 258-3369.

If you have comments, please mail them to: City Clerk, 435 Ryman, Missoula, MT 59802.

Martha L. Rehbein, CMC,
City Clerk

#20322433 December 1 & 8, 2013

City of Missoula, Montana
City Clerk's Office
RECEIVED
DEC 11 2013
11:30 AM
PM Initial

City of Missoula, Montana
Item to be Referred to City Council Committee

Committee: Public Health and Safety

Agenda item title: Set Hearing Date for Ratification of Amendments to the Missoula City-County Air Pollution Control Program

Date: 10-25-2013

Sponsor: City-County Health Department

Prepared by: Jim Carlson

Ward(s) affected: All

Action Required: To set hearing date, hold public hearing and pass a motion to approve amendments to the Missoula City-County Air Pollution Control Program.

Recommended Motion: To adopt the attached resolution.

Timeline:

Referred to committee:
Committee discussion:
Public hearing (if necessary): As scheduling allows
Deadline: As scheduling allows

Background and Alternatives Explored: See attached document:

Financial Implications: Minimal to City-County Health Department and to public

Request for Commission Action

- Please fill out each field on this form completely. Incomplete requests will not be accepted.
- Please obtain all signatures except Clerk & Recorder before submitting.
- Please ensure your request is appropriately reviewed before submitting to the Commissioners for action.
- Please ensure appropriate staff attends the Commissioners' administrative meeting or provide for other arrangements.
- To the extent possible, please ensure all contracts conform to the approved county contract template.
- If your contract does not conform, in whole or in part, you must submit the contract for legal review. Please specify which contract sections differ from the county contract template in the space provided below. Risk management review is required when insurance stipulations do not conform with the contract template.

Requestor Information

Submitted by/Dept: Health Department
Date Submitted: 10-25-13
Reviewed by/Dept: Jim Carlson
E-mail: jcarlson@co.missoula.mt.us
Phone: 4996

Action Information

Date Required: As soon as time allows
Action/Motion Requested: Set hearing for proposed amendments to the Air Rules.
Project/Item:
Parties Involved: DEQ & Health
Fiscal Impact: $ 0
Budget Action Required? no
Project Location: health
Project Begin: ongoing
Project End: ongoing

Legal Review Required?

(•) Yes ( ) No

Reviewed By: M. McClain

HR Review Required?

(Independent Contractor Agreements Only)

( ) Yes (•) No

Reviewed By:

Risk Management Review Required?

( ) Yes (•) No

Reviewed By:

Internal Use Only

Handled By:	Journal:	Date:

Chair _____

Commissioner _____

Commissioner _____

Action Date _____

( ) BCC Approved

( ) Chair Authorized to Sign

BCC Notes:

Please describe the action requested in detail:

To set hearing for approval of proposed amendments to the Missoula City-County Air Pollution Control Program. The amendments are non-controversial in nature and focus primarily on correcting reference errors and rewriting rules for improved clarity. No comments were received on these proposed amendments to the Air Pollution Control Pragram at the October 17, 2013 Air Pollution Control Board Hearing.

Request for Commission Action

- Please fill out each field on this form completely. Incomplete requests will not be accepted.
- Please obtain all signatures except Clerk & Recorder before submitting.
- Please ensure your request is appropriately reviewed before submitting to the Commissioners for action.
- Please ensure appropriate staff attends the Commissioners' administrative meeting or provide for other arrangements.
- To the extent possible, please ensure all contracts conform to the approved county contract template.
- If your contract does not conform, in whole or in part, you must submit the contract for legal review. Please specify which contract sections differ from the county contract template in the space provided below. Risk management review is required when insurance stipulations do not conform with the contract template.

Requestor Information

Submitted by/Dept: Health Department
Date Submitted: 11-7-13
Reviewed by/Dept: Jim Carlson
E-mail: jcarlson@co.missoula.mt.us
Phone: 4996

Action Information

Date Required: As soon as time allows
Action/Motion Requested: Sign Resolution Approving AQ regs ammendments
Project/Item:
Parties Involved: DEQ & Health
Fiscal Impact: $ 0
Budget Action Required? no
Project Location: health
Project Begin: ongoing
Project End: ongoing

Legal Review Required?

(•) Yes ( ) No

Reviewed By: M. McClain

HR Review Required?

(Independent Contractor Agreements Only)

( ) Yes (•) No

Reviewed By:

Risk Management Review Required?

( ) Yes (•) No

Reviewed By:

Internal Use Only

Handled By:	Journal:	Date:

Chair _____

Commissioner _____

Commissioner _____

Action Date _____

( ) BCC Approved

( ) Chair Authorized to Sign

BCC Notes:

Please describe the action requested in detail:

To sign resolution approving amendments to the Missoula City-County Air Pollution Control Program. This documents the approval action that the Commissioners took at the joint City-County hearing on 12-9-13.

MISSOULA COUNTY

MISSOULA CITY-COUNTY HEALTH DEPARTMENT
ENVIRONMENTAL HEALTH DIVISION
301 WEST ALDER
MISSOULA, MONTANA 59802-4123
(406) 258-4755 FAX # (406) 258-4781

Summary and Explanation for Changes to the Missoula City-County Air Pollution Control Program Missoula City Council & Missoula County Commissioners October 25, 2013

Chapter 3 – Failure To Attain Standards

1. Rule 3.102(1)(b) – Particulate Matter Contingency Measures
Reference errors are fixed.

Chapter 6- Standards for Stationary Sources

1. Rule 6.102 (4) – Air Quality Permit Required
The rule change in 6.102(4)(a) clarifies that the Missoula City-County Health Department air quality permitting policies and conditions for the Missoula Air Stagnation Zone replace the Montana Air Quality Permit addendums specific to PM_{10} nonattainment areas. A reference omission is also fixed in Rule 6.102(4)(d).

2. Rule 6.102(5)(a) – Air Quality Permit Required
6.102(5)(a) may conflict with state law. The additional language proposed for 6.102(5)(a) removes any potential conflict with state law.

3. Rule 6.102(6) – Air Quality Permit Required
A reference error is fixed.

Chapter 8 – Fugitive Particulate

1. Rule 8.203(3)(a)(ii) clarifies that long term parking area exemptions do not apply to sales lots for vehicles.

Chapter 15 – Penalties

1. Rule 15.104(3)(a and b) – Solid Fuel Burning Device Penalties
Reference errors are fixed.

MISSOULA
COUNTY

MISSOULA CITY-COUNTY HEALTH DEPARTMENT
ENVIRONMENTAL HEALTH DIVISION
301 WEST ALDER
MISSOULA, MONTANA 59802-4123
(406) 258-4755 FAX # (406) 258-4781

Public Notices Sent Out for Proposed
2013 Missoula City-County Air Pollution Control Program Rule Changes

Air Quality Advisory Council Meeting Notices for proposed changes to the Air Rules sent to Interested Parties Email list: August 30 and September 27, 2013.

Independent Adds Publicized: October 3, 2013 and October 10, 2013 for the October 17 Air Pollution Control Board Hearing.

Interested Parties Email for October 17 Air Board Hearing: September 26, 2013.

Missoula City-County Health Department Response to Comments

No public comments for the proposed changes to the Missoula City-County Air Pollution Control Program were received by the Missoula City-County Health Department.

MISSOULA COUNTY

MISSOULA CITY-COUNTY HEALTH DEPARTMENT
ENVIRONMENTAL HEALTH DIVISION
301 WEST ALDER
MISSOULA, MONTANA 59802-4123
(406) 258-4755 FAX # (406) 258-4781

Applicability of 75-2-301 Findings

For Rule Changes Proposed to the Missoula City-County Air Pollution Control Program
October 17, 2013

MCA 75-2-301(3)(b) requires the Air Pollution Control Board to fulfill the provisions of MCA 75-2-301(4) when adopting an ordinance or local law that is more stringent than the comparable state law.

MCA 75-2-301(4) allows the Board to adopt a rule more stringent than comparable state law if they make a written finding after a public hearing and public comment and based on evidence that the proposed local standard or requirement:

(A) protects public health or the environment of the area;
(B) can mitigate harm to the public health or the environment; and
(C) is achievable with current technology.

The written finding must reference information and peer-reviewed scientific studies contained in the record that form the basis for the board's or the local air pollution control program's conclusion. The written finding must also include information from the hearing record regarding costs to the regulated community that are directly attributable to the proposed local standard or requirement.

If Missoula's Program includes a rule that is currently more stringent than state rules, and the amendments do not make the rule even more strict, MCA 75-2-301(4) does not apply. In addition, if an amendment is purely clarifying an existing rule, it is not subject to MCA 75-2-301(4).

This document identifies which proposed changes to the Missoula City-County Air Pollution Control Program are more stringent than comparable state law and therefore subject to MCA 75-2-301(4).

Chapter 3 – Failure To Attain Standards

1. Rule 3.102(1)(b) – Particulate Matter Contingency Measures
   Reference errors are fixed.
   MCA 75-2-301(4) does not apply.

Chapter 6- Standards for Stationary Sources

1. Rule 6.102 (4) – Air Quality Permit Required
   The rule change in 6.102(4)(a) clarifies that the Missoula City-County Health Department air quality permitting policies and conditions for the Missoula Air Stagnation Zone replace the Montana Air Quality Permit addendums specific to PM_{10} nonattainment areas. A reference omission is also fixed in Rule 6.102(4)(d).
   MCA 75-2-301(4) does not apply.

2. Rule 6.102(**5**)(a) – Air Quality Permit Required
   6.102(5)(a) may conflict with state law. Adding the phrase "*that does not have the potential to emit 250 tons a year or more of any pollutant subject to regulation under Title 75, Chapter 2, MCA, including fugitive emissions*," clarifies the rule and removes the potential conflict with the Montana Code Annotated.
   MCA 75-2-301(4) does not apply.

3. Rule 6.102(**6**) – Air Quality Permit Required
   A reference error is fixed.
   MCA 75-2-301(4) does not apply.

Chapter 8 – Fugitive Particulate

There are no comparable state requirements to the Chapter 8 rules and the proposed changes clarify existing rules. **MCA 75-2-301(4) does not apply.**

1. Rule 8.203(3)(a)(ii) clarifies that long term parking area paving exemptions do not apply to sales lots for vehicles.

Chapter 15 – Penalties

1. Rule 15.104(3)(a and b) – Solid Fuel Burning Device Penalties
   Reference errors are fixed.
   MCA 75-2-301(4) does not apply.

FORMAL AGENDA
MISSOULA CITY COUNCIL MEETING
CITY COUNCIL CHAMBERS
140 WEST PINE STREET, MISSOULA, MT
December 9, 2013, 7:00 PM

I. CALL TO ORDER AND ROLL CALL

II. APPROVAL OF THE MINUTES

1. City Council Minutes dated November 25, 2013 -- History

III. SCHEDULE OF COMMITTEE MEETINGS

1. Committee Schedule for the week of December 9, 2013 -- History

IV. PUBLIC COMMENTS

V. CONSENT AGENDA

(Items on the consent agenda were approved in City Council committees by a unanimous vote. We save time at Council meetings by voting on these items as a package. The City Clerk will read the list aloud, so citizens watching on MCAT will know what is on the consent agenda. We'll invite community comment on these items before we vote.)

1. Claims totaling $408,480.75 with checks dated December 3, 2013 --Mary Kay Wedgwood History

Recommended motion
Approve claims totaling $408,480.75 with checks dated December 3, 2013

2. Claims totaling $333,067.53 with checks dated December 10, 2013 --Mary Kay Wedgwood History

Recommended motion
Approve claims totaling $333,067.53 with checks dated December 10, 2013.

3. State of the Urban Forest --Chris Boza History

Recommended motion
Adopt a resolution of the Missoula City Council in support of the development of a long term management plan for the Missoula urban forest including reallocation of existing and available fiscal year 2014 Park District Funds for plan development.

4. Agreement to dispose of biosolids from the Wastewater Treatment Plant for FY13-FY16. --Bruce Bender History

Recommended motion
Authorize the Mayor to sign an agreement with EKO Compost to dispose of biosolids from the Wastewater Treatment Plant for FY13-FY16

5. Schedule a public hearing on the Russell Street project History

Recommended motion
Ratify the motion to set a public hearing for December 16, 2013, to receive expressions of public opinion on the design of Russell Street.

VI. COMMENTS FROM CITY STAFF, AGENCIES, BOARDS, COMMISSIONS,

AUTHORITIES AND THE COMMUNITY FORUM

VII. SPECIAL PRESENTATIONS

1. Proclamation - Computer Science Education Week --John Engen — History

VIII. PUBLIC HEARINGS

(State law and City Council rules set guidelines for inviting community comment in a formal way on certain issues. Following a staff report on each item, the City Council and the Mayor invite community comment. The City Council normally votes on the same night as the public hearing unless one Council member requests that it be returned to a City Council committee for further consideration.)

1. Amendments to the Missoula City-County Air Pollution Control Program --Jim Carlson — History

Recommended motion
(Adopt/Reject) A joint resolution of Missoula County and the City of Missoula to support new Missoula City-County air pollution control program rules changes to Chapter 3 "Failure to Attain Standards"; Chapter 6 "Standards for Stationary Sources"; Chapter 8 "Fugitive Particulate"; and Chapter 15 "Penalties." Some of the proposed rule changes include correct reference errors in Chapter 3; clarify the temporary permitting process for portable industrial sources in Chapter 6; clarify the sales parking lot paving rules in Chapter 8; and correct reference errors in Chapter 15.

2. An ordinance amending Missoula Municipal Code Chapter 5.36 entitled "Special Sales" changing the chapter name to "Going Out of Business, Relocation, Fire or Other Altered Stock Sales" and generally amending regulations associated with conducting such sales in the City of Missoula. --Dave Strohmaier — History

Recommended motion
[Second and final reading] (Adopt/reject) an ordinance amending Missoula Municipal Code Chapter 5.36 entitled "Special Sales" changing the chapter name to "Going Out of Business, Relocation, Fire or Other Altered Stock Sales" and generally amending regulations associated with conducting such sales in the City of Missoula.

IX. COMMUNICATIONS FROM THE MAYOR

X. GENERAL COMMENTS OF CITY COUNCIL

XI. COMMITTEE REPORTS

(Items listed under Committee Reports were not approved unanimously in City Council committees. The chairperson of the standing City Council committee will make a motion reflecting the committee's actions. We invite community comment on each item.)

1. Committee of the Whole -- History
   a. COW Minutes dated December 4, 2013-- History
2. Parks and Conservation Committee -- History
   a. PC Minutes dated December 4, 2013-- History
3. Public Works Committee -- History

a. PW Minutes dated December 4, 2013-- History

XII. NEW BUSINESS

1. Request from Marilyn Marler to cancel the city council meeting on December 30, 2013 -- History

Recommended motion
Direct the City Clerk to advertise the cancellation of the December 30, 2013 City Council meeting.

2. Request from Dave Strohmaier on an interim urgency zoning ordinance amending Title 20, Missoula City Zoning Ordinance Section 20.75.070: "Regulation of Specific Types of Signs," sub-section H: "Sidewalk Signs," to increase the number of allowable sidewalk signs for each business from one to two and to revise the requirement that the sidewalk sign be placed immediately in front of the building where the business is located. --Dave Strohmaier, Jason Wiener History

Recommended motion
I move the city council ratify the scheduling of a public hearing on December 16, 2013, on an interim urgency zoning ordinance amending Title 20, Missoula City Zoning Ordinance Section 20.75.070; Regulation of Specific Types of Signs, Sub-Section H: Sidewalk Signs, to increase the number of allowable sidewalk signs for each business from one to two and to eliminate the requirement that the sidewalk sign be placed immediately in front of the building where the business is located and refer the ordinance to the Land Use and Planning Committee for a preview prior to the public hearing.

XIII. ITEMS TO BE REFERRED

(Items listed here have been proposed by Council members, staff, or the Mayor for consideration in City Council committees. Committee chairs are responsible for scheduling consideration of these items in their respective committee meetings. These items are listed on our agenda for information only. They will not be considered at this meeting. For further information about any item, contact the person listed in parenthesis.)

1. Administration and Finance Committee -- History

   a. Reappointment to the Urban Transportation District Board--John Engen History

   b. A resolution authorizing the execution and delivery of property schedule nos. 4 and 5 with respect to the Master Tax-Exempt Installment Purchase Agreement with U.S. Bancorp Government Leasing and Finance, Inc.--Leigh Griffing History

   c. City Council Meeting Schedule 2014--Marty Rehbein History

2. Land Use and Planning Committee -- History

   a. Conditional use request for micro-brewery and micro-distillery at 139 East Main St.--Mary McCrea History

3. Parks and Conservation Committee -- History

   a. Parks and Recreation Master Fee Schedule For Facility Use, Reservations, Contracts, Permits & Programs 2014.--Shirley Kinsey History

	b.	Fire Management Plan for City of Missoula Open Space/Conservation Lands	History
	c.	All Abilities Playground Contract with Kompan Inc, for purchase and installation of playground equipment and fall zone surfacing--David Selvage	History
	d.	Agreement for Lighting the Madison Street Pedestrian Bridge	History
4.	Public Safety and Health Committee --		History
	a.	Council Appointments to the Health Board	History
	b.	Joint Resolution of Missoula City and Missoula County to authorize the Local Emergency Planning Committee and Disaster Planning Committee to establish a local, Type III All Hazard Incident Management Team--Jason Diehl	History
	c.	Amend Section 15.04.016 of Missoula Municipal Code to provide for local adoption of Appendix D of the International Fire Code (IFC) edition adopted by the Fire Prevention and Investigation Bureau of the Montana Department of Justice.--Jason Diehl	History
5.	Public Works Committee --		History
	a.	Bid Award for Automated Flow Injection Chemical Analysis System	History
	b.	Purchase of Engineering inspection vehicle--Jack Stucky	History
	c.	Purchase of Police community service and administrative vehicles--Jack Stucky	History
	d.	Purchase of Engineering inspection vehicle--Jack Stucky	History
	e.	Purchase of Urban Forestry pickup--Jack Stucky	History

XIV. MISCELLANEOUS COMMUNICATIONS, PETITIONS, REPORTS AND ANNOUNCEMENTS

XV. ADJOURNMENT

The City makes reasonable accommodations for any known disability that may interfere with a person's ability to participate in this meeting. Persons needing accommodation must notify the City Clerk's Office to make needed arrangements. Please call 552-6080 or write to Martha Rehbein, 435 Ryman Street, Missoula, Montana 59802, to make your request known.

MISSOULA
COUNTY

MISSOULA CITY-COUNTY HEALTH DEPARTMENT
ENVIRONMENTAL HEALTH DIVISION
301 WEST ALDER
MISSOULA, MONTANA 59802-4123
(406) 258-4755 FAX # (406) 258-4781

Minutes of the joint Missoula City Council and Missoula County Board of County Commissions Hearing can be found on line at the Missoula city web site.

The written summary of the Hearing have been included with this record of adoption.

Minutes are in a video format. See links below.

http://www.ci.missoula.mt.us/

http://www.ci.missoula.mt.us/index.aspx?NID=7

MISSOULA CITY COUNCIL ACTION SUMMARY
City Council Chambers
140 West Pine Street
Missoula, Montana
December 9, 2013, 7:00 PM

I. CALL TO ORDER AND ROLL CALL

Present: Mayor John Engen, Ed Childers, Ward 6, Dick Haines, Ward 5, Bob Jaffe, Ward 3, Marilyn Marler, Ward 6, Mike O'Herron, Ward 5, Dave Strohmaier, Ward 1, Alex Taft, Ward 3, Jason Wiener, Ward 1, Jon Wilkins, Ward 4.
Absent: Caitlin Copple, Ward 4, Adam Hertz, Ward 2, Cynthia Wolken, Ward 2.

II. APPROVAL OF THE MINUTES

1. City Council Minutes dated November 25, 2013 -- History

The minutes were approved as submitted.

III. SCHEDULE OF COMMITTEE MEETINGS

1. Committee Schedule for the week of December 9, 2013 -- History

IV. PUBLIC COMMENTS

V. CONSENT AGENDA

1. Claims totaling $408,480.75 with checks dated December 3, 2013 --Mary Kay Wedgwood History

Recommended motion:
Approve claims totaling $408,480.75 with checks dated December 3, 2013

Motion:
Approve claims totaling $408,480.75 with checks dated December 3, 2013
Vote on the motion to approve:
AYES: Ed Childers, Dick Haines, Bob Jaffe, Marilyn Marler, Mike O'Herron, Dave Strohmaier, Alex Taft, Jason Wiener, Jon Wilkins

ABSENT: Caitlin Copple, Adam Hertz, Cynthia Wolken
The motion passed.

2. Claims totaling $333,067.53 with checks dated December 10, 2013 --Mary Kay Wedgwood History

Recommended motion:
Approve claims totaling $333,067.53 with checks dated December 10, 2013.

Motion:
Approve claims totaling $333,067.53 with checks dated December 10, 2013.

Vote on the motion to approve:
AYES: Ed Childers, Dick Haines, Bob Jaffe, Marilyn Marler, Mike O'Herron, Dave Strohmaier, Alex Taft, Jason Wiener, Jon Wilkins

ABSENT: Caitlin Copple, Adam Hertz, Cynthia Wolken
The motion passed.

3. State of the Urban Forest --Chris Boza History

Recommended motion:
Adopt a resolution of the Missoula City Council in support of the development of a long term management plan for the Missoula urban forest including reallocation of existing and available fiscal year 2014 Park District Funds for plan development.

Motion:
Adopt a resolution of the Missoula City Council in support of the development of a long term management plan for the Missoula urban forest including reallocation of existing and available fiscal year 2014 Park District Funds for plan development.
Vote on the motion to approve:
AYES: Ed Childers, Dick Haines, Bob Jaffe, Marilyn Marler, Mike O'Herron, Dave Strohmaier, Alex Taft, Jason Wiener, Jon Wilkins

ABSENT: Caitlin Copple, Adam Hertz, Cynthia Wolken
The motion passed.

4. Agreement to dispose of biosolids from the Wastewater Treatment Plant for FY13-FY16. --Bruce Bender History

Authorize the Mayor to sign an agreement with EKO Compost to dispose of biosolids from the Wastewater Treatment Plant for FY13-FY16

Motion:
Authorize the Mayor to sign an agreement with EKO Compost to dispose of biosolids from the Wastewater Treatment Plant for FY13-FY16
Vote on the motion to approve:
AYES: Ed Childers, Dick Haines, Bob Jaffe, Marilyn Marler, Mike O'Herron, Dave Strohmaier, Alex Taft, Jason Wiener, Jon Wilkins

ABSENT: Caitlin Copple, Adam Hertz, Cynthia Wolken
The motion passed.

5. Schedule a public hearing on the Russell Street project History

Recommended motion:
Ratify the motion to set a public hearing for December 16, 2013, to receive expressions of public opinion on the design of Russell Street.

Motion:
Ratify the motion to set a public hearing for December 16, 2013, to receive expressions of public opinion on the design of Russell Street.
Vote on the motion to approve:

AYES: Ed Childers, Dick Haines, Bob Jaffe, Marilyn Marler, Mike O'Herron, Dave Strohmaier, Alex Taft, Jason Wiener, Jon Wilkins

ABSENT: Caitlin Copple, Adam Hertz, Cynthia Wolken
The motion passed.

VI. COMMENTS FROM CITY STAFF, AGENCIES, BOARDS, COMMISSIONS, AUTHORITIES AND THE COMMUNITY FORUM

VII. SPECIAL PRESENTATIONS

1. Proclamation - Computer Science Education Week --John Engen — History

VIII. PUBLIC HEARINGS

1. Amendments to the Missoula City-County Air Pollution Control Program --Jim Carlson — History

Recommended motion:
(Adopt/Reject) A joint resolution of Missoula County and the City of Missoula to support new Missoula City-County air pollution control program rules changes to Chapter 3 "Failure to Attain Standards"; Chapter 6 "Standards for Stationary Sources"; Chapter 8 "Fugitive Particulate"; and Chapter 15 "Penalties." Some of the proposed rule changes include correct reference errors in Chapter 3; clarify the temporary permitting process for portable industrial sources in Chapter 6; clarify the sales parking lot paving rules in Chapter 8; and correct reference errors in Chapter 15.

Motion:
Adopt a joint resolution of Missoula County and the City of Missoula to support new Missoula City-County air pollution control program rules changes to Chapter 3 "Failure to Attain Standards"; Chapter 6 "Standards for Stationary Sources"; Chapter 8 "Fugitive Particulate"; and Chapter 15 "Penalties." Some of the proposed rule changes include correct reference errors in Chapter 3; clarify the temporary permitting process for portable industrial sources in Chapter 6; clarify the sales parking lot paving rules in Chapter 8; and correct reference errors in Chapter 15.
Vote on the motion to approve:
AYES: Ed Childers, Dick Haines, Bob Jaffe, Marilyn Marler, Mike O'Herron, Dave Strohmaier, Alex Taft, Jason Wiener, Jon Wilkins

ABSENT: Caitlin Copple, Adam Hertz, Cynthia Wolken
The motion passed.

Commissioner Curtiss moved to adopt the resolution on behalf of Missoula County. Commissioner Carey seconded the motion. The motion carried unanimously.

2. An ordinance amending Missoula Municipal Code Chapter 5.36 entitled "Special Sales" changing the chapter name to "Going Out of Business, Relocation, Fire or Other Altered Stock Sales" and generally amending regulations associated with conducting such sales in the City of Missoula. --Dave Strohmaier — History

Recommended motion:
[Second and final reading] (Adopt/reject) an ordinance amending Missoula

Municipal Code Chapter 5.36 entitled "Special Sales" changing the chapter name to "Going Out of Business, Relocation, Fire or Other Altered Stock Sales" and generally amending regulations associated with conducting such sales in the City of Missoula.

Motion:
[Second and final reading] Adopt an ordinance amending Missoula Municipal Code Chapter 5.36 entitled "Special Sales" changing the chapter name to "Going Out of Business, Relocation, Fire or Other Altered Stock Sales" and generally amending regulations associated with conducting such sales in the City of Missoula including the amendments proposed by staff.
Vote on the motion to approve:
AYES: Ed Childers, Bob Jaffe, Marilyn Marler, Mike O'Herron, Dave Strohmaier, Alex Taft, Jason Wiener, Jon Wilkins
NAYS:: Dick Haines

ABSENT: Caitlin Copple, Adam Hertz, Cynthia Wolken
The motion passed.

IX. COMMUNICATIONS FROM THE MAYOR

X. GENERAL COMMENTS OF CITY COUNCIL

Marler appointed Adam Hertz to Parks & Conservation Committee.

XI. COMMITTEE REPORTS

1. Committee of the Whole -- History
   a. COW Minutes dated December 4, 2013-- History
2. Parks and Conservation Committee -- History
   a. PC Minutes dated December 4, 2013-- History
3. Public Works Committee -- History
   a. PW Minutes dated December 4, 2013-- History

XII. NEW BUSINESS

1. Request from Marilyn Marler to cancel the city council meeting on December 30, 2013 -- History

Recommended motion:
Direct the City Clerk to advertise the cancellation of the December 30, 2013 City Council meeting.

Motion:
Direct the City Clerk to advertise the cancellation of the December 30, 2013 City Council meeting.
Vote on the motion to approve:
AYES: Ed Childers, Dick Haines, Bob Jaffe, Marilyn Marler, Mike O'Herron, Dave Strohmaier, Alex Taft, Jason Wiener, Jon Wilkins

ABSENT: Caitlin Copple, Adam Hertz, Cynthia Wolken
The motion passed.

2. Request from Dave Strohmaier on an interim urgency zoning ordinance amending Title 20, Missoula City Zoning Ordinance Section 20.75.070: "Regulation of Specific Types of Signs," sub-section H: "Sidewalk Signs," to increase the number of allowable sidewalk signs for each business from one to two and to revise the requirement that the sidewalk sign be placed immediately in front of the building where the business is located. --Dave Strohmaier, Jason Wiener History

Recommended motion:

I move the city council ratify the scheduling of a public hearing on December 16, 2013, on an interim urgency zoning ordinance amending Title 20, Missoula City Zoning Ordinance Section 20.75.070; Regulation of Specific Types of Signs, Sub-Section H: Sidewalk Signs, to increase the number of allowable sidewalk signs for each business from one to two and to eliminate the requirement that the sidewalk sign be placed immediately in front of the building where the business is located and refer the ordinance to the Land Use and Planning Committee for a preview prior to the public hearing.

Motion:
I move the city council ratify the scheduling of a public hearing on December 16, 2013, on an interim urgency zoning ordinance amending Title 20, Missoula City Zoning Ordinance Section 20.75.070; Regulation of Specific Types of Signs, Sub-Section H: Sidewalk Signs, to increase the number of allowable sidewalk signs for each business from one to two and to eliminate the requirement that the sidewalk sign be placed immediately in front of the building where the business is located and refer the ordinance to the Land Use and Planning Committee for a preview prior to the public hearing.
Vote on the motion to approve:Upon a voice vote, the motion carried

ABSENT: Caitlin Copple, Adam Hertz, Cynthia Wolken
The motion passed.

XIII. ITEMS TO BE REFERRED

1. Administration and Finance Committee -- History

   a. Reappointment to the Urban Transportation District Board--John Engen History

   b. A resolution authorizing the execution and delivery of property schedule nos. 4 and 5 with respect to the Master Tax-Exempt Installment Purchase Agreement with U.S. Bancorp Government Leasing and Finance, Inc.--Leigh Griffing History

   c. City Council Meeting Schedule 2014--Marty Rehbein History

2. Land Use and Planning Committee -- History

   a. Conditional use request for micro-brewery and micro-distillery at 139 East Main St.--Mary McCrea History

3.	Parks and Conservation Committee --		History
	a.	Parks and Recreation Master Fee Schedule For Facility Use, Reservations, Contracts, Permits & Programs 2014.--Shirley Kinsey	History
	b.	Fire Management Plan for City of Missoula Open Space/Conservation Lands	History
	c.	All Abilities Playground Contract with Kompan Inc, for purchase and installation of playground equipment and fall zone surfacing--David Selvage	History
	d.	Agreement for Lighting the Madison Street Pedestrian Bridge	History
4.	Public Safety and Health Committee --		History
	a.	Council Appointments to the Health Board	History
	b.	Joint Resolution of Missoula City and Missoula County to authorize the Local Emergency Planning Committee and Disaster Planning Committee to establish a local, Type III All Hazard Incident Management Team--Jason Diehl	History
	c.	Amend Section 15.04.016 of Missoula Municipal Code to provide for local adoption of Appendix D of the International Fire Code (IFC) edition adopted by the Fire Prevention and Investigation Bureau of the Montana Department of Justice.--Jason Diehl	History
5.	Public Works Committee --		History
	a.	Bid Award for Automated Flow Injection Chemical Analysis System	History
	b.	Purchase of Engineering inspection vehicle--Jack Stucky	History
	c.	Purchase of Police community service and administrative vehicles--Jack Stucky	History
	d.	Purchase of Engineering inspection vehicle--Jack Stucky	History
	e.	Purchase of Urban Forestry pickup--Jack Stucky	History

XIV. MISCELLANEOUS COMMUNICATIONS, PETITIONS, REPORTS AND ANNOUNCEMENTS

XV. ADJOURNMENT

The meeting adjourned at 7:46 p.m.

County Resolution No. 2013-131

City Resolution Number 7839

A joint resolution of the Missoula County Board of Commissioners and the Missoula City Council to support new Missoula City-County air pollution control program rules.

WHEREAS, it is the public policy of the County of Missoula to preserve, protect, improve and maintain such levels of air quality in the County of Missoula as will protect human health and safety, animal life, and property, will foster the comfort and convenience of the inhabitants of the County of Missoula, and will promote the economic and social development of the County of Missoula. To this end, it is the policy of the County of Missoula to require the use of all practicable methods to reduce, prevent, and control air pollution in the County of Missoula; and

WHEREAS, the 24-hour National Ambient Air Quality Standards for PM2.5 (particulate matter with an aerodynamic diameter of 2.5 microns and smaller) was lowered by the United States Environmental Protection Agency from 65 *ug*/m3 to 35 *ug*/m3 on September 21, 2006; and

WHEREAS, air pollution studies in Missoula and other communities of western Montana have found wood combustion to be the largest source of PM2.5 air pollution in the winter when high PM2.5 levels are represent; and

WHEREAS, Several chapters of the Missoula City-County Air Pollution Control Program have been in need of updating to correct reference errors, clarity issues, and needed revisions; and

WHEREAS, the Missoula City County Air Pollution Control Board proposed revisions to the Missoula City-County Air Pollution Control Program Chapters 3, 6, 8, 15 to correct reference errors found in the rules and to address the high PM2.5 concentrations found throughout the county, and after due notice, conducted a public hearing on October 17, 2013 and approved and passed those revisions at a public meeting on October 17, 2013; and

WHEREAS, the proposed revisions of the Missoula City-County Air Pollution Control Program have been submitted to the Missoula County Board of Commissioners and the Missoula City Council by the Missoula City-County Air Pollution Control Board for this
Councils approval; and

WHEREAS, the Missoula County Board of Commissioners and the Missoula City Council held a public hearing on December 9, 2013, to consider the revisions of the Missoula City-County Air Pollution Control Program;

NOW THEREFORE BE IT RESOLVED that the Missoula County Board of Commissioners and the Missoula City Council approves and adopts the revised Missoula Air Pollution Control Program, Chapter 3 Failure to Attain Standards, Chapter 6 Standards For Stationary Sources, Chapter 8 Fugitive Particulate, and Chapter 15 Penalties which are attached hereto and by this reference incorporated herein as part of this Resolution, to be effective upon approval by the Montana Board of Environmental Review.

PASSED AND ADOPTED this 9th day of December, 2013.

For Missoula County:

APPROVED:

MICHELE LANDQUIST, Chair
Missoula County Commissioner

JEAN CURTISS
Missoula County Commissioner

BILL CAREY
Missoula County Commissioner

ATTEST:

Vickie Zeier, Clerk and Recorder

APPROVED AS TO FORM AND CONTENT:

Deputy County Attorney

For the City of Missoula:

ATTEST:

Martha L. Rehbein, CMC
City Clerk

APPROVED:

John Engen
Mayor

(SEAL)

CITY OF MISSOULA
THE GARDEN CITY
MISSOULA
HUB OF FIVE VALLEYS
MISSOULA COUNTY, MONTANA

9/19/2013
CHAPTER 3
FAILURE TO ATTAIN STANDARDS

Rule 3.101 - Purpose
As required by 42 USC 7410(a)(2)(G) of the FCAA, this chapter outlines what the department will do in the event that either non-attainment areas fail to attain the NAAQS or to make reasonable progress in reducing emissions.

Rule 3.102 - Particulate Matter Contingency Measures

(1) Within sixty (60) days after being notified by the DEQ and EPA that the area has failed to attain the PM_{10} NAAQS or make reasonable further progress in reducing emissions, the department will select and implement one of the following contingency measures:
(a) If the major contributing source is re-entrained road dust, then the department will implement Rule 8.304.

(b) If the major contributing source is wood burning, then the department will implement Rules ~~4.112~~ 4.113 and ~~9.119~~ 9.601.

(2) The department will determine what source is the significant contributor to the violation using chemical or microscopic analysis of exposed PM_{10} filters.

(3) If neither wood burning nor re-entrained road dust is the major contributing source, the department will still implement one of the contingency measures listed in (1) of this rule.

Rule 3.103 - Carbon Monoxide Contingency Measures
Within sixty (60) days of notification by the DEQ and the EPA that the area has failed to attain the carbon monoxide NAAQS or make reasonable further progress in reducing emissions, the department will implement Rules 9.119 and if the department determines that motor vehicles are greater than 40 percent of the cause, the department will implement Rule 10.110.

Rule 3.104 - Early Implementation of Contingency Measures
Early implementation of a contingency measure will not result in the requirement to implement additional moderate area contingency measures if the area fails to attain the NAAQS or make reasonable further progress in reducing emissions. However, if the area is redesignated as serious, additional control measures including Best Available Control Measures and serious area contingency measures will be necessary.

CHAPTER 6
STANDARDS FOR STATIONARY SOURCES

Subchapter 1 – Air Quality Permits for Air Pollutant Sources

Rule 6.101 – Definitions

For the purpose of this subchapter the following definitions apply:

(1) "Air Quality Permit" or "permit" means a permit issued by the department for the construction, installation, alteration, or operation of any air pollution source. The term includes annual operating and construction permits issued prior to November 17, 2000.

(2) "Commencement of construction" means the owner or operator has either:

(a) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(3) "Construct or Construction" means on-site fabrication, modification, erection or installation of a source or control equipment, including a reasonable period for startup and shakedown.

(4) "Existing Source" means a source or stack associated with a source that is in existence and operating or capable of being operated or that had an air quality permit from the department or the Control Board on March 16, 1979.

(5) "Major Emitting Facility" means a stationary source or stack associated with a source that directly emits, or has the potential to emit, 100 tons per year of any air pollutant, including fugitive emissions, regulated under the Clean Air Act of Montana.

(6) "New or Altered Source" means a source or stack (associated with a source) constructed, installed or altered on or after March 16, 1979.

(7) "Owner or Operator" means the owner of a source or the authorized agent of the owner, or the person who is responsible for the overall operation of the source.

(8) "Portable source" means a source which is not stationary or fixed to a single location, and which is not fully self propelled. The term may include, but is not limited to, portable asphalt plants, portable gravel crushers and portable wood chippers

(9) "Potential to Emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, must be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a source.

(10) "Source" means a "stationary source" as defined by Rule 2.101(45).

Rule 6.102 – Air Quality Permit Required

(1) A person may not construct, install, alter, operate or use any source without having a valid permit from the department when required by this rule to have a permit.

(2) A permit is required for the following:

(a) any source that has the potential to emit 25 tons or more of any pollutant per year;

(b) Incinerators; asphalt plants; concrete plants; and rock crushers without regard to size;

(c) Solid fuel burning equipment with the heat input capacity of 1,000,000 BTU/hr or more;

(d) A new stack or source of airborne lead pollution with a potential to emit five tons or more of lead per year;

(e) An alteration of an existing stack or source of lead pollution that increases the maximum potential of the source to emit airborne lead by 0.6 tons or more per year.

(3) A portable source with a Montana Air Quality Permit issued pursuant to the Administrative Rules of Montana Title 17, Chapter 8, subchapter 7 may apply for a Temporary Missoula City-County Air Quality Permit. The department may issue a Temporary Missoula City-County Air Quality Permit to a source if the following conditions are met:

(a) The applicant sends written notice of intent to transfer location to the department. Such notice must include documentation that the applicant has published a notice of the intended transfer in a legal publication in a newspaper of general circulation in the area into which the permit transfer is to be made. The notice must include the statement that the department will accept public comments for fifteen days after the date of publication; and

(b) The applicant has submitted a complete Missoula City-County Air Quality Permit application to the department prior to submitting an application for a Temporary Missoula City-County Air Quality Permit.

(4) A source with a Temporary Missoula City-County Air Quality Permit is subject to the following conditions:

(a) The emission control requirements of the Montana Air Quality Permit issued to the portable source are transferred verbatim, without augmentation, revision, or redaction to the Temporary Missoula City-County Air Quality Permit excluding conditions and addendums specific to PM_{10} nonattainment areas. Missoula City-County Health Department air quality permitting policies and conditions for the Missoula Air Stagnation Zone replace the Montana Air Quality Permit addendums specific to PM_{10} nonattainment areas; and

(b) The source may locate and operate in Missoula County after the department has approved the permit transfer; and

(c) A Temporary Missoula City-County Air Quality Permit expires in 180 days or upon completion of the Missoula City-County air quality permitting process required by Rule 6.102(3)(b), whichever occurs first; and

(d) The Department may revoke a Temporary Missoula City-County Air Quality Permit prior to the expiration of the time period set forth in 6.102(4)(c) if the portable source violates any provision of the Temporary Missoula City-County Air Quality Permit.

(5) An air quality permit is not required for the following, except when the Control Board determines an air quality permit is necessary to insure compliance with the NAAQS and other provisions of this Program:

(a) Any major stationary source or modification, as defined in 40 CFR 51.165 or 51.166, which is required to obtain an air quality permit from the MT DEQ in conjunction with ARM Title 17, Chapter 8, Subchapters 8, 9 or 10 that does not have the potential to emit 250 tons a year or more of any pollutant subject to regulation under Title 75, Chapter 2, MCA, including fugitive emissions;

(b) Residential, institutional, and commercial fuel burning equipment of less than 10,000,000 BTU/hr heat input if burning liquid or gaseous fuels, or 1,000,000 BTU/hr input if burning solid fuel;

(c) Residential and commercial fireplaces, barbecues and similar devices for recreational,

cooking or heating use;

(d) motor vehicles, trains, aircraft or other such self-propelled vehicles;

(e) agricultural and forest prescription fire activities;

(f) emergency equipment installed in hospitals or other public institutions or buildings for use when the usual sources of heat, power and lighting are temporarily unattainable;

(g) routine maintenance or repair of equipment;

(h) public roads; and

(i) any activity or equipment associated with the planting, production or harvesting of agricultural crops.

(6) A source that is exempt from obtaining an air quality permit by Rule 6.102(~~35~~) is subject to all other applicable provisions of this program, including but not limited to those regulations concerning outdoor burning, odors, motor vehicles, fugitive particulate and solid fuel burning devices.

(7) A source not otherwise required to obtain an air quality permit may obtain such a permit for the purpose of establishing federally enforceable limits on its potential to emit.

Rule 6.103 – General Conditions

(1) An air quality permit must contain and permit holders must adhere to the following provisions:

(a) requirements and conditions applicable to both construction and subsequent use including, but not limited to, applicable emission limitations imposed by subchapter 5 of this chapter, the Clean Air Act of Montana and the FCAA.

(b) such conditions as are necessary to assure compliance with all applicable provisions of this Program and the Montana SIP.

(c) a condition that the source shall submit information necessary for updating annual emission inventories.

(d) a condition that the permit must be available for inspection by the department at the location for which the permit is issued.

(e) a statement that the permit does not relieve the source of the responsibility for complying with any other applicable City, County, federal or Montana statute, rule, or standard not contained in the permit.

(2) An air quality permit is valid for five years, unless:

(a) additional construction that is not covered by an existing construction and operating permit begins on the source;

(b) a change in the method of operation that could result in an increase of emissions begins at the source;

(c) the permit is revoked or modified as provided for in Rules 6.108 and 6.109; or

(d) the permit clearly states otherwise.

(3) A source whose permit has expired may not operate until it receives another valid permit from the department.

(4) An air quality permit for a new or altered source expires 36 months from the date of issuance if the construction, installation, or alteration for which the permit was issued is not completed within that time. Another permit is required pursuant to the requirements of this subchapter for any subsequent construction, installation, or alteration by the source.

(5) A new or altered source may not commence operation, unless the owner or operator demonstrates that construction has occurred in compliance with the permit and that the source can operate in

compliance with applicable conditions of the permit, provisions of this Program, and rules adopted under the Clean Air Act of Montana and the FCAA and any applicable requirements contained in the Montana SIP.

(6) Commencement of construction or operation under a permit containing conditions is deemed acceptance of all conditions so specified, provided that this does not affect the right of the permittee to appeal the imposition of conditions through the Control Board hearing process as provided in Chapter 14.

(7) Having an air quality permit does not affect the responsibility of a source to comply with the applicable requirements of any control strategy contained in the Montana SIP.

Rule 6.104 – Reserved

Rule 6.105 – Air Quality Permit Application Requirements

(1) The owner or operator of a new or altered source shall, not later than 180 days before construction begins, or if construction is not required not later than 120 days before installation, alteration~~,~~ or use begins, submit an application for an air quality permit to the department on forms provided by the department.

(a) An application submitted by a corporation must be signed by a principal executive officer of at least the level of vice president, or an authorized representative, if that representative is responsible for the overall operation of the source;

(b) An application submitted by a partnership or a sole proprietorship must be signed by a general partner or the proprietor respectively;

(c) An application submitted by a municipal, state, federal or other public agency must be signed by either a principal executive officer, appropriate elected official or other duly authorized employee; and

(d) An application submitted by an individual must be signed by the individual or his or her authorized agent.

(2) The application must include the following:

(a) A map and diagram showing the location of the proposed new or altered source and each stack associated with the source, the property involved, the height and outline of the buildings associated with the new or altered source, and the height and outline of each stack associated with the new or altered source;

(b) A description of the new or altered source including data on maximum design production capacity, raw materials and major equipment components;

(c) A description of the control equipment to be installed;

(d) A description of the composition, volume and temperatures of the effluent stream, including the nature and extent of air pollutants emitted, quantities and means of disposal of collected pollutants, and the air quality relationship of these factors to conditions created by existing sources or stacks associated with the new or altered source;

(e) Normal and maximum operating schedules;

(f) Adequate drawings, blueprints, specifications or other information to show the design and operation of the equipment involved;

(g) Process flow diagrams containing material balances;

(h) A detailed schedule of construction or alteration of the source;

(i) A description of the shakedown procedures and time frames that will be used at the

source;

(j) Other information requested by the department that is necessary to review the application and determine whether the new or altered source will comply with applicable provisions of this Program; including but not limited to information concerning compliance with environmental requirements at other facilities;

(k) Documentation showing the city or county zoning office was notified in writing by the applicant that the proposed use requires an air quality permit;

(l) A valid city or county zoning compliance permit for the proposed use;

(3) The department may waive the requirement that any of the above information must accompany a permit application.

(4) When renewing an existing permit, the owner or operator of a source is not required to submit information already on file with the department. However, the department may require additional information to ensure the source will comply with all applicable requirements.

(5) An application for a solid or hazardous waste incinerator must include the information specified in Rule 6.605.

(6) An owner or operator of a new or altered source proposing construction or alteration within any area designated as nonattainment in 40 CFR 81.327 for any regulated air pollutant shall demonstrate that all major emitting facilities located within Montana and owned or operated by such persons, or by an entity controlling, controlled by, or under common control with, such persons, are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable air quality emission limitations and standards contained in ARM Title 17, Chapter 8.

(7) The owner or operator of a new or altered source shall, before construction is scheduled to end as specified in the permit, submit additional information on a form provided by the department. The information to be submitted must include the following:

(a) Any information relating to the matters described in Section (2) of this rule that has changed or is no longer applicable; and

(b) A certification by the applicant that the new or altered source has been constructed in compliance with the permit.

(8) An application is deemed complete on the date the department received it unless the department notifies the applicant in writing within thirty (30) days thereafter that it is incomplete. The notice must list the reasons why the application is considered incomplete and must specify the date by which any additional information must be submitted. If the information is not submitted as required, the application is considered withdrawn unless the applicant requests in writing an extension of time for submission of the additional information. The application is complete on the date the required additional information is received.

Rule 6.106 – Public Review of Air Quality Permit Application

(1) The applicant shall notify the public, by means of legal publication in a newspaper of general circulation in the area affected by the application of its application for an air quality permit. The notice must be published not sooner than ten (10) days prior to submittal of an application nor later than ten (10) days after submittal of an application. The applicant shall use the department's format for the notice. The notice must include:

(a) the name and the address of the applicant;

(b) address and phone number of the premises at which interested persons may obtain further information, may inspect and may obtain a copy of the application;

(c) the date by which the department must receive written public comment on the

application. The public must be given at least 30 days from the date the notice is published to comment on the application.

(2) The department shall notify the public of its preliminary determination by means of legal publication in a newspaper of general circulation in the area affected by the application and by sending written notice to any person who commented on the application during the initial 30-day comment period. Each notice must specify:

(a) whether the department intends on issuing, issuing with conditions, or denying the permit;

(b) address and phone number of the premises at which interested persons may obtain further information, may inspect and may obtain a copy of the proposed permit;

(c) the date by which the department must receive written public comment on the application. The public must be given at least 15 days from the date the notice is published to comment on the application.

(3) A person who has submitted written comments and who is adversely affected by the department's final decision may request, in writing, a hearing before the Control Board within fifteen (15) days after the department's final decision. The request for hearing must state specific grounds why the permit should not be issued, should be issued, or why it should be issued with particular conditions. Department receipt of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing process.

(4) Permit renewals are subject to this rule.

Rule 6.107 – Issuance or Denial of an Air Quality Permit

(1) A permit may not be issued to a new or altered source unless the applicant demonstrates that the source:

(a) can be expected to operate in compliance with:

(i) the conditions of the permit,

(ii) the provisions of this Program;

(iii) rules adopted under the Clean Air Act of Montana) and the FCAA.; and

(iv) any applicable control strategies contained in the Montana SIP.

(b) will not cause or contribute to a violation of a Montana or NAAQS.

(2) An air quality permit for a new or altered source may be issued in an area designated as nonattainment in 40 CFR 81.327 only if the applicable SIP approved in 40 CFR Part 52, Subpart BB is being carried out for that nonattainment area.

(3) The department shall make a preliminary determination as to whether the air quality permit should be issued or denied within forty (40) days after receipt of a completed application.

(4) The department shall notify the applicant in writing of its final decision within sixty (60) days after receipt of the completed application.

(5) If the department's final decision is to issue the air quality permit, the department may not issue the permit until:

(a) fifteen (15) days have elapsed since the final decision and no request for a hearing before the Control Board has been received; or

(b) the end of the Control Board Hearing process as provided for in Chapter 14, if a request for a Control Board Hearing was received.

(6) If the department denies the issuance of an air quality permit it shall notify the applicant in writing

of the reasons why the permit is being denied and advise the applicant of his or her right to request a hearing before the Control Board within fifteen (15) days after receipt of the department's notification of denial of the permit.

Rule 6.108 – Revocation or Modification of an Air Quality Permit

(1) An air quality permit may be revoked for any violation of:

(a) A condition of the permit;

(b) A provision of this Program;

(c) An applicable regulation, rule or standard adopted pursuant to the FCAA;

(d) A provision of the Clean Air Act of Montana; or

(f) any applicable control strategies contained in the Montana SIP.

(2) An air quality permit may be modified for the following reasons:

(a) Changes in any applicable provisions of this Program adopted by the Control Board, or rules adopted under the Clean Air Act of Montana;

(b) Changed conditions of operation at a source that do not result in an increase of emissions

(c) When the department or Control Board determines modifications are necessary to insure compliance with the provisions of this Program or an implementation plan approved by the Control Board.

(3) The department shall notify the permittee in writing of its intent to revoke or modify the permit. The permit is deemed revoked or modified in accordance with the department's notice unless the permittee makes a written request for a hearing before the Control Board within fifteen (15) days of receipt of the department's notice. Departmental receipt of a written request initiates the appeals process outlined in Chapter 14 of this Program and postpones the effective date of the department's decision to revoke or modify the permit until the conclusion of the hearing process.

Rule 6.109 – Transfer of Permit

(1) An air quality permit may not be transferred from one location to another or from one piece of equipment to another, except as allowed in (2) of this rule.

(2) An air quality permit may be transferred from one location to another if:

(a) written notice of intent to transfer location is sent to the department, along with documentation that the permittee has published notice of the intended transfer by means of a legal publication in a newspaper of general circulation in the area to which the transfer is to be made. The notice must include the statement that public comment will be accepted by the department for fifteen days after the date of publication;

(b) the source will operate in the new location for a period of less than one year; and

(c) the source is expected to operate in compliance with:

(i) this Program;

(ii) the standards adopted pursuant to the Clean Air Act of Montana, including the Montana ambient air quality standards;

(iii) applicable regulations and standards promulgated pursuant to the FCAA, including the NAAQS; and

(iv) any control strategies contained in the Montana state implementation plan.

(d) the source has a valid city or county zoning compliance permit for the proposed use at the

new location; and

(e) the source pays the transfer fee listed in Attachment A.

(3) An air quality permit may be transferred from one person to another if written notice of intent to transfer, including the names of the transferor and the transferee, is sent to the department.

(4) The department will approve or disapprove a permit transfer within 30 days after receipt of a complete notice of intent as described in (2) or (3) of this rule.

Subchapters 2, 3, 4 – *reserved*

Subchapter 5 – Emission Standards

Rule 6.501 – Emission Control Requirements

(1) For the purpose of this rule, Best Available Control Technology (BACT)" means an emission limitation (including a visible emission standard), based on the maximum degree of reduction for each pollutant subject to regulation under the FCAA or the Clean Air Act of Montana, that would be emitted from any proposed stationary source or modification that the department, on a case by case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event may application of BACT result in emission of any pollutant that would exceed the emissions allowed by any applicable standard under Rules 6.506 or 6.507. If the department determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice or operational standard or combination thereof, to require the application of BACT. Such standard must, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation and must provide for compliance by means which achieve equivalent results.

(2) The owner or operator of a new or altered source for which an air quality permit is required by subchapter 1 of this Chapter shall install on that source the maximum air pollution control capability that is technically practicable and economically feasible, except that:

(a) best available control technology must be used; and

(b) the lowest achievable emission rate must be met when required by the FCAA.

(3) The owner or operator of any air pollution source for which an air quality permit is required by subchapter 1 of this Chapter shall operate all equipment to provide the maximum air pollution control for which it was designed.

(4) The department may establish emission limits on a source based on an approved state implementation plan or maintenance plan to keep emissions with in a budget.

Rule 6.502 – Particulate Matter from Fuel Burning Equipment

(1) For the purpose of this rule "new fuel burning equipment" means any fuel burning equipment constructed or installed after November 23, 1968.

(2) The following emission limits apply to solid fuel burning equipment constructed or installed after May 14, 2010 with a heat input capacity from 1,000,000 BTU/hr up to and including 10,000,000 BTU/hr.

(a) Inside the Air Stagnation Zone, solid fuel burning equipment must meet LAER and a person may not cause or allow particulate matter emissions in excess of 0.1 pounds per million BTU heat input to be discharged from any stack, opening or chimney into the atmosphere.

(b) Outside the Air Stagnation Zone, solid fuel burning equipment must meet BACT and a person may not cause or allow particulate matter emissions in excess of 0.20 lbs per million BTU heat input to be discharged from any stack, opening or chimney into the atmosphere.

(3) For devices or operations not covered in Rule 6.502(2), a person may not cause or allow particulate matter caused by the combustion of fuel to be discharged from any stack or chimney into the atmosphere in excess of the hourly rates set forth in the following table:

Heat Input (million BTUs/hr)	Maximum Allowable Emissions of Particulate Matter (lbs/million BTU's)	
	Existing Fuel Burning Equipment	New Fuel Burning Equipment
≤ 10	0.60	0.60
100	0.40	0.35
1,000	0.28	0.20
≥ 10,000	0.19	0.12

(4) For a heat input between any two consecutive heat inputs stated in the preceding table, maximum allowable emissions of particulate matter are shown for existing fuel burning equipment on Figure 1 and for new fuel burning equipment on Figure 2. For the purposes hereof, heat input is calculated as the aggregate heat content of all fuels (using the upper limit of their range of heating value) whose products of combustion pass through the stack or chimney.

(5) When two or more fuel burning units are connected to a single stack, the combined heat input of all units connected to the stack may not exceed that allowable for the same unit connected to a single stack.

(6) This rule does not apply to:

(a) emissions from residential solid fuel combustion devices, such as fireplaces and wood and coal stoves with heat input capacities less than 1,000,000 BTU per hour; and

(b) new stationary sources subject to Rule 6.506 for which a particulate emission standard has been promulgated.

FIGURE 1
Maximum Emission of Particulate Matter from Existing Fuel Burning Installations

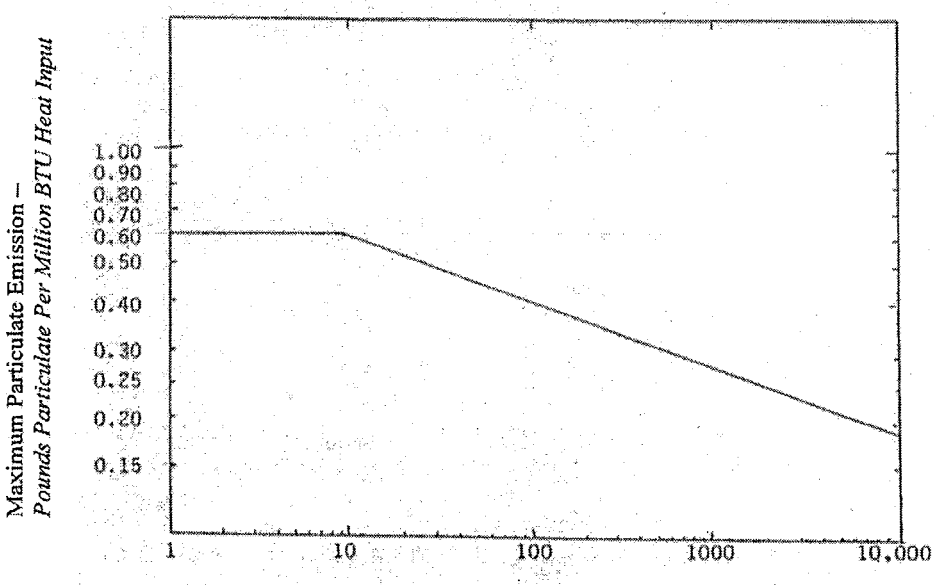
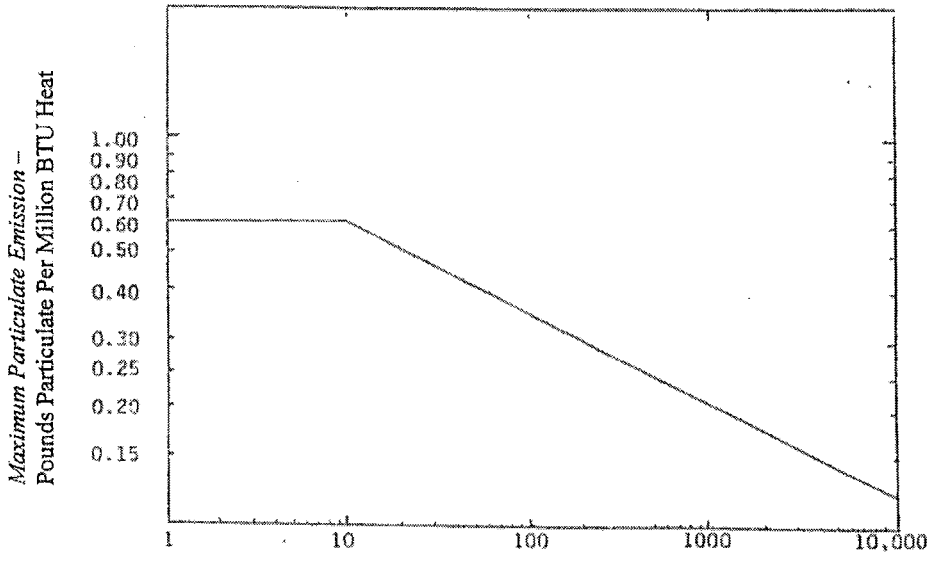


FIGURE 2
Maximum Emission of Particulate Matter from New Fuel Burning Installations



Rule 6.503 – Particulate Matter from Industrial Processes

(1) A person may not cause or allow particulate matter in excess of the amount shown in the following table to be discharged into the outdoor atmosphere from any operation, process or activity.

Process (lb/hr)	Weight Rate (tons/hr)	Rate of Emission (lb/hr)
100	0.0	0.551
200	0.10	0.877
400	0.20	1.40
600	0.30	1.83
800	0.40	2.22
1,000	0.50	2.58
1,500	0.75	3.38
2,000	1.00	4.10
2,500	1.25	4.76
3,000	1.50	5.38
3,500	1.75	5.96
4,000	2.00	6.52
5,000	2.50	7.58
6,000	3.00	8.56
7,000	3.50	9.49
8,000	4.00	10.4
9,000	4.50	11.2
10,000	5.00	12.0
12,000	6.00	13.6
16,000	8.00	16.5
18,000	9.00	17.9
20,000	10.00	19.2
30,000	15.00	25.2
40,000	20.00	30.5
50,000	25.00	35.4
60,000	30.00	40.0
70,000	35.00	41.3
80,000	40.00	42.5
90,000	45.00	43.6
100,000	50.00	44.6
120,000	60.00	46.3
140,000	70.00	47.8
160,000	80.00	49.0
200,000	100.00	51.2
1,000,000	500.00	69.0
2,000,000	1,000.00	77.6
6,000,000	3,000.00	92.7

(2) When the process weight rate falls between two values in the table, or exceeds 3,000 tons per hour, the maximum hourly allowable emissions of particulate are calculated using the following equations:

(a) for process weight rates up to 60,000 pounds per hour:

$$E = 4.10\ P^{0.67}$$

(b) for process weight rates in excess of 60,000 pounds per hour:

$$E = 55.0\ P^{0.11} - 40$$

Where E = rate of emission in pounds per hour and P = process weight rate in tons per hour.

(3) This rule does not apply to particulate matter emitted from:

(a) the reduction cells of a primary aluminum reduction plant,

(b) those new stationary sources listed in Rule 6.506 for which a particulate emission standard has been promulgated,

(c) fuel burning equipment, and

(d) incinerators.

Rule 6.504 – Visible Air Pollutants

(1) A person may not cause or allow emissions that exhibit an opacity of forty percent (40%) or greater averaged over six consecutive minutes to be discharged into the outdoor atmosphere from any source installed on or before November 23, 1968, the provisions of this rule do not apply to transfer of molten metals or emissions from transfer ladles.

(2) A person may not cause or authorize emissions to be discharged into the outdoor atmosphere from any source installed after November 23, 1968, that exhibit an opacity of twenty percent (20%) or greater averaged over six consecutive minutes.

(3) During the building of new fires, cleaning of grates, or soot blowing, the provisions of Sections (1) and (2) apply, except that a maximum average opacity of sixty percent (60%) is permissible for not more than one four minute period in any 60 consecutive minutes. Such a four-minute period means any four consecutive minutes.

(4) This rule does not apply to emissions from:

(a) wood-waste burners;

(b) incinerators;

(c) motor vehicles;

(d) those new stationary sources listed in ARM 17.8.340 for which a visible emission standard has been promulgated; or

(e) residential solid-fuel burning devices.

Rule 6.505 – Fluoride Emissions

(1) A person may not cause or allow to be discharged into the outdoor atmosphere from any phosphate rock or phosphorate processing equipment or equipment used in the production of elemental phosphorous, enriched phosphates, phosphoric acid, defluorinated phosphates, phosphate fertilizers or phosphate concentrates or any equipment used in the processing of fluorides or wastewater enriched flourides, in a gaseous or particulate form or any combination of gaseous or particulate forms in excess of 0.3 pounds per ton of P_2O_5 (phosphorous pentoxide) introduced into the process of any calcining, nodulizing, defluorinating or acidulating process or any combination of the foregoing, or any other process, except aluminum reduction, capable of causing a release of fluorides in the form or forms indicated in this rule.

(2) Pond emissions:

(a) A person may not cause or allow fluorides in excess of 108 micrograms per square centimeter per 28 days (µg/cm2/28 days) to be released into the outdoor atmosphere from any storage pond, settling basin, ditch, liquid holding tank or other liquid holding or

conveying device from operations outlined in Section (1). The concentration of fluorides is to be determined using the calcium formate paper method. Papers must be exposed in a standard Montana Box located not less than 18 inches or more than 48 inches above the level of the liquid in the devices herein enumerated and not more than 16 inches laterally from the liquid's edge. Other locations may be permitted if approved by the department.

(b) At least four such sampling stations must be placed at locations designated by the department. Two or more calcium formate papers, as designated by the department, must be exposed in the standard Montana Box for a period designated by the department. Regardless of the duration of the sampling period, the values determined must be corrected to 28 days.

(c) A minimum of two calcium formate papers for each sampling period from each sample box must be provided to the department, if requested, within ten days from the date of the request.

(3) Preparation, exposure and analysis:

(a) Preparation of calcium formate papers:

(i) Soak Whatman #2, 11 cm. filter papers in a 10 percent solution of calcium formate for five minutes.

(ii) Dry in a forced air oven at 80°C. Remove immediately when dryness is reached.

(b) Exposure of calcium formate papers:

(i) Two papers, or more, if directed, are suspended in a standard Montana Box on separate hangers at least two inches apart.

(ii) Exposure must be for 28 days + 3 days unless otherwise indicated by the department.

(iii) Calcium formate papers must be kept in an air tight container both before and after exposure until the time of analysis.

(c) Analysis of calcium formate papers is adapted from Standard Methods for the Examination of Water and Waste Water; using Willard-Winter perchloric acid distillations and the Spadns-Zirconium Lake method for fluoride determination.

Rule 6.506 – New Source Performance Standards

(1) For the purpose of this rule, the following definitions apply:

(a) "Administrator", as used in 40 CFR Part 60, means the department, except in the case of those duties that cannot be delegated to the local program by the state and the EPA, in which case "administrator" means the administrator of the EPA.

(b) "Stationary source" means any building, structure, facility, or installation that emits or may emit any air pollutant subject to regulation under the Federal Clean Air Act.

(2) The terms and associated definitions specified in 40 CFR 60.2, apply to this rule, except as specified in subsection (1)(a) above.

(3) The owner and operator of any stationary source or modification, as defined and applied in 40 CFR Part 60, shall comply with the standards and provisions of 40 CFR Part 60.

(4) For the purpose of this rule, the Control Board hereby adopts and incorporates by reference 40 CFR Part 60, which pertains to standards of performance for new stationary sources and modifications.

Rule 6.507 – Hazardous Air Pollutants

(1) For the purpose of this rule, the terms and associated definitions specified in 40 CFR 61.02 apply, except that:

(a) "Administrator", as used in 40 CFR Part 61, means the department, except in the case of those duties that cannot be delegated to the local program by the state and the EPA in which case "administrator" means the administrator of the EPA.

(2) The owner or operator of any existing or new stationary source, as defined and applied in 40 CFR Part 61, shall comply with the standards and provisions of 40 CFR Part 61.

(3) For the purpose of this rule, the Control Board hereby adopts and incorporates by reference 40 CFR Part 61, which pertains to emission standards for hazardous air pollutants.

Rule 6.508 – Hazardous Air Pollutants for Source Categories

(1) For this rule, the following definitions apply:

(a) "112(g) exemption" means a document issued by the department on a case-by-case basis, finding that a major source of HAP meets the criteria contained in 40 CFR 63.41 [definition of "construct a major source", (2)(i) through (vi)], and is thus exempt from the requirements of 42 USC 7412(g).

(b) "Beginning actual construction" means, in general, initiation of physical on-site construction activities of a permanent nature. Such activities include, but are not limited to, installing building supports and foundations, laying underground pipework, and constructing permanent storage structures.

(c) "Construct a major source of HAP" means:

(i) to fabricate, erect, or install a major source of HAP; or

(ii) to reconstruct a major source of HAP, by replacing components at an existing process or production unit that in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, whenever:

(A) the fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable process or production unit; and

(B) it is technically and economically feasible for the reconstructed major source to meet the applicable MACT emission limitation for new sources established under 40 CFR 63 subpart B.

(d) "Greenfield site" means a contiguous area under common control that is an undeveloped site.

(e) "MACT standard" means a standard that has been promulgated pursuant to 42 USC 7412(d), (h), or (j).

(f) "Major source of HAP" means:

(i) at any greenfield site, a stationary source or group of stationary sources that is located within a contiguous area and under common control and emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP; or

(ii) at any developed site, a new process or production unit which in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP.

(g) "Maximum achievable control technology" or "MACT" means the emission limitation that is not less stringent than the emission limitation achieved in practice by the best controlled similar source, and that reflects the maximum degree of reduction in emissions that the department, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by the constructed or reconstructed major source of HAP.

(h) "Notice of MACT approval" means a document issued by the department containing all federally enforceable conditions necessary to enforce MACT or other control technologies such that the MACT emission limitation is met.

(i) "Process or production unit" means any collection of structures and/or equipment, that processes, assembles, applies or otherwise uses material inputs to produce or store an intermediate or final product. A single facility may contain more than one process or production unit.

(2) The owner or operator of any affected source, as defined and applied in 40 CFR Part 63, shall comply with the requirements of 40 CFR 63, incorporated by reference in this rule. All references in 40 CFR 63, Subpart B to "permitting authority" refers to the department.

(3) Any owner or operator who constructs a major source of HAP is required to obtain from the department a notice of MACT approval or a 112(g) exemption pursuant to this rule, prior to beginning actual construction, unless:

(a) the major source has been specifically regulated or exempted from regulation under a MACT standard issued pursuant to 42 USC 7412(d), (h) or (j) and incorporated into 40 CFR Part 63;

(b) the owner or operator of the major source has already received all necessary air quality permits for such construction as of (the effective date of this rule); or

(c) the major source has been excluded from the requirements of 42 USC 7412(g) under 40 CFR 63.40(c), (e) or (f).

(4) Unless granted a 112(g) exemption under (6) below, at least 180 days prior to beginning actual construction, an owner or operator who constructs a major source of HAP shall apply to the department for a notice of MACT approval. The application must be made on forms provided by the department, and must include all information required under 40 CFR 63.43(e).

(5) When acting upon an application for a notice of MACT approval, the department shall comply with the principles of MACT determination specified in 40 CFR 63.43(d).

(6) The owner or operator of a new process or production unit that in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, may apply to the department for a 112(g) exemption, if the process or production unit meets the criteria contained in 40 CFR 63.41 [definition of "construct a major source" (2)(i) through (vi)]. Application must be made on forms provided by the department, at least 180 days prior to beginning actual construction. The application must include such information as may be necessary to demonstrate that the process of production unit meets the criteria referenced herein.

(7) As further described below, and except as expressly modified by this rule, the procedural requirements of Chapter 6, subchapter 1 apply to an application for a notice of MACT approval or 112(g) exemption. For the purpose of this rule:

(a) all references in applicable provisions of Chapter 6, subchapter 1 to "permit", or "air quality permit" mean "notice of MACT approval" or "112(g) exemption," as appropriate;

(b) all references in applicable provisions of Chapter 6, subchapter 1 to "new or altered source" mean "major source of HAP."

(8) The following rules govern the application, review and final approval or denial of a notice of MACT approval or 112 (g) exemption: Rules 5.112, 6.103(2), 6.103(4)-(7), 6.106, 6.107(1) and

6.107(6);

(9) The department shall notify the applicant in writing of any final approval or denial of an application for a notice of MACT approval or 112(g) exemption.

(10) A notice of MACT approval must contain the elements specified in 40 CFR 63.43(g). The notice expires if fabrication, erection, installation or reconstruction has not commenced within 18 months of issuance, except that the department may grant an extension which may not exceed an additional 12 months.

(11) An owner or operator of a major source of HAP that receives a notice of MACT approval or a 112(g) exemption from the department shall comply with all conditions and requirements contained in the notice of MACT approval or 112(g) exemption.

(12) If a MACT standard is promulgated before the date an applicant has received a final and legally effective determination for a major source of HAP subject to the standard, the applicant shall comply with the promulgated standard.

(13) The department may revoke a notice of MACT approval or 112(g) exemption if it determines that the notice or exemption is no longer appropriate because a MACT standard has been promulgated. In pursuing revocation, the department shall follow the procedures specified in Rule 6.108. A revocation under this section may not become effective prior to the date an owner or operator is required to be in compliance with a MACT standard, unless the owner or operator agrees in writing otherwise.

Subchapter 6 – Incinerators

Rule 6.601 – Minimum Standards

(1) A person may not cause or authorize to be discharged into the outdoor atmosphere from any incinerator, particulate matter in excess of 0.10 grains per standard cubic foot of dry flue gas, adjusted to twelve percent (12%) carbon dioxide and calculated as if no auxiliary fuel had been used.

(2) A person may not cause or authorize to be discharged into the outdoor atmosphere from any incinerator emissions that exhibit an opacity of ten percent (10%) or greater averaged over six consecutive minutes.

(3) An incinerator may not be used to burn solid or hazardous waste unless the incinerator is a multiple chamber incinerator or has a design of equal effectiveness approved by the department prior to installation or use.

(4) The department or Control Board shall place additional requirements on the design, testing and operation of incinerators constructed after March 20, 1992. This requirement does not apply to incinerators that burn paper waste or function as a crematorium or are in compliance with Lowest Achievable Emission Rate as defined in Rule 2.101(25) for all regulated air pollutants.

Rule 6.602 – Hours of Operation

(1) The department may, for purposes of evaluating compliance with this rule, direct that a person may not operate or authorize the operation of any incinerator at any time other than between the hours of 8:00 AM and 5:00 PM, except that incinerators that burn only gaseous materials will not be subject to this restriction.

(2) When the operation of incinerators is prohibited by the department, the owner or operator of the incinerator shall store the solid or hazardous waste in a manner that will not create a fire hazard or arrange for the removal and disposal of the waste in a manner consistent with ARM Title 17, Chapter 50, Subchapter 5.

Rule 6.603 – Performance Tests

(1) The provisions of this chapter apply to performance tests for determining emissions of particulate matter from incinerators. All performance tests must be conducted while the affected facility is operating at or above the maximum refuse charging rate at which such facility will be operated and the material burned must be representative of normal operation and under such other relevant conditions as the department shall specify based on representative performance of the affected facility. Test methods set forth in 40 CFR, Part 60, or equivalent methods approved by the department must be used.

Rule 6.604 – Hazardous Waste Incinerators

Effective March 20, 1992, a new permit may not be issued to incinerate hazardous wastes as listed in ARM Title 17, Chapter 54, Subchapter 3, inside the Air Stagnation Zone.

Rule 6.605 – Additional Air Quality Permit Requirements

(1) In addition to the permitting requirements of Chapter 6, subchapter 1, an application for an air quality permit for a solid or hazardous waste incinerator must include the following:

(a) A human health risk assessment protocol (hereafter "protocol") etailing the human health risk assessment procedures; and

(b) A human health risk assessment (hereafter "assessment") that shows that ambient concentrations of pollutants from emissions constitute no more than a negligible risk to the public health, safety, and welfare and to the environment.

(2) The protocol must include, at a minimum, methods used in compiling the emission inventory, ambient dispersion models and modeling procedures used, toxicity values for each pollutant, exposure pathways and assumptions, any statistical analysis applied and any other information necessary for the department to review the adequacy of the assessment.

(3) The assessment must include, at a minimum, the following:

(a) a list of potential emissions of all pollutants specified in the federal Clean Air Act Hazardous Air Pollutants List (as defined in section 112(b) of the FCAA) from the following sources;

(i) emitting unit(s) to be permitted;

(ii) existing incineration unit(s) at the facility;

(iii) new or existing emitting units solely supporting any incineration unit at the facility (such as fugitive emissions from fuel storage); and

(iv) existing units that partially support the incineration unit if the type or amount of any emissions under an existing permit will be changed. If an existing emitting unit, wholly or partially supporting the incineration facility, increases the types or amount of its emissions, so that a permit alteration is required, that portion of the emissions increase attributable to the support of the incineration facility must be considered in the human health risk assessment.

(b) a characterization of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from any existing emission source at the facility; and

(c) an assessment of impacts of all pollutants inventoried in (a) above, except pollutants may be excluded if the department determines that exposure from inhalation is the only appropriate pathway to consider and if:

(i) the potential to emit the pollutant is less than 1.28×10^{-13} grams per second; the source has a stack height of at least 2 meters, a stack velocity of at least 0.645 meters per second, and a stack exit temperature of at least 800°F; and the stack is at least 5 meters from the property boundary; or

(ii) the ambient concentrations of the pollutants (calculated using the potential to emit; enforceable limits or controls may be considered) are less than the levels specified in ARM 17.8.770 (See Tables 1 and 2 in Appendix C).

(4) The assessment must address risks from all appropriate pathways. Incineration facilities that do not emit or emit only minute amounts of hazardous air pollutants contained in Tables 3 or 4 in Appendix C need only address impact from the inhalation exposure pathway and may use a department supplied screening model to assess human health risk.

(5) The assessment must be performed in accordance with accepted human health risk assessment practices, or state or federal guidelines in effect when the assessment is performed, and must address impacts on sensitive populations. The human health risk must be calculated using the source's potential to emit. Enforceable limits or controls may be considered. The department may approve alternative procedures if site-specific conditions warrant.

(6) The department may impose additional requirements for the assessment, on a case-by-case basis, if the department reasonably determines that the type or amount of material being incinerated, the proximity to sensitive populations, short-term emissions variations, acute health impact, or the local topographical or ventilation conditions require a more detailed assessment to adequately define the potential public health impact. Additional requirements for the assessment may include, but are not limited to, specific emission inventory procedures for determining emissions from the incineration facility, requiring use of more sophisticated air dispersion models or modeling procedures and consideration of additional exposure pathways.

(7) The department shall include a summary of the protocol in the permit analysis. The summary must clearly define the scope of the assessment, must describe the exposure pathways used and must specify any pollutants identified in the emission inventory that were not required to be included in the assessment. The summary must also state whether, and to what extent, the impacts of existing emissions, or the synergistic effect of combined pollutants, were considered in the final human health risk level calculated to determine compliance with the negligible risk standard. The summary must also state that environmental effects unrelated to human health were not considered in determining compliance with the negligible risk standard, but were evaluated in determining compliance with all applicable rules or requirements requiring protection of public health, safety and welfare and the environment.

Subchapter 7 – Wood Waste Burners

Rule 6.701 – Opacity Limits

A person may not cause or authorize to be discharged into the outdoor atmosphere from any wood-waste burner any emissions that exhibit an opacity of twenty percent (20%) or greater averaged over six (6) consecutive minutes. The provisions of this section may not be exceeded for more than sixty (60) minutes in eight consecutive hours for building of fires in wood-waste burners.

Rule 6.702 – Operation

(1) A thermocouple and a recording pyrometer or other temperature measurement and recording device approved by the department must be installed and maintained on each wood-waste burner. The thermocouple must be installed at a location near the center of the opening for the exit gases, or at another location approved by the department.

(2) A minimum temperature of 700°F must be maintained during normal operation of all wood-waste burners. A normal start-up period of one (1) hour is allowed during which the 700°F minimum temperature does not apply. The burner must maintain 700°F operating temperature until the fuel feed is stopped for the day.

(3) The owner or operator of a wood-waste burner shall maintain a daily written log of the wood-waste burner's operation to determine optimum patterns of operations for various fuel and atmospheric conditions. The log must include, but not be limited to, the time of day, draft settings, exit gas temperature, type of fuel, and atmospheric conditions. The log or a copy of it must be submitted to the department within ten (10) days after it is requested.

Rule 6.703 – Fuels

(1) A person may not use a wood-waste burner for the burning of other than normal production process wood-waste transported to the burner by continuous flow conveying methods.

(2) Materials that cannot be disposed of through outdoor burning, as specified in Rule 7.103 (1), (2), (4) and (5), may not be burned in a wood-waste burner.

CHAPTER 8
FUGITIVE PARTICULATE

Subchapter 1 General Provisions

Rule 8.101 - Definitions

For purpose of this Chapter, the following definitions apply:

(1) "Approved deicer" means a magnesium chloride based product or other product with similar dust suppression properties, that is approved for use by the department and the Missoula Valley Water Quality District.

(2) "Area of Regulated Road Sanding Materials" means the area defined by:
T13N R19W Sections 2,8,11,14,15,16,17,20,21,22,23,27,28,29, 32,33,34;
T12N R19W Sections 4,5,6,7; as shown on the attached map, (see Appendix A).

(3) "AASHTO" means the American Association of State and Highway Transportation Officials Test Methods.

(4) "Best available control technology (BACT)" means an emission limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under the 1990 amendments to the Federal Clean Air Act or the Clean Air Act of Montana that would be emitted from any proposed stationary source or modification that the department, on a case by case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event may application of BACT result in emission of any pollutant that would exceed the emissions allowed by the applicable standard under 40 CFR Part 60 and 61. If the department determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice or operational standard or combination thereof, to require the application of BACT. Such standard must, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation and must provide for compliance by means which achieve equivalent results.

(5) "Block pavers" means a block or brick made of hard, durable material designed to handle vehicle traffic. A block paver keeps vehicles off the underlying soils while allowing the growth of vegetation through spaces inside or outside the block or paver.

(6) "Bound recycled glass" means a solid, self-draining surface composed of elastomerically bound recycled glass created by bonding post-consumer glass with a mixture of resins, pigments and binding agents.

(7) "Commercial" means:
(a) any activity related to the purchase, sale, offering for sale, or other transaction involving the handling or disposition of any article, service, or commodity; or

(b) other facilities including but not limited to office buildings, offices, maintenance, recreational or amusement enterprises, churches, schools, trailer courts, apartments, and three or more dwelling units on one parcel.

(8) "Existing source" means a source that was in existence and operating or capable of being operated or had ~~a~~ an air quality permit from the department prior to February 16, 1979.

(9) "Extraordinary circumstance" means when a law officer calls for sanding of a roadway to eliminate an existing unsafe traffic situation when deicer would be inadequate or cannot be applied within a reasonable amount of time, or when the slope of a roadway or thickness of ice prevent the use of deicing materials as an adequate method of providing a safe driving surface within a reasonable amount of time.

(10) "Fugitive particulate" means any particulate matter discharged into the outdoor atmosphere that is not discharged from the normal exit of a stack or chimney for which a source test can be performed in accordance with Method 5 (determination of particulate emissions from stationary sources), Appendix A, Part 60.275 (Test Method and Procedures), Title 40, Code of Federal Regulations [CFR] (Revised July 1, 1977).

(11) "Industrial" means activity related to the manufacture, storage, extraction, fabrication, processing, reduction, destruction, conversion, or wholesaling of any article, substance or commodity or any treatment thereof in such a manner as to change the form, character, or appearance thereof.

(12) "Long-term parking for heavy equipment or semis" means an area where only heavy equipment or semis are parked, and these vehicles are parked there for longer than 48 hour periods. This does not include loading or unloading areas for semis.

(13) "Major arterial" means any roadway eligible for primary or urban funds from the Montana Department of Transportation.

(14) "New source" means a source that was constructed, installed or altered on or after February 16, 1979, unless the source had a permit to construct prior to February 16, 1979.

(15) "Parking lot" or "parking area" means an area where operable vehicles are parked for more than 15 days of a calendar year including but not limited to areas that contain vehicles offered for sale.

(16) "Paved" means having a minimum of two (2) inches of hot mix asphalt or four (4) inches of portland cement concrete with an appropriate base for the soil type. The requirements are for the purpose of minimizing fugitive particulate emissions and do not represent structural standards.

(17) "Private driveway" means a privately owned access or egress that serves two or fewer dwelling units.

(18) "Private road" means a privately owned access or egress that serves three or more dwelling units or that serves one or more non-residential parcels.

(19) "Public road" means a publicly owned or maintained road, a road dedicated to the public, a petitioned road or a prescriptive use road.

(20) "Reasonable precautions" means any reasonable measure to control emissions of airborne particulate matter. The department will determine what is reasonable on a case by case basis taking into account energy, environmental, economic, and other costs.

(21) "Reinforced grids" means a solid material composed of connected patterns designed to handle vehicle traffic. A reinforced grid keeps vehicles off the underlying soils while allowing the growth of vegetation through spaces built into the grid.

(22) "Required deicing zone" means the area within the City limits, bordered in the north by the northern right-of-way boundary of Interstate 90 and in the south by the southern right-of-way boundary of 39th Street and Southwest Higgins Avenue, but also including those portions of Rattlesnake Drive and Van Buren Street that lie inside the City limits.

(23) "Road" means an open way for purposes of vehicular travel including highways, streets, and alleys. A private driveway is considered a new road when its use is increased to serve more than two dwelling units or to serve one or more commercial/industrial sites.

(24) "Utility" means unoccupied equipment sites or facilities, including but not limited to communication antennas and power line right of ways.

(25) "Vehicle" means every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except bicycles and devices moved by animal power or used exclusively upon stationary rails or tracks.

Rule 8.102 - General Requirements

(1) A person may not cause or authorize the production, handling, transportation, or storage of any material unless reasonable precautions to control fugitive particulate are taken.

(2) Fugitive particulate emissions from any source may not exhibit an opacity of twenty (20) percent or greater averaged over six (6) consecutive minutes.

(3) A person may not cause or permit a building or its appurtenances or a road, or a driveway, or an open area to be constructed, used, repaired or demolished without applying all reasonable precautions to prevent fugitive particulate. The department may require reasonable measures to prevent fugitive particulate emissions, including but not limited to, paving or frequent cleaning of road, driveways, and parking lots; applying dust suppressants; applying water; planting and maintaining vegetative ground cover and using a combination of reinforced grids or block pavers with a healthy vegetative cover.

(4) Governmental agencies are subject to the same regulations as commercial enterprises in this chapter.

Rule 8.103 - Stationary Source Requirements

Within any area designated non-attainment for either the primary or secondary NAAQS person who owns or operates:

(1) An existing source of fugitive particulate shall apply reasonably available control technology (RACT);

(2) A new source of fugitive particulate that has a potential to emit less than 100 tons per year of particulate shall apply best available control technology (BACT);

(3) A new source of fugitive particulate that has a potential to emit 100 or more tons per year of particulate shall apply lowest achievable emission rate (LAER).

Rule 8.104 - Construction and Mining Sites

(1) A person in charge of a construction project or mining operation may not cause, suffer or allow dirt, rock, sand and other material from the site to be tracked out onto paved surfaces without taking all reasonable measures to prevent the deposition of the material and/or to promptly clean up the material. Reasonable measures include but are not limited to frequent cleaning of the paved roadway, paving access points, use of dust suppressants, filling and covering trucks so material does not spill in transit and use of a track out control device.

(2) Temporary roads and parking areas at active construction sites and mining operations do not need to be paved and are not subject to the permitting requirements of subchapter 2 of this Chapter. After the project(s) or mining is complete, temporary roads and parking areas must be permanently removed or closed off to traffic.

Rule 8.105 - Agricultural Exemption

The provisions of this Chapter do not apply to fugitive particulate originating from any activity or equipment associated with the use of agricultural land or the planting, production, harvesting, or storage of agricultural crops. (This exemption does not apply to the processing of agricultural products by a commercial business).

Subchapter 2 Paving Requirements in the Air Stagnation Zone

Rule 8.201 - Permits Required

(1) After September 16, 1994, a person may not construct or cause to be constructed a new road, private or commercial driveway or parking lot in the Air Stagnation Zone without having a permit from the department except as provided for in Rule 8.104(2), 8.105 and 8.202(4).

(2) The applicant shall supply plans for the proposed construction at the time of the application for the permit. Plans must be legibly drawn with permanent ink or printed or reproduced by a process guaranteeing a permanent record. The department may require that the plans include the following information:

(a) A complete legal description of the affected parcels and a location map of the proposed construction area.

(b) A scaled plan-view drawing that includes all existing and proposed property boundaries, structures, roads, parking areas and adjoining exterior roads. Proposed construction must be clearly labeled.

(c) The width of proposed roads and driveways and dimensions of proposed parking areas.

(d) The thickness of the base material and the pavement to be used on the proposed construction.

(e) A description of the intended uses of the road, driveway or parking lot, including but not limited to the estimated number and type of vehicles using the road, parking lot or driveway.

(f) A description of adjoining exterior roads, e.g. paved or unpaved, public or private.

(g) Any additional information the department may require to evaluate the application prior to the issuance of a permit.

Rule 8.202 - New Roads in the Air Stagnation Zone

(1) After September 16, 1994, all new roads in the Air Stagnation Zone must be paved, except as provided in (3) through (5) of this rule and in Rule 8.104.

(2) New public and private roads must be paved within 2 years (730 days) after road construction begins or final plat approval, whichever comes first, except that new private roads serving commercial and industrial sites must be paved prior to occupancy.

(3) The department may allow temporary occupancy of a building or use of a road serving a commercial or industrial site before the road is paved if weather prevents paving before occupancy or use. Such an extension may not exceed six months.

(4) Roads used solely for utilities, or solely for agricultural or silvicultural purposes are exempt from paving requirements of Subchapter 8.2, but are subject to dust abatement measures to prevent particulate matter from becoming airborne. If the use of a road changes so that it is no longer used solely for utilities, or solely for agricultural or silvicultural purposes, the road will be considered a new road and all paving regulations pertinent to the new uses on the road must be met.

(5) Temporary roads at landfills do not have to be paved or permitted, but are subject to dust abatement measures. For this rule, a road at a landfill is considered temporary if it exists in the same location less than three years.

Rule 8.203 - New Parking Areas in the Air Stagnation Zone

(1) After September 16, 1994, new public and private parking areas must be paved prior to occupancy, except as provided in (2)-(4) of this rule.

(2) The department may allow temporary occupancy of a building before the parking areas are paved if weather prevents paving before occupancy. Such an extension may not exceed six months.

(3) Exceptions.

(a) The following areas do not have to be paved if they are constructed in accordance with Section (5) of this rule:

(i) Long term parking areas for heavy equipment and semi trucks where the vehicles will be parked for longer than 48 hours at a time and no other vehicular traffic is allowed. (This exemption does not apply to sales lots or loading areas.)

(ii) Long term parking areas for vehicles that will be parked for extended periods of time, if no other vehicular traffic is allowed and if no more than fifteen (15) vehicles travel in or out of the area per day averaged over any three consecutive days. (This exemption does not apply to sales lots for ~~automobiles or RVs~~vehicles)

(iii) Display areas for heavy equipment, where no other vehicles will be displayed or offered for sale and no other vehicular traffic is allowed.

(b) At licensed RV parks, accesses to parking spots must be paved, but parking spots for RVs need not be paved if:

(i) they are constructed in accordance with 4 (a) of this rule; or

(ii) they are constructed using reinforced grids and a healthy vegetative cover is maintained that can handle traffic.

(c) Parking areas used exclusively for the sale or display of light tractors and implements with no other vehicular use need not be paved if:

(i) the area is mowed and maintained with a healthy stand of vegetation adequate to be an effective dust suppressant; or

(ii) the area meets the requirements of 4 (a) of this rule.

(d) Parking areas used exclusively for outdoor recreational/entertainment facilities including, but not limited to, outdoor theatres, fairs or athletic fields, may use vegetation or reinforced grids with vegetation as an alternative to paving if the following conditions are met.

(i) New access road(s) for the parking area will be paved.

(ii) The parking area will be used less than 61 days per calendar year.

(iii) The department has approved a construction plan showing:

(A) that the parking area soils can support a vegetative cover and the proposed vehicular traffic;

(B) that vegetation able to survive and maintain ground cover with the proposed vehicle use is present or that appropriate vegetation will be planted and established prior to use of the parking area; and

(C) that an irrigation system able to maintain the vegetative cover will be installed.

(iv) The department has approved a maintenance plan that:

(A) states that vehicles will not use the parking area when soil conditions are muddy or excessive damage to the vegetation will occur;

(B) states that vehicles will not use the parking area when carry out of dirt or dust onto surrounding paved surfaces will occur;

(C) states that the parking area will be blocked off with a physical barrier that will prevent vehicle access when the parking area is not in use; and

(D) explains how the ground cover vegetation will be maintained by the appropriate use of irrigation, fertilizer, aeration and other necessary measures.
(E) may include rotation of vehicle use around the parking area to reduce impacts on the soil and vegetation. Any use of the parking area counts as one day of use for the entire parking area.

(e) The department may order that an area that qualifies for one of the above exemptions be paved if:

(i) the area is not constructed or maintained as required by this rule.
(ii) particulate emissions exceed those typical of a clean paved surface; or
(iii) carryout of dirt or dust onto surrounding paved surfaces occurs.

(f) If the use of an area changes so that an exemption no longer applies, the area must meet all regulations for new construction applicable to the new uses of the area.

(4) The department may allow self-draining solid surfaces including, but not limited to, block pavers and bound recycled glass for parking areas provided the following conditions are met.

(i) The surface is rated for the vehicular traffic loads projected for that parking area
(ii) Fugitive emissions from the surface will not exceed those from a clean, paved parking area.
(iii) The surface is cleaned regularly to prevent fugitive particulate
(iv) If the surface is disturbed or destroyed it must be paved or rebuilt before continued use.

(5) Construction Specifications for Exemptions.

(a) Unless otherwise specified in this rule, unpaved parking and display areas must consist of a suitable base material topped with a minimum of four inches of ¾ inch minus gravel, that meets the following specifications:

(i)The material must consist of hard, durable particles or fragments of slag, stone or gravel screened and crushed to the required size and grading specified here.

Sieve Designation	Percent Passing, by Weight
¾ inch	100
No. 4	30 – 60
No. 10	20 - 50
No. 200	less than 8

(ii) That portion of the material passing a No. 40 sieve must have a plasticity index of 4 or less, as determined by AASHTO T-91.

(b) To minimize carry-out of material onto the access road, pavement must be placed between unpaved parking areas allowed in (3)(a) of this rule and the paved or unpaved access road as follows:

(i) At least 60 linear feet of paved surface of adequate width must be placed between an unpaved long term parking area for heavy equipment and semi-trucks and the access road. This paved surface must be placed and used so that heavy equipment and semi-trucks cross 60 feet of paved surface before entering the access road.
(ii) At least 20 linear feet of paved surface of adequate width must be placed between unpaved long term parking areas allowed in (3)(a)(ii) of this rule and the access road. This paved surface must be placed and used so that vehicles cross 20 feet of paved surface before entering the access road.
(iii) The paved surface must begin at the edge of the access road.

Rule 8.204 - New Driveways in the Air Stagnation Zone

(1) After September 16, 1994, before occupancy of a residential unit, new private driveways accessing a paved road must be paved or covered with a self-draining solid surface as provided by part (4) of

this rule to a minimum of twenty (20) feet back from the paved road or to the outside boundary of the right of way, whichever is longer.

(2) The department may allow temporary occupancy of a residential unit before the driveway is paved if weather prevents paving before occupancy. Such an extension may not exceed six months.

(3) Private driveways accessing an existing unpaved road do not have to be paved, but must meet the requirements of Rule 8.205.

(4) The department may allow a self-draining solid surface including, but not limited to, block pavers and bound recycled glass in lieu of pavement provided the following conditions are met.

(i) The surface is rated for the vehicular traffic loads projected for that driveway

(ii) Fugitive emissions from the surface will not exceed those from a clean, paved driveway.

(iii) The surface is cleaned regularly to prevent fugitive particulate

(iv) If the surface is disturbed or destroyed it must be paved or rebuilt before continued use.

Rule 8.205 - Unpaved Access Roads

(1) The department may not issue a permit for a new road, commercial site, industrial site, or private driveway in the Air Stagnation Zone accessed by an unpaved road unless:

(a) a waiver of the option to protest an RSID or SID for the paving of the unpaved access road has been recorded at the Clerk and Recorder's Office for the parcel; or

(b) the owner of the real property accessed by the unpaved road executes a deed restriction waiving the option to protest any RSIDs or SIDs for the paving of the unpaved access road using the language set forth below.

> I/We, the undersigned, hereby certify that I/we are the owners of the real property located at (legal description) and hereby waive any option to protest an RSID or SID affecting said property for the purpose of financing the design and construction of a public paved road accessing said property. Further, my/our signatures on this waiver may be used in lieu of my/our signature(s) on an RSID or SID petition for the creation of one or more RSID's or SID petitions for the purpose of financing the design and construction of a public paved road accessing the above-described property.
>
> This waiver runs with the land and is binding on the transferees, successors, and assigns of the owners of the land described herein. All documents of conveyance must refer to and incorporate this waiver.

(2) In the Air Stagnation Zone, property owner who is subdividing land that contains parcels accessing an unpaved road, or whose primary access is an unpaved road, shall waive the option to protest an RSID or SID that upgrades and paves the road and shall include the language set forth in (1)(b)above on the plat.

Rule 8.206 - Maintenance of Pavement Required

(1) All paved roads, driveways, storage areas and parking lots within the Air Stagnation Zone must be cleaned and maintained regularly to prevent fugitive particulate.

(2) Any existing paved surface that is disturbed or destroyed must be re-paved before continued use.

Rule 8.207 - Paving Existing Facilities in the Air Stagnation Zone

(1) The department may require any person owning or operating a commercial establishment which is located on a publicly owned or maintained road which is used by more than 200 vehicles per day averaged over any 3-day period to submit a plan which provides for paving and restricting traffic to paved surfaces for any areas used by said commercial establishment for access, egress, and

parking except where said access, egress, and parking is seasonal and intermittent and the area in which said access, egress and parking is located is not in violation of Ambient Air Quality Standards as listed in ARM 17.8.201 - 17.8.230. The plan must include drawings and other information that the department may require to indicate the adequacy of the plan. The plan must provide reasonable time for construction of paved roads or structures limiting traffic to paved surfaces, but this time may not exceed one year from the date of submittal to the department.

(2) The department may require any person owning, leasing, or managing property containing a road or thoroughfare which is used by more than 50 vehicles per day, averaged over any three day period, to submit a plan which provides for paving or for restricting traffic to paved surfaces. Roads located in areas that do not violate the ambient air quality standards (ARM 17.8.201 - 17.8.230), and which are used seasonally and intermittently are exempt from this requirement. The plan must include drawings and other information that the department may require. A reasonable time will be permitted for the construction of paved roads or structures limiting traffic to paved surfaces, but this time may not exceed one year from the date of submittal of the plan to the department unless an extension is granted by the Control Board.

Subchapter 3 - Road Maintenance Inside the Area of Regulated Road Sanding Materials

Rule 8.301 - Deicer Required

(1) When the ambient temperature is above 10°F. a person may not apply street sanding materials other than an approved deicer to those public roadways in the required deicing zone, except under extraordinary circumstances.

Rule 8.302 - Durability Requirements

(1) A person may not place any sanding or chip sealing materials upon any road or parking lot located inside the area of regulated road sanding materials that has a durability of less than or equal to 80 as defined by AASHTO T-210 procedure B and a silt content passing the #200 sieve of greater than 2.5% as defined by AASHTO T-27 and T-11.

Rule 8.303 - Street Sweeping Requirements

(1) Between December 1 and March 31, when the paved road surface is above 32°F for longer than four hours, political subdivisions shall clean the center line and areas immediately adjacent to the travel lane of any major arterials they maintain inside the area of regulated road sanding materials.

(2) The Control Board hereby incorporates Chapter 10.50 of the Missoula Municipal Codes which requires street sweeping.

Rule 8.304 - Contingency Measure

(1) The area of regulated road sanding materials defined by Rule 8.101(2) is expanded to include Section 1, T12N R20W, Sections 5 and 24, T13N R19W, Sections 19, 24, 25, 30, 31 and 36, T13N R20W.

CHAPTER 15
PENALTIES

Rule 15.101 - General Provisions

(1) Action under this Chapter is not a bar to enforcement of this Program, or regulations or orders made pursuant thereto, by injunction or other appropriate remedy. The Control Board or the department may institute and maintain in the name of the county or the state any and all enforcement proceedings.

(2) All fines collected under this chapter are deposited in the County General Fund.

(3) It is the intention of the Control Board to impose absolute liability upon persons for conduct that violates any part, provision or order issued pursuant to these regulations. Unless otherwise specifically provided, a person may be guilty of an offense without having, with respect to each element of the offense, either knowledge, negligence, or specific intent.

(4) It is the specific intention of the Control Board that these regulations impose liability upon corporations for violations of a part, provision or order issued pursuant to these regulations.

(5) A person is responsible for conduct which is an element of an offense if the conduct is either that of the person himself or that of another and he is legally accountable.

(6) A person is legally accountable for the conduct of another under these regulations when he:
(a) causes another to perform the conduct, regardless of the legal capacity or mental state of the other person; or

(b) either before or during the commission of an offense with the purpose to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid such other person in the planning or commission of the offense.

Rule 15.102 - Criminal Penalties

(1) Except as provided for in Rule 15.104, a person who violates a provision, regulation, or rule enforced under this Program, or an order made pursuant to this Program, is guilty of an offense and upon conviction subject to a fine not to exceed ten thousand dollars ($10,000.00). Each day of the violation constitutes a separate offense.

Rule 15.103 - Civil Penalties

(1) Except as provided in Rule 15.104, a person who violates a provision, rule or order under this Program, after notice thereof has been given by the department is subject to a civil penalty not to exceed ten thousand dollars ($10,000) per violation. Each day a violation continues constitutes a separate violation. Upon request of the department the county attorney may petition the district court to impose, assess and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided in Rule 15.102.

Rule 15.104 - Solid Fuel Burning Device Penalties

(1) Notwithstanding the provisions of Rule 15.102, a person who violates a provision of Chapter 9 (Solid Fuel Burning Devices) is guilty of a criminal offense and subject, upon conviction, to a fine not to exceed five hundred dollars ($500.00). Each day a violation continues constitutes a separate offense.

(2) Notwithstanding the provisions of Rule 15.103, any person who violates any of the provisions of Chapter 9 is subject to a civil penalty not to exceed five hundred dollars ($500.00). Each day a violation continues constitutes a separate violation. The civil penalty is in lieu of the criminal penalty provided for in Rule 15.102, and may be pursued in any court of competent jurisdiction.

(3) (a) The civil penalty or criminal fine for a violation of the same provision of Rules ~~9.104, 9.105 and 9.106~~ 9.103, 9.104, and 9.302 during any burning season as defined in Chapter 9 is:

First Violation - Fifty Dollars ($50)
Second Violation - Two Hundred Fifty Dollars ($250)
Third or Subsequent Violation - Five Hundred ($500)

(b) Penalties for violations of Rule ~~9.108~~ 9.202 must not be less than five hundred dollars ($500.00) per offense.

Rule 15.105 - Non-Compliance Penalties

(1) Except as provided in Section (2), the department shall assess and collect a noncompliance penalty from any person who owns or operates:
(a) a stationary source (other than a primary nonferrous smelter that has received a nonferrous smelter order under 42 U.S.C. 7419), that is not in compliance with any emission limitation specified in an order of the department, emission standard, or compliance schedule under the state implementation plan approved by the EPA;

(b) a stationary source that is not in compliance with an emission limitation, emission standard, standard of performance, or other requirement under 42 U.S.C. 7411, 7412, 7477, or 7603;

(c) a stationary source that is not in compliance with any other requirement under this Program or any requirement of subchapter V of the FCAA, 42, U.S.C. 7661, et seq.; or

(d) any source referred to in Sections (1)(a) – (c) that has been granted an exemption, extension, or suspension under Subsection (2) or that is covered by a compliance order, or a primary nonferrous smelter that has received a primary nonferrous smelter order under 42 U.S.C. 7419, if such source is not in compliance under such extension, order or suspension.

(2) Notwithstanding the requirements of Section (1), the department may, after notice and opportunity for a public hearing, exempt any source from the requirements of Section (1) through Section (14) with respect to a particular instance of noncompliance that:
(a) the department finds is de minimis in nature and in duration;

(b) is caused by conditions beyond the reasonable control of the source and is of no demonstrable advantage to the source; or

(c) is exempt under 42 USC 7420(a)(2)(B) of the Federal Clean Air Act.

(3) Any person who is jointly or severally adversely affected by the department's decision may request, within 15 days after the department renders its decision, upon affidavit setting forth the grounds therefor, an administrative review as provided for in Chapter 14.

(4) The amount of the penalty that shall be assessed and collected with respect to any source under Section (1) through Section (14) shall be equal to:

(a) the amount determined in accordance with the rules adopted by the Control Board, which shall be no less than the economic value which a delay in compliance after July 1, 1987, may have for the owner of such source, including the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period not to exceed 10 years, operation and maintenance costs foregone as a result of noncompliance, and any additional economic value which such a delay may have for the owner or operator of such source; minus

(b) the amount of any expenditure made by the owner or operator of that source during any such quarter for the purpose of bringing that source into and maintaining compliance with such

requirement, to the extent that such expenditures have not been taken into account in the calculation of the penalty under Section (4)(a).

(5) To the extent that any expenditure under Section (4)(b) made during any quarter is not subtracted for such quarter from the costs under Section (4)(a), such expenditure may be subtracted for any subsequent quarter from such costs. In no event may the amount paid be less than the quarterly payment minus the amount attributed to actual cost of construction.

(6) If the owner or operator of any stationary source to whom notice is issued under Section (10) does not submit a timely petition under Section (10)(a)(ii) or submits a petition which is denied and if the owner or operator fails to submit a calculation of the penalty assessment, a schedule for payment, and the information necessary for independent verification thereof, the department may enter into a contract with any person who has no financial interest in the matter to assist in determining the amount of the penalty assessment or payment schedule with respect to such source. The cost of carrying out such contract may be added to the penalty to be assessed against the owner or operator of such source.

(7) Any person who fails to pay the amount of any penalty assessed under this rule on a timely basis shall be required to pay an additional quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be equal to 20% of the aggregate amount of such person's penalties and nonpayment penalties with respect to such source which are unpaid as of the beginning of such quarter.

(8) Any non-compliance penalty required under this rule shall be paid in quarterly installments for the period of covered noncompliance. After the first payment, all quarterly payments shall be equal and determined without regard to any adjustment or any subtraction under Section (4)(b).
(a) The first payment shall be due 6 months after the date of issuance of the notice of noncompliance under Section (10) with respect to any source. Such first payment shall be in the amount of the quarterly installment for the upcoming quarter, plus the amount owed for the preceding period within the period of covered noncompliance for such source.

(b) For the purpose of this rule, "period of covered noncompliance" means the period which begins on the date of issuance of the notice of noncompliance under Section (10) and ends on the date on which such source comes into, or, for the purpose of establishing the schedule of payments, is estimated to come into compliance with such requirement.

(9) The department shall adjust the amount of the penalty or the payment schedule proposed by such owner or operator under Section (10)(a)(i) if the department finds after notice and opportunity for a hearing that the penalty or schedule does not meet the requirements of this rule.
(a) Upon determination that a source is in compliance and is maintaining compliance with the applicable requirement, the department shall review the actual expenditures made by the owner or operator of such source for the purpose of attaining and maintaining compliance and shall make a final adjustment of the penalty within 180 days after such source comes into compliance and:
(i) provide reimbursement with interest to be paid by the county at appropriate prevailing rates for overpayment by such person; or
(ii) assess and collect an additional payment with interest at appropriate prevailing rates for any underpayment by such person.

(10) The department shall give a brief but reasonably specific notice of noncompliance to each person who owns or operates a source subject to Section (1) which is not in compliance as provided in that section, within thirty (30) days after the department has discovered the noncompliance.
(a) Each person to whom notice has been given pursuant to Section (10) shall:
(i) calculate the amount of penalty owed (determined in accordance with Section (4)(a) and (b) and the schedule of payments (determined in accordance with Section (8) for each source), and within forty-five (45) days after issuance of the notice of noncompliance, submit that calculation and proposed schedule, together with the information necessary

for an independent verification thereof, to the department; or
(ii) submit to the Control Board a petition within forty-five (45) days after the issuance of such notice, challenging such notice of noncompliance or alleging entitlement to an exemption under Section (2) with respect to a particular source.

(b) Each person to whom notice of noncompliance is given shall pay the department the amount determined under Section (4) as the appropriate penalty unless there has been a final determination granting a petition filed pursuant to Section (10)(a)(ii).

(11) The Control Board shall provide a hearing on the record and make a decision (including findings of fact and conclusions of law) not later than ninety (90) days after the receipt of any petition under Section (10)(a)(ii) with respect to such source. If the petition is denied, the petitioner shall submit the material required by Section (10)(a)(i) to the department within forty-five (45) days of the date of the decision.

(12) All noncompliance penalties collected by the department pursuant to this rule shall be deposited in a county special revenue fund until a final determination and adjustment have been made as provided in Section (10) and amounts have been deducted by the department for costs attributable to implementation of this rule and for contract costs incurred pursuant to Section (6), if any. After a final determination has been made and additional payments or refunds have been made, the penalty money remaining shall be transferred to the County General Fund.

(13) In the case of any emission limitation, emission standard, or other requirement approved or adopted by the Control Board under this Program after July 1, 1979, and approved by the EPA as an amendment to the state implementation plan, which is more stringent than the emission limitation or requirement for the source in effect prior to such approval or promulgation, or where there was no emission limitation, emission standard, or other requirement approved or adopted before July 1, 1979, the date for imposition of the noncompliance penalty under Rule 15.102 (Criminal Penalties) and Rule 15.103 (Civil Penalties) shall be the date on which the source is required to be in full compliance with such emission limitation, emission standard, or other requirement or 3 years after the approval or promulgation of such emission limitation or requirement, whichever is sooner.

(14) Any orders, payments, sanctions, or other requirements under this rule shall be in addition to any other permits, orders, payments, sanctions, or other requirements established under this Program and shall in no way affect any civil or criminal enforcement proceedings brought under Rule 15.102 (Criminal penalties) or Rule 15.103 (Civil penalties). The noncompliance penalties collected pursuant to this rule are intended to be cumulative and in addition to other remedies, procedures and requirements authorized by this Program.

Section 4

Air Quality Advisory Council Meetings

From: Sarah Coefield
To: Interested Parties; Sam Sill
Date: 8/30/2013 4:25 PM
Subject: September AQAC meeting
Attachments: AQAC Agenda 2013.09.03.pdf

Hello,

The next Air Quality Advisory Council meeting will be Tuesday, September 3rd. Please find the agenda attached to this e-mail.

What: AQAC

When: 6:30pm, September 3, 2013
Where: Health Board Conference Room #210 (Second Floor)
Missoula City-County Health Department
301 W. Alder.

Sarah Coefield, M.S., M.A.
Air Quality Specialist
Missoula City-County Health Department
301 W. Alder
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MISSOULA COUNTY

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AIR QUALITY ADVISORY COUNCIL
MEETING AGENDA
Tuesday September 3, 2013 at 6:30 pm
Health Board Conference Room #210 (Second Floor)
Missoula City-County Health Department—301 West Alder

1. Call to order

2. Recognize excused absences, establish voting membership

3. Approve agenda

4. Approve July minutes

5. Public comment on non-agenda items

6. Article presentation

7. Old Business:
   i. Letter to the Board regarding the Air Quality Index
   ii. Alternate membership vacancies

8. Discussion item: Potential additional contingency measures to reduce PM2.5 emissions in Missoula.

9. Chapter 6 proposed rule change revisions: fix clerical errors and resolve compatibility issues.

10. Staff report

11. Public comment

12. Select AQAC representative for next Air Board meeting update

13. Announcements, other business

14. Adjourn

If you need special assistance to attend this meeting, please contact:
Sarah Coefield, Air Quality Specialist
Missoula City-County Health Department
301 W. Alder, Missoula, MT 59802
Phone: 258-4755 FAX: 258-4781
Email: scoefield@co.missoula.mt.us

From: Sarah Coefield
To: Interested Parties
Date: 9/27/2013 4:42 PM
Subject: October AQAC meeting
Attachments: AQAC Agenda 2013.10.01.pdf

Hello,

The next Air Quality Advisory Council meeting will be Tuesday, October 1st. Please find the agenda attached to this e-mail.

What: AQAC

When: 6:30pm, October 1, 2013
Where: Health Board Conference Room #210 (Second Floor)
Missoula City-County Health Department
301 W. Alder.

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AIR QUALITY ADVISORY COUNCIL
MEETING AGENDA
Tuesday October 1, 2013 at 6:30 pm
Health Board Conference Room #210 (Second Floor)
Missoula City-County Health Department—301 West Alder

1. Call to order
2. Recognize excused absences, establish voting membership
3. Approve agenda
4. Approve August minutes
5. Public comment on non-agenda items
6. Article presentation
7. Certificate of Compliance Forms – Fostering participation during real estate transactions.
8. Air Pollution Control Program Rule Revisions for chapters 3, 6, 8, 15
9. AQAC letter to the Montana Department of Environmental Quality re: the Air Quality Index
10. Staff report
11. Public comment
12. Select AQAC representative for next Air Board meeting update
13. Announcements, other business
14. Adjourn

If you need special assistance to attend this meeting, please contact:
Sarah Coefield, Air Quality Specialist
Missoula City-County Health Department
301 W. Alder, Missoula, MT 59802
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Section 5

Findings for HB521

MISSOULA COUNTY

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Applicability of 75-2-301 Findings

For Rule Changes Proposed to the Missoula City-County Air Pollution Control Program

September 19, 2013 (Corrects November 8, 2012 Document)

MCA 75-2-301(3)(b) requires the Air Pollution Control Board to fulfill the provisions of MCA 75-2-301(4) when adopting an ordinance or local law that is more stringent than the comparable state law.

MCA 75-2-301(4) allows the Board to adopt a rule more stringent than comparable state law if they make a written finding after a public hearing and public comment and based on evidence that the proposed local standard or requirement:

(A) protects public health or the environment of the area;
(B) can mitigate harm to the public health or the environment; and
(C) is achievable with current technology.

The written finding must reference information and peer-reviewed scientific studies contained in the record that form the basis for the board's or the local air pollution control program's conclusion. The written finding must also include information from the hearing record regarding costs to the regulated community that are directly attributable to the proposed local standard or requirement.

If Missoula's Program includes a rule that is currently more stringent than state rules, and the amendments do not make the rule even more strict, MCA 75-2-301(4) does not apply. In addition, if an amendment is purely clarifying an existing rule, it is not subject to MCA 75-2-301(4).

This document identifies which proposed changes to the Missoula City-County Air Pollution Control Program are more stringent than comparable state law and therefore subject to MCA 75-2-301(4).

Chapter 4 – Missoula County Air Stagnation and Emergency Episode Avoidance Plan

1. Rule 4.112 – Wildfire Smoke Emergency Episode Avoidance Plan

   Proposed changes clarify that health advisories are the appropriate response for wildfire smoke episodes, not regulatory actions such as Alerts or Warnings. This change fixes an omission from the previous rule re-write. The rule is not more stringent than existing requirements.

   MCA 75-2-301(4) does not apply.

Chapter 6- Standards for Stationary Sources

1. Rule 6.101(8) - Definitions

   This rule defines portable industrial sources. This change is for clarification purposes and does not increase stringency.

   MCA 75-2-301(4) does not apply.

2. Rule 6.101(10) – Definitions

   Change corrects a reference error and is therefore not more stringent than existing requirements.

   MCA 75-2-301(4) does not apply.

3. Rule 6.102 (3 and 4) – Air Quality Permit Required

   This rule change allows portable industrial sources with a valid State of Montana Air Quality Permit to operate under a temporary Missoula City-County Air Quality Permit while the portable source pursues a permanent Missoula City-County Air Quality Permit. New regulations are no more stringent than the current requirements.

   MCA 75-2-301(4) does not apply.

4. Rule 6.102(4 5) – Air Quality Permit Required

   Clarifies that the air board may require an air quality permit if a permit is needed to protect the National Ambient Air Quality Standards. Maintaining air pollutant levels below the National Ambient Air Quality Standards is one of the main purposes of the Air Pollution Control Program and has been shown to protect public health (see EPA NAAQS summary online at http://www.epa.gov/air/criteria.html).

   MCA 75-2-301(4) justification will be in written findings document.

5. Rule 6.601(4)

Change corrects a reference error and is therefore not more stringent than existing requirements.

MCA 75-2-301(4) does not apply.

6. Rules 6.103(6), 6.106(3), 6.107 (5-6), and 6.108(3)

Removes the Administrative Review Process from the Air Pollution Control Program permitting actions and clarifies who may request an Air Board Hearing. Who can request an Air Board Hearing is also clarified and expanded in this rule rewrite. These are clarifications to administrative procedures and are not more stringent than existing requirements.

MCA 75-2-301(4) does not apply.

Chapter 7- Outdoor Burning

1. Rule 7.101(3) – Definitions

The rule change clarifies the definition of bonfire. The previous definition was often interpreted inconsistently. This definition re-write allows the department to give a more consistent interpretation on what is a bonfire and follows department policy on what constitutes a bonfire. The proposed change is not more stringent than existing requirements.

MCA 75-2-301(4) does not apply.

Rule 7.106(1) – Minor Outdoor Burning Source Requirements

Updates the rules to agree with how the outdoor burning permit program is now run. The paper and phone methods have gone primarily to an internet and phone program and this change is needed to keep up with the new system. The proposed change is not more stringent than existing requirements.

MCA 75-2-301(4) does not apply.

Rule 7.107(3) – Major Outdoor Burning Source Requirements

Clarifies major outdoor burning source requirements in the county and is not more stringent than existing requirements.

MCA 75-2-301(4) does not apply.

Chapter 8 – Fugitive Particulate

There are no comparable state requirements or the proposed changes clarify existing rules. The proposed rules allow for more paving alternatives and are therefore not more stringent than existing requirements. **MCA 75-2-301(4) does not apply.**

The purpose of the Chapter 8 changes are to allow alternatives to asphalt or concrete paving in situations where other surfaces with low fugitive emissions are technically feasible. The rule changes also clarify that temporary roads at mining sites may not need to be paved and that material carry out at mining sites must be controlled to reduce fugitive emissions.

Rule 8.101(5) adds a definition for block pavers.
Rule 8.101(6) adds a definition for bound recycled glass.
Rule 8.101(21) adds a definition for reinforced grids. This replaces the "geoblock" definition that was in Rule 8.101(9).
Rule 8.102(2) clarifies opacity rules for sources.
Rule 8.102(3) replaces the term "geoblocks" with reinforced grids and block pavers.
Rule 8.104 clarifies that roads at mining sites are temporary.
Rule 8.104(1) clarifies that temporary roads at mining sites are required to control material carry out.
Rule 8.104(2) clarifies that temporary roads at mining sites may not be required to pave.
Rule 8.202(4) clarifies that roads used for solely for utilities, agricultural or silvicultural purposes are exempt from the paving requirements of Subchapter 8.2
Rule 8.202(5) clarifies that ~~only~~ landfill roads may only be considered temporary if they exist in the same location for less than three years.
Rule 8.203(1) acknowledges the addition of 8.203(4).
Rule 8.203(3)(a)(ii) clarifies that long term parking area exemptions do not apply to sales lots for automobiles or RVs.
Rule 8.203(b)(ii) and Rule 8.203(d) replaces the term geoblock with reinforced grids since geoblock is a trade name and needs to be replaced.
Rule 8.203(4) adds a provision to allow self-draining solid surfaces (i.e. permeable paving) in parking areas as long as certain conditions are met.
Rule 8.204(1) allows a self-draining solid surface as an option for new private driveways.
Rule 8.204(4) adds a provision to allow self-draining solid surface in lieu of paving for new driveways in the air stagnation zone as long as certain conditions are met.

Chapter 9- Solid Fuel Burning Devices

There are no comparable state or federal requirements. Therefore, **MCA 75-2-301(4) does not apply.**

Chapter 14- Enforcement and Administrative Procedures

The proposed changes in administrative process are not more stringent than existing requirements. **MCA 75-2-301(4) does not apply.**

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75-2-301 Written Findings

For Rule Changes Proposed to the Missoula City-County
Air Pollution Control Program
November 15, 2012

September 19, 2013
This document corrects reference error found in November 15, 2012 Written Findings.

MCA 75-2-301(3)(b) requires the Air Pollution Control Board to fulfill the provisions of MCA 75-2-301(4) when adopting an ordinance or local law that is more stringent than the comparable state law.

MCA 75-2-301(4) allows the Board to adopt a rule more stringent than comparable state law if they make a written finding after a public hearing and public comment and based on evidence that the proposed local standard or requirement:

(A) protects public health or the environment of the area;
(B) can mitigate harm to public health or the environment; and
(C) is achievable with current technology.

The written finding must reference information and peer-reviewed scientific studies contained in the record that form the basis for the board's or the local air pollution control program's conclusion. The written finding must also include information from the hearing record regarding costs to the regulated community that are directly attributable to the proposed local standard or requirement.

If Missoula's Program includes a rule that is currently more stringent than state rules, and the amendments do not make the rule even more strict, MCA 75-2-301(4) does not apply. In addition, if an amendment is purely clarifying an existing rule, it is not subject to MCA 75-2-301(4).

Chapter 6- Standards for Stationary Sources

Rule 6.102(45) – Air Quality Permits Required

This rule allows the Air Pollution Control Board to require a source to get a Missoula City-County Air Quality Permit if the Air Board determines that a permit is needed to

ensure compliance with the National Ambient Air Quality Standards (NAAQS). (This rule is therefore more stringent than the comparable state regulation.)

Missoula County came within three-tenths of a microgram of $PM_{2.5}$ non-attainment status. Solid fuel burning devices (e.g. woodstoves) were the number one source of $PM_{2.5}$ in a winter 2006-2007 chemical mass balance study. Given Missoula County's history of particulate pollution and brush with non-attainment designation, Missoula County citizens will be best protected if new sources that may cause Missoula to exceed the NAAQS are reviewed and regulated via a permitting system. The NAAQS are well-known to be protective of public health (see bibliography below), and therefore, by working to keep Missoula County in compliance with the NAAQS, this proposed rule change protects public health.

Permits are a common tool used to ensure substantive requirements are complied with. Without them, the department has limited means of regulating these entities to ensure pollution was minimized. The permitting process allows for pre-construction review, the application of Best Available Control Technology (BACT), and the establishment of emission limits. Through the BACT process, air quality permits make air pollution control requirements that are technologically possible. It is during the permitting process that cost to comply with emission standards is determined. Ultimately, permits help Missoula County meet federal health based air quality standards, including the new $PM_{2.5}$ standards.

By allowing the Air Pollution Control Board to require a source to get a Missoula City-County Air Quality Permit to ensure compliance with the National Ambient Air Quality Standards, this proposed change to the Missoula City-County Air Pollution Control Program protects public health, can mitigate harm to public health, and is achievable with current technology.

Peer reviewed scientific studies: See bibliography.

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Applicability of 75-2-301 Findings

For Rule Changes Proposed to the Missoula City-County Air Pollution Control Program
October 17, 2013

MCA 75-2-301(3)(b) requires the Air Pollution Control Board to fulfill the provisions of MCA 75-2-301(4) when adopting an ordinance or local law that is more stringent than the comparable state law.

MCA 75-2-301(4) allows the Board to adopt a rule more stringent than comparable state law if they make a written finding after a public hearing and public comment and based on evidence that the proposed local standard or requirement:

(A) protects public health or the environment of the area;
(B) can mitigate harm to the public health or the environment; and
(C) is achievable with current technology.

The written finding must reference information and peer-reviewed scientific studies contained in the record that form the basis for the board's or the local air pollution control program's conclusion. The written finding must also include information from the hearing record regarding costs to the regulated community that are directly attributable to the proposed local standard or requirement.

If Missoula's Program includes a rule that is currently more stringent than state rules, and the amendments do not make the rule even more strict, MCA 75-2-301(4) does not apply. In addition, if an amendment is purely clarifying an existing rule, it is not subject to MCA 75-2-301(4).

This document identifies which proposed changes to the Missoula City-County Air Pollution Control Program are more stringent than comparable state law and therefore subject to MCA 75-2-301(4).

Chapter 3 – Failure To Attain Standards

1. Rule 3.102(1)(b) – Particulate Matter Contingency Measures
   Reference errors are fixed.
   MCA 75-2-301(4) does not apply.

Chapter 6- Standards for Stationary Sources

1. Rule 6.102 (4) – Air Quality Permit Required
   The rule change in 6.102(4)(a) clarifies that the Missoula City-County Health Department air quality permitting policies and conditions for the Missoula Air Stagnation Zone replace the Montana Air Quality Permit addendums specific to PM_{10} nonattainment areas. A reference omission is also fixed in Rule 6.102(4)(d).
   MCA 75-2-301(4) does not apply.

2. Rule 6.102(**5**)(a) – Air Quality Permit Required
   6.102(5)(a) may conflict with state law. Adding the phrase "*that does not have the potential to emit 250 tons a year or more of any pollutant subject to regulation under Title 75, Chapter 2, MCA, including fugitive emissions*," clarifies the rule and removes the potential conflict with the Montana Code Annotated.
   MCA 75-2-301(4) does not apply.

3. Rule 6.102(**6**) – Air Quality Permit Required
   A reference error is fixed.
   MCA 75-2-301(4) does not apply.

Chapter 8 – Fugitive Particulate

There are no comparable state requirements to the Chapter 8 rules and the proposed changes clarify existing rules. **MCA 75-2-301(4) does not apply.**

1. Rule 8.203(3)(a)(ii) clarifies that long term parking area paving exemptions do not apply to sales lots for vehicles.

Chapter 15 – Penalties

1. Rule 15.104(3)(a and b) – Solid Fuel Burning Device Penalties
   Reference errors are fixed.
   MCA 75-2-301(4) does not apply.

Missoula City-County Air Pollution Control Program

Proposed Rule Changes
Record of Decision March 25, 2013

MISSOULA COUNTY

MISSOULA CITY-COUNTY HEALTH DEPARTMENT
ENVIRONMENTAL HEALTH DIVISION
301 WEST ALDER
MISSOULA, MONTANA 59802-4123
(406) 258-4755 FAX # (406) 258-4781

RECEIVED
MAR 27 2013
MT Dept. Environmental Quality
Permitting & Compliance Division
Air Resource Management Bureau

March 11, 2013

David Klemp, Bureau Chief
Montana Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Dear Mr. Klemp:

Over that last year the Missoula City-County Health Department has worked to revise the Missoula City-County Air Pollution Control Program rules. The proposed changes have been approved by the Missoula City-County Air Pollution Control Board, the Missoula Board of County Commissioners and the Missoula City Council. The Missoula City-County Health Department requests that the State Board of Environmental Review (BER) initiate proceedings Pursuant to MCA 75-2-301 (3) to approve the proposed amendments which become effective upon BER approval.

Enclosed is a packet of information that includes: the proposed amendments; hearings public notice; response to comments; approval documents from the local air board, City and County; evidence of notification and documentation of compliance with MCA 75-2-301 (4).

Let us know if you need any further information.

Sincerely,

Jim Carlson
Environmental Health Director

Missoula City – County
Air Pollution Control Program

Revisions adopted by the:
Missoula City-County Air Pollution Control Board on November 15, 2012
Missoula City Council on February 25, 2013
Missoula Board of County Commissioners on February 25, 2013

To be forwarded to
The Montana Board of Environmental Review for approval

Missoula City–County
Air Pollution Control Program
Proposed Changes

State Board of Environmental Review

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Section 1

Proposed Changes to Missoula City-County Air Pollution Control Program Chapters 4, 6, 7, 8, 9 and 14

PROPOSED MISSOULA CITY-COUNTY AIR POLLUTION CONTROL PROGRAM RULE CHANGES

CHAPTER 4
MISSOULA COUNTY AIR STAGNATION AND EMERGENCY EPISODE AVOIDANCE PLAN

Rule 4.101 - Purpose
This chapter serves a dual purpose. As Missoula County's Air Stagnation Plan it protects the community from significant harm during air stagnation periods and prevents violation of the particulate matter ambient standards. As Missoula County's Emergency Episode Avoidance Plan, its purpose is to prevent high ambient concentrations of regulated air pollutants that may endanger public health and welfare. To both these ends, the regulations of this chapter control emissions from sources within Missoula County when meteorological conditions are not adequate to prevent high ambient concentrations of air pollutants. Planning for air stagnation and emergency episodes assures that emissions reduction is conducted effectively with minimal inconvenience to the sources and the general public.

Rule 4.102 - Applicability
(1) The provisions regarding Stage 1 Air Alerts apply to all persons and sources of air pollution located within Impact Zone M as defined in Rule 2.101(23).

(2) All other provisions of this chapter apply to all persons and sources of air pollution in Missoula County.

(3) The department may call Alerts, Warnings, Emergencies and Crises to be in effect in all or any portion of the county, using available scientific and meteorological data to determine the areas affected by high ambient concentrations of pollutants.

(4) When Alerts are not required, the department may call for voluntary compliance in any or all portions of the county, using available scientific and meteorological data to determine the areas affected by high ambient concentrations of pollutants.

(5) As specified in the 1991 stipulation between the Control Board and the Department of Health and Environmental Sciences (predecessor to DEQ) and agreed upon by the Board of Health and Environmental Sciences (predecessor to the Board of Environmental Review), the provisions of this chapter apply, as described in this Rule, to sources in Missoula County that are permitted by DEQ.

Rule 4.103 - General Provisions
(1) The four air pollution control stages are Stage I Alert, Stage II Warning, Stage III Emergency and Stage IV Crisis. Each stage is associated with thresholds of specific air pollutants. When ambient concentrations of air pollutants as specified in Rule 4.104 exceed a threshold, or in the case of particulate matter, are expected to exceed a threshold, required control activities must be implemented except as allowed by Rule 4.112.

(2) Nothing in this chapter limits the authority of the Control Board or department to act in an emergency situation. The department may act to protect the public from imminent danger caused by any air pollutant. Such action may include but is not limited to verbal orders to cease emission release, or ordering the use of specified procedures in the management of actual or potential toxic air pollution releases resulting from accidents involving the transportation, use, or storage of toxic chemicals or mixtures of chemicals that could result in the release of toxic chemicals.

(3) When in effect, the requirements of this chapter supersede all other regulations under this Program that are less restrictive.

Rule 4.104 - Air Pollution Control Stages
(1) Stage I – ALERT for Particulate Matter
(a) The department may declare a Stage I Alert for particulate matter if it determines using available

scientific and meteorological data that, any of the following conditions occurs. If the department determines that the primary air pollution source is crustal, an alert can be called for the air stagnation zone, rather than all of Impact Zone M:

(i) whenever the ambient concentration of $PM_{2.5}$ meets or exceeds 21 ug/m^3 averaged over an eight hour period; or

(ii) whenever the ambient concentration of PM_{10} exceeds 80 ug/m^3 averaged over an eight hour period.

(b) The department shall declare a Stage I Alert for particulate matter if it determines using available scientific and meterological data, that any of the following conditions occur unless dispersion conditions are expected to improve rapidly. If the department determines that the primary air pollution source is crustal, an alert can be called for the air stagnation zone, rather than all of Impact Zone M:

(i) whenever the ambient concentration of $PM_{2.5}$ meets or exceeds 28 ug/m^3 averaged over an eight hour average; or

(ii) whenever the ambient concentration of $PM_{2.5}$ can reasonably be expected to exceed 35 ug/m^3 averaged over the next 24 hours if a Stage I Alert is not called; or

(iii) whenever the ambient concentration of PM_{10} can reasonably be expected to exceed 150 ug/m^3 averaged over the next 24 hours if a Stage I Alert is not called.

(2) Stage II - WARNING

(a) The department shall declare a Stage II Warning for particulate matter if it determines using available scientific and meterological data, that any of the following conditions occurs unless dispersion conditions are expected to improve rapidly:

(i) whenever the ambient concentration of $PM_{2.5}$ meets or exceeds 35 ug/m^3 for an eight hour average; or

(ii) whenever scientific and meterological data indicate that the 24-hour average $PM_{2.5}$ concentrations will remain at or above 35 ug/m^3 if a Stage II Warning is not called; or

(iii) whenever the ambient concentration of PM_{10} exceeds 150 ug/m^3 averaged over an eight hour period and an Alert is already in effect; or

(iv) whenever the ambient concentration of PM_{10} exceeds 180 ug/m^3 average over an eight hour period and an Alert is not already in effect; or

(v) whenever scientific and meteorological data indicate that the 24 hour average PM_{10} concentrations will remain at or above 150 ug/m^3 if a Stage II Warning is not called.

(b) The department shall declare a Stage II WARNING whenever the ambient concentration of any of the following pollutants listed equals or exceeds the specified levels:

$S0_2$	800 ug/m^3	24-hour average
CO	17 mg/m^3	3-hour average
O_3	400 ug/m^3	1-hour average
NO_2	1130 ug/m^3	1-hour average
NO_2	282 ug/m^3	24-hour average

(3) Stage III – EMERGENCY

The department shall declare a Stage III Emergency whenever the ambient concentration of any of the following pollutants listed equals or exceeds the specified levels:

$PM_{2.5}$	80 ug/m^3	24-hour average
PM_{10}	420 ug/m^3	24-hour average
$S0_2$	1600 ug/m^3	24-hour average
CO	34 mg/m^3	3-hour average
O_3	800 ug/m^3	1-hour average
$N0_2$	2260 ug/m^3	1-hour average
NO_2	565 ug/m^3	24-hour average

(4) Stage IV – CRISIS

The department shall declare a Stage IV CRISIS whenever the ambient concentration of any of the following pollutants listed equals or exceeds the specified levels:

$PM_{2.5}$	135 ug/m^3	24-hour average
PM_{10}	500 ug/m^3	24-hour average

$S0_2$	2100 ug/m^3	24-hour average
CO	46 mg/m^3	8-hour average
O_3	1000 ug/m^3	1-hour average
$N0_2$	3000 ug/m^3	1-hour average
NO_2	750 ug/m^3	24-hour average

(5) Ambient concentrations of pollutants are determined by the department using a reference method, or a device that correlates to a reference method air quality monitor or sampler.

(6) The department shall reduce an air pollution control stage to the appropriate stage when the department determines measurements of the ambient air indicate a corresponding reduction in pollutant levels and available meteorological data indicates that the concentration of such pollutant will not immediately increase again.

Rule 4.105 - Emergency Operations

(1) The department shall prepare an emergency episode operations plan, which includes the following information:

(a) an explanation of ambient air quality surveillance procedures;

(b) a description of how meteorological information is obtained and used during episodes;

(c) provisions for increased monitoring during episodes;

(d) provisions for increased staffing during episodes; and

(e) a communications plan for use during episodes.

Rule 4.106 - Abatement Plan For Certain Sources

(1) Each governmental road department shall have an abatement plan that describes what actions they will take to minimize road dust during air stagnation and emergency episodes. The plans must demonstrate the use of all reasonable measures to reduce road dust along heavily traveled streets and are subject to review and approval by the department.

(2) Each stationary source within Missoula County emitting or capable of emitting twenty-five (25) tons or more of PM_{10}, SO_2, CO, O_3 or NO_2 per year shall have a plan of abatement for reducing emissions of each such pollutant when the ambient concentration of such pollutant equals or exceeds the concentrations set forth in Rule 4.104. The plan, which is subject to review and approval by the department, must sufficiently demonstrate the ability of the source to reduce emissions as required under each stage of the emergency episode avoidance plan.

(3) Within 60 days of notification by the department that new requirements are in effect, a source required by this rule to have an abatement plan shall submit an updated plan to the department for review and approval.

(4) The department may require sources to periodically review and update their abatement plans, and submit them to the department for review and approval.

Rule 4.107 - Enforcement Procedure

(1) If any of the provisions of this chapter are being violated, or if, based on scientific and meteorological data, the Control Board or department has reasonable grounds to believe that there exists in Missoula County a condition of air pollution that requires immediate action to protect the public health or safety, the department or the Control Board or any law enforcement officer acting under the direction of the department or Control Board may order any person or persons causing or contributing to the air pollution to immediately reduce or completely discontinue the emission of pollutants.

(2) The order must specify the provision of the Program being violated and the manner of violation, and must direct the person or persons causing or contributing to the air pollution to reduce or completely discontinue the emission of air pollutants immediately. The order must notify the person to whom it is directed of the right to request a hearing. The order must be personally delivered to the person or persons in violation or

their agent.

(3) If a hearing is requested by a person or persons allegedly in violation of the provisions of this chapter, within 24 hours the department shall fix a time and place for a hearing to be held before the Control Board or a hearings examiner appointed by the Control Board. Not more than 24 hours after the commencement of such hearing, and without adjournment, the Control Board or hearings examiner shall affirm, modify, or set aside the order. A request for a hearing does not stay or nullify an order.

(4) If a person fails to comply with an order issued under this chapter, the department or the Control Board may initiate action under Chapter 15 of this Program.

(5) The right to request a hearing before the Control Board under this chapter does not apply to violations of Chapter 9. Enforcement procedures for violations of Chapter 9 are described in Rule 15.104.

Rule 4.108 - Stage I Alert Control Activities

(1) During a Stage I Alert, the department shall:

(a) advise citizens via public media and the department's Air Pollution Hotline of the actions listed under an Alert, and of medical precautions.

(b) shall suspend outdoor burning.

(c) may require construction companies to take additional effective dust-control action for roads under construction or repair.

(2) During a Stage I Alert, the following general curtailment provisions take effect:

(a) Residential solid fuel burning devices shall comply with the applicable requirements of Chapter 9.

(b) Citizens should limit driving to necessary trips only and should avoid driving on unpaved surfaces such as dirt roads and unpaved shoulders and alleys.

(c) The City, County and State road departments shall take actions appropriate under the prevailing weather conditions to reduce road dust along heavily traveled streets, as described in their abatement plans required by Rule 4.106.

(3) During a Stage I Alert, the following curtailment provisions for stationary sources take effect:

(a) Air pollution control equipment must be used to its maximum efficiency;

(b) Incinerators, except pathological incinerators, air pollution control devices and crematoriums, shall cease operation during an Alert.

(c) Commercial boiler operators should limit manual boiler lancing and soot blowing to between the hours of 12 p.m. and 4 p.m.

(d) A stationary source may not switch to a higher sulfur or ash content fuel unless:

(i) the source has continuous emission reduction equipment for the control of emissions caused by the alternate fuel; or

(ii) the low sulfur or ash content fuel supply has been interrupted by the utility supplying the fuel.

(e) Each stationary source emitting or capable of emitting twenty-five (25) tons or more per year of any pollutant shall implement its abatement plan to reduce emissions during an Alert.

Rule 4.109 - Stage II Warning Control Activities

(1) During a Stage II Warning, the department shall:

(a) advise citizens via public media and the Air Pollution Hotline of the actions described under a Warning, and of medical precautions.

(b) advise the public to eliminate all nonessential driving, and urge citizens to carpool or use non-motorized or public transportation.

(c) inspect operating stationary sources required to implement an abatement plan by Rule 4.106 to ensure compliance with the plan.

(d) notify DEQ so it can initiate notification and communication procedures contained in the Montana Emergency Episode Avoidance Plan (Montana SIP, Chapter 9). However, the department is responsible for notifying state and county permitted sources and the public of requirements under this plan.

(2) During a Stage II Warning, the following general curtailment provisions take effect:
(a) All Alert conditions remain in effect except where Warning steps are more stringent.

(b) Solid fuel burning devices must comply with the applicable requirements of Chapter 9.

(c) For sources other than solid fuel burning devices, a person may not cause, allow or discharge visible emissions from any source unless such source has a State or County operating permit.

(3) During a Stage II Warning, the following curtailment provisions for stationary sources take effect:
(a) All Alert restrictions apply, except where Warning steps are more stringent;

(b) Pathological incinerators and crematoriums must limit operations to the hours between 12:00 p.m. and 4 p.m.;

(c) Commercial boiler operators shall limit manual boiler lancing and soot blowing to between the hours of 12 noon and 4 p.m.;

(d) Each stationary source emitting or capable of emitting twenty-five (25) tons or more per year of any pollutant shall implement its abatement plan to reduce emissions during a Warning using the maximum efficiency of abatement equipment in accordance with that plan.

(e) If so advised by the department, the source shall prepare to take action as advised under the Emergency conditions.

(4) The following additional provisions for stationary sources take effect if a Warning is in effect for any pollutant other than PM_{10} or when ambient PM_{10} levels reach 350 ug/m^3:
(a) The source must show substantial reductions in the emissions of air pollutants by using fuels with low ash and sulfur content;

(b) The source must show substantial reduction of air pollutants from manufacturing operations by curtailing, postponing, or deferring production and all operations;

(c) The source must show maximum reduction of air pollutants by deferring trade waste disposal operations that emit solid particles, gas vapors or malodorous substances; and

(d) The source must show maximum reduction of heat load demands for processing.

Rule 4.110 - Stage III Emergency Control Activities

(1) During a Stage III Emergency, the department shall:
(a) advise citizens via public media and the department's Air Pollution Hotline of the actions described under an Emergency and of medical precautions.

(b) inspect stationary sources required to implement an abatement plan by Rule 4.106 to ensure compliance with the plan.

(c) if conditions continue to worsen, issue a specific advisement that total curtailment under a Crisis condition is possible.

(d) notify DEQ so it can initiate notification and communication procedures contained in the Montana Emergency Episode Avoidance Plan (Montana State Implementation Plan, Chapter 9). However, the

department is responsible for notifying state and county permitted sources and the public of requirements under this plan.

(2) During a Stage III Emergency, the following general curtailment provisions take effect:
(a) All Alert and Warning conditions apply, except where Emergency steps are more stringent.

(b) All nonessential public gatherings should be voluntarily canceled.

(c) Persons driving motor vehicles must reduce operations by use of carpools, non-motorized transportation and public transportation and by eliminating unnecessary driving.

(d) Solid fuel burning devices may not be operated.

(3) During a Stage III Emergency, the following curtailment provisions for stationary sources take effect:
(a) All Warning restrictions remain in effect, except where Emergency steps are more stringent;

(b) Incinerators, except pollution control devices, must cease operation;

(c) For manufacturing industries that require a relatively short lead time for shut down, the source must show elimination of air pollutants from manufacturing operations by ceasing, curtailing, postponing or deferring production and allied operations to the extent possible without causing injury to persons or damage to equipment.

(d) For sources still allowed to operate, a minimum forty percent (40%) reduction in emissions below maximum permissible operating emissions is required, except this requirement does not apply to those sources where the department determines such reductions are not physically possible. For manufacturing operations, the source may have to assume reasonable economic hardship by postponing production and allied operation to meet this reduction;

(e) Each stationary source emitting or capable of emitting twenty-five (25) tons or more per year of any pollutant shall implement its abatement plan to reduce emissions during an Emergency.

Rule 4.111 - Stage IV Crisis Control Activities

(1) During a Stage IV Crisis, the department shall:
(a) inspect stationary sources required to implement an abatement plan by Rule 4.106 to ensure compliance with the plan.

(b) The department will notify DEQ so it can initiate notification and communication procedures contained in the Montana Emergency Episode Avoidance Plan (Montana State Implementation Plan, Chapter 9). However, the department is responsible for notifying state and county permitted sources and the public of requirements under this plan.

(2) During a Stage IV Crisis, the following general curtailment provisions take effect:
(a) All conditions from the Alert, Warning, and Emergency stages apply except where Crisis steps are more stringent.

(b) Only those establishments (e.g., places of employment or business) associated with essential services may remain open. Essential services are news media, medically associated services (hospitals, labs, pharmacies), direct food supply (grocery markets, restaurants), drinking water supply and wastewater treatment, police, fire and health officials and their associated establishments. It is expressly intended that any service not defined as essential cease all business. Depending on the duration and nature of the crisis, the department may add the operation of certain services and facilities to the list of essential services. Examples of businesses and establishments considered nonessential include, but are not limited to: banks (except for supplying funds for essential services), all offices, bars and taverns, laundries, gas stations, barber shops, schools (all levels), repair shops, amusement and recreation facilities, libraries, and city, state and federal offices (except those identified as essential services).

(c) The use of motor vehicles is prohibited except in emergencies with the approval of law enforcement and

the department.

(3) During a Stage IV Crisis, the following curtailment provisions for stationary sources take effect:
(a) Stationary sources shall cease all manufacturing functions, but they may maintain operations necessary to prevent injury to persons or damage to equipment.

(b) Each stationary source emitting or capable of emitting twenty-five (25) tons or more per year of any pollutant shall implement its abatement plan to reduce emissions during a Crisis.

Rule 4.112 – Wildfire Smoke Emergency Episode Avoidance Plan
During wildfire smoke episodes, the department may waive the requirements of 4.~~105~~ 104 – 4.111 only when:

(1) wildfire smoke is the primary source of $PM_{2.5}$ in the airshed; and

(2) the effects on $PM_{2.5}$ levels are insignificant when the requirements are waived.

Rule 4.113 - Contingency Measure~~s~~
Upon notification by the DEQ and EPA that a violation of the 24 hour NAAQS for PM_{10} has occurred, and with departmental determination that solid fuel burning devices are greater than 40% percent of the cause, the department shall conduct extensive nighttime enforcement of the wood burning regulations when a Stage I Alert is declared.

Rule 6.101 – Definitions

For the purpose of this subchapter the following definitions apply:

(1) "Air Quality Permit" or "permit" means a permit issued by the department for the construction, installation, alteration, or operation of any air pollution source. The term includes annual operating and construction permits issued prior to November 17, 2000.

(2) "Commencement of construction" means the owner or operator has either:

(a) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(3) "Construct or Construction" means on-site fabrication, modification, erection or installation of a source or control equipment, including a reasonable period for startup and shakedown.

(4) "Existing Source" means a source or stack associated with a source that is in existence and operating or capable of being operated or that had an air quality permit from the department or the Control Board on March 16, 1979.

(5) "Major Emitting Facility" means a stationary source or stack associated with a source that directly emits, or has the potential to emit, 100 tons per year of any air pollutant, including fugitive emissions, regulated under the Clean Air Act of Montana.

(6) "New or Altered Source" means a source or stack (associated with a source) constructed, installed or altered on or after March 16, 1979.

(7) "Owner or Operator" means the owner of a source or the authorized agent of the owner, or the person who is responsible for the overall operation of the source.

(8) "Portable source" means a source which is not stationary or fixed to a single location, and which is not fully self propelled. The term may include, but is not limited to, portable asphalt plants, portable gravel crushers and portable wood chippers

(89) "Potential to Emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, must be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a source.

(910) "Source" means a "stationary source" as defined by Rule 2.101(4745).

Rule 6.102 – Air Quality Permit Required

(1) A person may not construct, install, alter, operate or use any source without having a valid permit from the department when required by this rule to have a permit.

(2) A permit is required for the following:

(a) any source that has the potential to emit 25 tons or more of any pollutant per year;

(b) Incinerators; asphalt plants; concrete plants; and rock crushers without regard to size;

(c) Solid fuel burning equipment with the heat input capacity of 1,000,000 BTU/hr or more;

(d) A new stack or source of airborne lead pollution with a potential to emit five tons or more of lead per year;

(e) An alteration of an existing stack or source of lead pollution that increases the maximum potential of the source to emit airborne lead by 0.6 tons or more per year.;

(3) A portable source with a Montana Air Quality Permit issued pursuant to the Administrative Rules of Montana Title 17, Chapter 8, subchapter 7 may apply for a Temporary Missoula City-County Air Quality Permit. The department may issue a Temporary Missoula City-County Air Quality Permit to a source if the following conditions are met:

(a) The applicant sends written notice of intent to transfer location to the department. Such notice must include documentation that the applicant has published a notice of the intended transfer in a legal publication in a newspaper of general circulation in the area into which the permit transfer is to be made. The notice must include the statement that the department will accept public comments for fifteen days after the date of publication; and

(b) The applicant has submitted a complete Missoula City-County Air Quality Permit application to the department prior to submitting an application for a Temporary Missoula City-County Air Quality Permit.

(4) A source with a Temporary Missoula City-County Air Quality Permit is subject to the following conditions:

(a) The emission control requirements of the Montana Air Quality Permit issued to the portable source are transferred verbatim, without augmentation, revision, or redaction to the Temporary Missoula City-County Air Quality Permit excluding conditions and addendums specific to PM_{10} nonattainment areas; and

(b) The source may locate and operate in Missoula County after the department has approved the permit transfer; and

(c) A Temporary Missoula City-County Air Quality Permit expires in 180 days or upon completion of the Missoula City-County air quality permitting process required by Rule 6.102(3)(b), whichever occurs first; and

(d) The Department may revoke a Temporary Missoula City-County Air Quality Permit prior to the expiration of the time period set forth in 6.102()(c) if the portable source violates any provision of the Temporary Missoula City-County Air Quality Permit.

~~(3~~5) An air quality permit is not required for the following, except when the Control Board determines an air quality permit is necessary to insure compliance with the NAAQS and other provisions of this Program:

(a) Any major stationary source or modification, as defined in 40 CFR 51.165 or 51.166, which is required to obtain an air quality permit from the MT DEQ in conjunction with ARM Title 17, Chapter 8, Subchapters 8, 9 or 10;

(b) Residential, institutional, and commercial fuel burning equipment of less than l0,000,000 BTU/hr heat input if burning liquid or gaseous fuels, or 1,000,000 BTU/hr input if burning solid fuel;

(c) Residential and commercial fireplaces, barbecues and similar devices for recreational, cooking or heating use;

(d) motor vehicles, trains, aircraft or other such self-propelled vehicles;

(e) agricultural and forest prescription fire activities;

(f) emergency equipment installed in hospitals or other public institutions or buildings for use when the usual sources of heat, power and lighting are temporarily unattainable;

(g) routine maintenance or repair of equipment;

(h) public roads; and

(i) any activity or equipment associated with the planting, production or harvesting of agricultural crops.

(46) A source that is exempt from obtaining an air quality permit by Rule 6.102(3) is subject to all other applicable provisions of this program, including but not limited to those regulations concerning outdoor burning, odors, motor vehicles, fugitive particulate and solid fuel burning devices.

(~~5~~7) A source not otherwise required to obtain an air quality permit may obtain such a permit for the purpose of

establishing federally enforceable limits on its potential to emit.

Rule 6.103 – General Conditions

(1) An air quality permit must contain and permit holders must adhere to the following provisions:

(a) requirements and conditions applicable to both construction and subsequent use including, but not limited to, applicable emission limitations imposed by subchapter 5 of this chapter, the Clean Air Act of Montana and the FCAA.

(b) such conditions as are necessary to assure compliance with all applicable provisions of this Program and the Montana SIP.

(c) a condition that the source shall submit information necessary for updating annual emission inventories.

(d) a condition that the permit must be available for inspection by the department at the location for which the permit is issued.

(e) a statement that the permit does not relieve the source of the responsibility for complying with any other applicable City, County, federal or Montana statute, rule, or standard not contained in the permit.

(2) An air quality permit is valid for five years, unless:

(a) additional construction that is not covered by an existing construction and operating permit begins on the source;

(b) a change in the method of operation that could result in an increase of emissions begins at the source;

(c) the permit is revoked or modified as provided for in Rules 6.108 and 6.109; or

(d) the permit clearly states otherwise.

(3) A source whose permit has expired may not operate until it receives another valid permit from the department.

(4) An air quality permit for a new or altered source expires 36 months from the date of issuance if the construction, installation, or alteration for which the permit was issued is not completed within that time. Another permit is required pursuant to the requirements of this subchapter for any subsequent construction, installation, or alteration by the source.

(5) A new or altered source may not commence operation, unless the owner or operator demonstrates that construction has occurred in compliance with the permit and that the source can operate in compliance with applicable conditions of the permit, provisions of this Program, and rules adopted under the Clean Air Act of Montana and the FCAA and any applicable requirements contained in the Montana SIP.

(6) Commencement of construction or operation under a permit containing conditions is deemed acceptance of all conditions so specified, provided that this does not affects the right of the permittee to appeal the imposition of conditions through the ~~administrative appeals~~Control Board hearing process as provided in Chapter 14.

(7) Having an air quality permit does not affect the responsibility of a source to comply with the applicable requirements of any control strategy contained in the Montana SIP.

Rule 6.104 – Reserved

Rule 6.105 – Air Quality Permit Application Requirements

(1) The owner or operator of a new or altered source shall, not later than 180 days before construction begins, or if construction is not required not later than 120 days before installation, alteration~~,~~ or use begins, submit an application for an air quality permit to the department on forms provided by the department.

(a) An application submitted by a corporation must be signed by a principal executive officer of at

least the level of vice president, or an authorized representative, if that representative is responsible for the overall operation of the source;

(b) An application submitted by a partnership or a sole proprietorship must be signed by a general partner or the proprietor respectively;

(c) An application submitted by a municipal, state, federal or other public agency must be signed by either a principal executive officer, appropriate elected official or other duly authorized employee; and

(d) An application submitted by an individual must be signed by the individual or his or her authorized agent.

(2) The application must include the following:

(a) A map and diagram showing the location of the proposed new or altered source and each stack associated with the source, the property involved, the height and outline of the buildings associated with the new or altered source, and the height and outline of each stack associated with the new or altered source;

(b) A description of the new or altered source including data on maximum design production capacity, raw materials and major equipment components;

(c) A description of the control equipment to be installed;

(d) A description of the composition, volume and temperatures of the effluent stream, including the nature and extent of air pollutants emitted, quantities and means of disposal of collected pollutants, and the air quality relationship of these factors to conditions created by existing sources or stacks associated with the new or altered source;

(e) Normal and maximum operating schedules;

(f) Adequate drawings, blueprints, specifications or other information to show the design and operation of the equipment involved;

(g) Process flow diagrams containing material balances;

(h) A detailed schedule of construction or alteration of the source;

(i) A description of the shakedown procedures and time frames that will be used at the source;

(j) Other information requested by the department that is necessary to review the application and determine whether the new or altered source will comply with applicable provisions of this Program; including but not limited to information concerning compliance with environmental requirements at other facilities;

(k) Documentation showing the city or county zoning office was notified in writing by the applicant that the proposed use requires an air quality permit;

(l) A valid city or county zoning compliance permit for the proposed use;

(3) The department may waive the requirement that any of the above information must accompany a permit application.

(4) When renewing an existing permit, the owner or operator of a source is not required to submit information already on file with the department. However, the department may require additional information to ensure the source will comply with all applicable requirements.

(5) An application for a solid or hazardous waste incinerator must include the information specified in Rule 6.605.

(6) An owner or operator of a new or altered source proposing construction or alteration within any area designated as nonattainment in 40 CFR 81.327 for any regulated air pollutant shall demonstrate that all major emitting facilities located within Montana and owned or operated by such persons, or by an entity controlling, controlled by, or under common control with, such persons, are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable air quality emission limitations and standards contained in ARM Title 17, Chapter 8.

(7) The owner or operator of a new or altered source shall, before construction is scheduled to end as specified in the permit, submit additional information on a form provided by the department. The information to be submitted must include the following:

(a) Any information relating to the matters described in Section (2) of this rule that has changed or is no longer applicable; and

(b) A certification by the applicant that the new or altered source has been constructed in compliance with the permit.

(8) An application is deemed complete on the date the department received it unless the department notifies the applicant in writing within thirty (30) days thereafter that it is incomplete. The notice must list the reasons why the application is considered incomplete and must specify the date by which any additional information must be submitted. If the information is not submitted as required, the application is considered withdrawn unless the applicant requests in writing an extension of time for submission of the additional information. The application is complete on the date the required additional information is received.

Rule 6.106 – Public Review of Air Quality Permit Application

(1) The applicant shall notify the public, by means of legal publication in a newspaper of general circulation in the area affected by the application of its application for an air quality permit. The notice must be published not sooner than ten (10) days prior to submittal of an application nor later than ten (10) days after submittal of an application. The applicant shall use the department's format for the notice. The notice must include:

(a) the name and the address of the applicant;

(b) address and phone number of the premises at which interested persons may obtain further information, may inspect and may obtain a copy of the application;

(c) the date by which the department must receive written public comment on the application. The public must be given at least 30 days from the date the notice is published to comment on the application.

(2) The department shall notify the public of its preliminary determination by means of legal publication in a newspaper of general circulation in the area affected by the application and by sending written notice to any person who commented on the application during the initial 30-day comment period. Each notice must specify:

(a) whether the department intends on issuing, issuing with conditions, or denying the permit;

(b) address and phone number of the premises at which interested persons may obtain further information, may inspect and may obtain a copy of the proposed permit;

(c) the date by which the department must receive written public comment on the application. The public must be given at least 15 days from the date the notice is published to comment on the application.

(3) A person who has submitted written comments and who is adversely affected by the department's final decision may request, in writing, ~~an administrative review~~a hearing before the Control Board within fifteen (15) days after the department's final decision. The request for hearing must state specific grounds why the permit should not be issued, should be issued, or why it should be issued with particular conditions. Department receipt of a request for a hearing postpones the effective date of the department's decision until the conclusion of the ~~administrative appeals~~hearing process.

(4) Permit renewals are subject to this rule.

Rule 6.107 – Issuance or Denial of an Air Quality Permit

(1) A permit may not be issued to a new or altered source unless the applicant demonstrates that the source:

(a) can be expected to operate in compliance with:

(i) the conditions of the permit,

(ii) the provisions of this Program;

(iii) rules adopted under the Clean Air Act of Montana) and the FCAA.; and

(iv) any applicable control strategies contained in the Montana SIP.

(b) will not cause or contribute to a violation of a Montana or NAAQS.

(2) An air quality permit for a new or altered source may be issued in an area designated as nonattainment in 40 CFR 81.327 only if the applicable SIP approved in 40 CFR Part 52, Subpart BB is being carried out for that nonattainment area.

(3) The department shall make a preliminary determination as to whether the air quality permit should be issued or denied within forty (40) days after receipt of a completed application.

(4) The department shall notify the applicant in writing of its final decision within sixty (60) days after receipt of the completed application.

(5) If the department's final decision is to issue the air quality permit, the department may not issue the permit until:

(a) fifteen (15) days have elapsed since the final decision and no request for ~~an administrative review~~a hearing before the Control Board has been received; or

(b) the end of the ~~administrative review~~Control Board Hearing process as provided for in Chapter 14, if a request for ~~an administrative review~~a Control Board Hearing was received.

(6) If the department denies the issuance of an air quality permit it shall notify the applicant in writing of the reasons why the permit is being denied and advise the applicant of his or her right to request ~~an administrative review~~a hearing before the Control Board within fifteen (15) days after receipt of the department's notification of denial of the permit.

Rule 6.108 – Revocation or Modification of an Air Quality Permit

(1) An air quality permit may be revoked for any violation of:

(a) A condition of the permit;

(b) A provision of this Program;

(c) An applicable regulation, rule or standard adopted pursuant to the FCAA;

(d) A provision of the Clean Air Act of Montana; or

(f) any applicable control strategies contained in the Montana SIP.

(2) An air quality permit may be modified for the following reasons:

(a) Changes in any applicable provisions of this Program adopted by the Control Board, or rules adopted under the Clean Air Act of Montana;

(b) Changed conditions of operation at a source that do not result in an increase of emissions

(c) When the department or Control Board determines modifications are necessary to insure compliance with the provisions of this Program or an implementation plan approved by the Control Board.

(3) The department shall notify the permittee in writing of its intent to revoke or modify the permit. The permit is deemed revoked or modified in accordance with the department's notice unless the permittee makes a written request for ~~an administrative review~~a hearing before the Control Board within fifteen (15) days of receipt of the department's notice. Departmental receipt of a written request initiates the appeals process outlined in Chapter 14 of this Program and postpones the effective date of the department's decision to revoke or modify the permit until the conclusion of the ~~administrative appeals~~hearing process.

Rule 6.109 – Transfer of Permit

(1) An air quality permit may not be transferred from one location to another or from one piece of equipment

to another, except as allowed in (2) of this rule.

(2) An air quality permit may be transferred from one location to another if:

(a) written notice of intent to transfer location is sent to the department, along with documentation that the permittee has published notice of the intended transfer by means of a legal publication in a newspaper of general circulation in the area to which the transfer is to be made. The notice must include the statement that public comment will be accepted by the department for fifteen days after the date of publication;

(b) the source will operate in the new location for a period of less than one year; and

(c) the source is expected to operate in compliance with:

(i) this Program;

(ii) the standards adopted pursuant to the Clean Air Act of Montana, including the Montana ambient air quality standards;

(iii) applicable regulations and standards promulgated pursuant to the FCAA, including the NAAQS; and

(iv) any control strategies contained in the Montana state implementation plan.

(d) the source has a valid city or county zoning compliance permit for the proposed use at the new location; and

(e) the source pays the transfer fee listed in Attachment A.

(3) An air quality permit may be transferred from one person to another if written notice of intent to transfer, including the names of the transferor and the transferee, is sent to the department.

(4) The department will approve or disapprove a permit transfer within 30 days after receipt of a complete notice of intent as described in (2) or (3) of this rule.

Subchapters 2, 3, 4 – *reserved*

Subchapter 5 – Emission Standards

Rule 6.501 – Emission Control Requirements

(1) For the purpose of this rule, Best Available Control Technology (BACT)" means an emission limitation (including a visible emission standard), based on the maximum degree of reduction for each pollutant subject to regulation under the FCAA or the Clean Air Act of Montana, that would be emitted from any proposed stationary source or modification that the department, on a case by case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event may application of BACT result in emission of any pollutant that would exceed the emissions allowed by any applicable standard under Rules 6.506 or 6.507. If the department determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice or operational standard or combination thereof, to require the application of BACT. Such standard must, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation and must provide for compliance by means which achieve equivalent results.

(2) The owner or operator of a new or altered source for which an air quality permit is required by subchapter 1 of this Chapter shall install on that source the maximum air pollution control capability that is technically practicable and economically feasible, except that:

(a) best available control technology must be used; and

(b) the lowest achievable emission rate must be met when required by the FCAA.

(3) The owner or operator of any air pollution source for which an air quality permit is required by subchapter 1 of this Chapter shall operate all equipment to provide the maximum air pollution control for which it was designed.

(4) The department may establish emission limits on a source based on an approved state implementation plan or maintenance plan to keep emissions with in a budget.

Rule 6.502 – Particulate Matter from Fuel Burning Equipment

(1) For the purpose of this rule "new fuel burning equipment" means any fuel burning equipment constructed or installed after November 23, 1968.

(2) The following emission limits apply to solid fuel burning equipment constructed or installed after May 14, 2010 with a heat input capacity from 1,000,000 BTU/hr up to and including 10,000,000 BTU/hr.

(a) Inside the Air Stagnation Zone, solid fuel burning equipment must meet LAER and a person may not cause or allow particulate matter emissions in excess of 0.1 pounds per million BTU heat input to be discharged from any stack, opening or chimney into the atmosphere.

(b) Outside the Air Stagnation Zone, solid fuel burning equipment must meet BACT and a person may not cause or allow particulate matter emissions in excess of 0.20 lbs per million BTU heat input to be discharged from any stack, opening or chimney into the atmosphere.

(3) For devices or operations not covered in Rule 6.502(2), a person may not cause or allow particulate matter caused by the combustion of fuel to be discharged from any stack or chimney into the atmosphere in excess of the hourly rates set forth in the following table:

Heat Input (million BTUs/hr)	Maximum Allowable Emissions of Particulate Matter (lbs/million BTU's)	
	Existing Fuel Burning Equipment	New Fuel Burning Equipment
≤ 10	0.60	0.60
100	0.40	0.35
1,000	0.28	0.20
≥ 10,000	0.19	0.12

(4) For a heat input between any two consecutive heat inputs stated in the preceding table, maximum allowable emissions of particulate matter are shown for existing fuel burning equipment on Figure 1 and for new fuel burning equipment on Figure 2. For the purposes hereof, heat input is calculated as the aggregate heat content of all fuels (using the upper limit of their range of heating value) whose products of combustion pass through the stack or chimney.

(5) When two or more fuel burning units are connected to a single stack, the combined heat input of all units connected to the stack may not exceed that allowable for the same unit connected to a single stack.

(6) This rule does not apply to:

(a) emissions from residential solid fuel combustion devices, such as fireplaces and wood and coal stoves with heat input capacities less than 1,000,000 BTU per hour; and

(b) new stationary sources subject to Rule 6.506 for which a particulate emission standard has been promulgated.

FIGURE 1
Maximum Emission of Particulate Matter from Existing Fuel Burning Installations

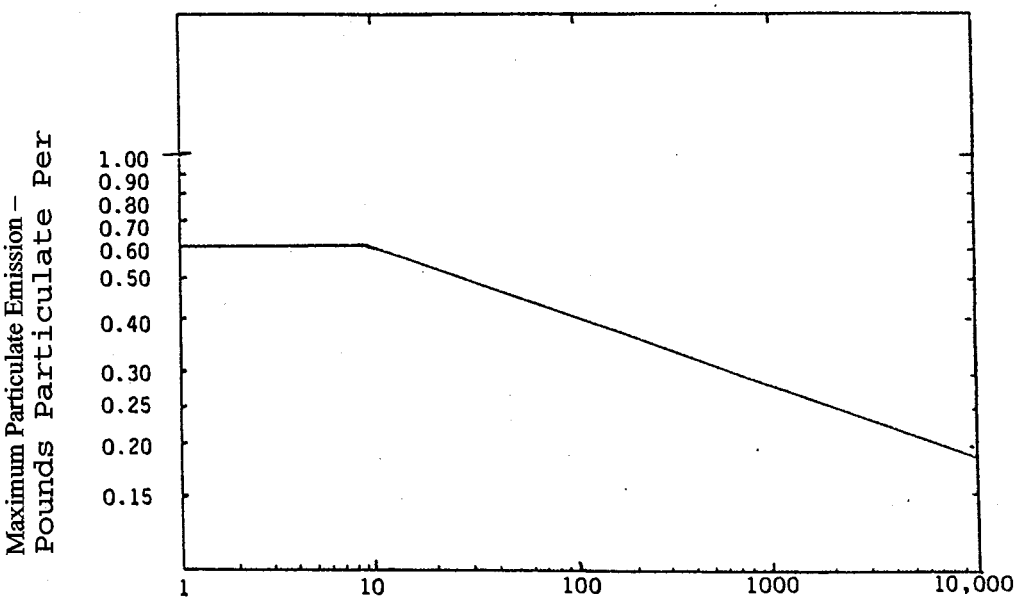
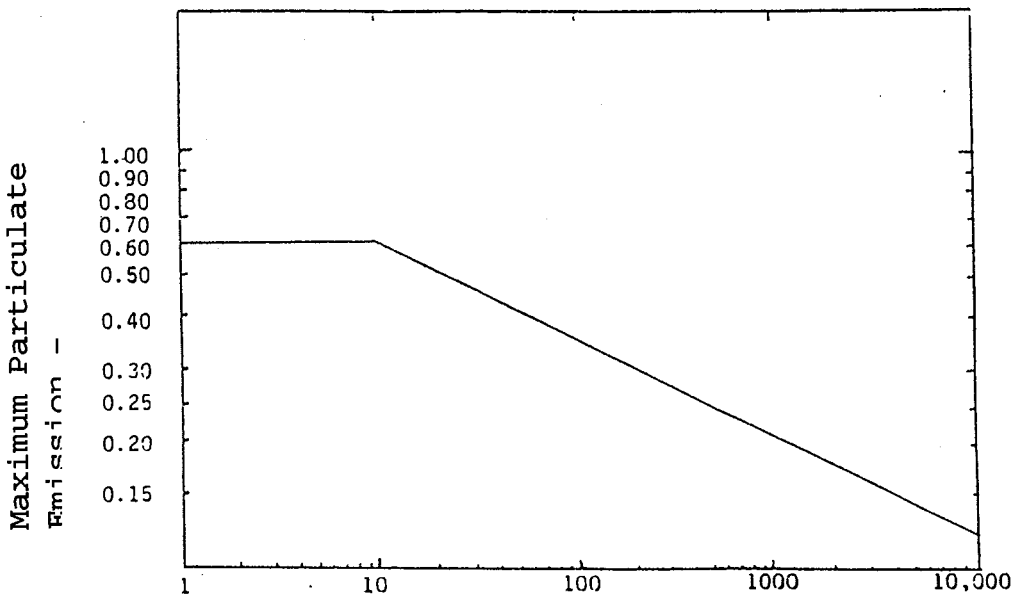


FIGURE 2
Maximum Emission of Particulate Matter from New Fuel Burning Installations



Rule 6.503 – Particulate Matter from Industrial Processes

(1) A person may not cause or allow particulate matter in excess of the amount shown in the following table to be discharged into the outdoor atmosphere from any operation, process or activity.

Process (lb/hr)	Weight Rate (tons/hr)	Rate of Emission (lb/hr)
100	0.0	0.551
200	0.10	0.877
400	0.20	1.40
600	0.30	1.83
800	0.40	2.22
1,000	0.50	2.58
1,500	0.75	3.38
2,000	1.00	4.10
2,500	1.25	4.76
3,000	1.50	5.38
3,500	1.75	5.96
4,000	2.00	6.52
5,000	2.50	7.58
6,000	3.00	8.56
7,000	3.50	9.49
8,000	4.00	10.4
9,000	4.50	11.2
10,000	5.00	12.0
12,000	6.00	13.6
16,000	8.00	16.5
18,000	9.00	17.9
20,000	10.00	19.2
30,000	15.00	25.2
40,000	20.00	30.5
50,000	25.00	35.4
60,000	30.00	40.0
70,000	35.00	41.3
80,000	40.00	42.5
90,000	45.00	43.6
100,000	50.00	44.6
120,000	60.00	46.3
140,000	70.00	47.8
160,000	80.00	49.0
200,000	100.00	51.2
1,000,000	500.00	69.0
2,000,000	1,000.00	77.6
6,000,000	3,000.00	92.7

(2) When the process weight rate falls between two values in the table, or exceeds 3,000 tons per hour, the maximum hourly allowable emissions of particulate are calculated using the following equations:

(a) for process weight rates up to 60,000 pounds per hour:

$$E = 4.10\ P^{0.67}$$

(b) for process weight rates in excess of 60,000 pounds per hour:

$$E = 55.0\ P^{0.11} - 40$$

Where E = rate of emission in pounds per hour and P = process weight rate in tons per hour.

(3) This rule does not apply to particulate matter emitted from:

(a) the reduction cells of a primary aluminum reduction plant,

(b) those new stationary sources listed in Rule 6.506 for which a particulate emission standard has been promulgated,

(c) fuel burning equipment, and

(d) incinerators.

Rule 6.504 – Visible Air Pollutants

(1) A person may not cause or allow emissions that exhibit an opacity of forty percent (40%) or greater averaged over six consecutive minutes to be discharged into the outdoor atmosphere from any source installed on or before November 23, 1968, the provisions of this rule do not apply to transfer of molten metals or emissions from transfer ladles.

(2) A person may not cause or authorize emissions to be discharged into the outdoor atmosphere from any source installed after November 23, 1968, that exhibit an opacity of twenty percent (20%) or greater averaged over six consecutive minutes.

(3) During the building of new fires, cleaning of grates, or soot blowing, the provisions of Sections (1) and (2) apply, except that a maximum average opacity of sixty percent (60%) is permissible for not more than one four minute period in any 60 consecutive minutes. Such a four-minute period means any four consecutive minutes.

(4) This rule does not apply to emissions from:

(a) wood-waste burners;

(b) incinerators;

(c) motor vehicles;

(d) those new stationary sources listed in ARM 17.8.340 for which a visible emission standard has been promulgated; or

(e) residential solid-fuel burning devices.

Rule 6.505 – Fluoride Emissions

(1) A person may not cause or allow to be discharged into the outdoor atmosphere from any phosphate rock or phosphorate processing equipment or equipment used in the production of elemental phosphorous, enriched phosphates, phosphoric acid, defluorinated phosphates, phosphate fertilizers or phosphate concentrates or any equipment used in the processing of fluorides or wastewater enriched flourides, in a gaseous or particulate form or any combination of gaseous or particulate forms in excess of 0.3 pounds per ton of P_2O_5 (phosphorous pentoxide) introduced into the process of any calcining, nodulizing, defluorinating or acidulating process or any combination of the foregoing, or any other process, except aluminum reduction, capable of causing a release of fluorides in the form or forms indicated in this rule.

(2) Pond emissions:

(a) A person may not cause or allow fluorides in excess of 108 micrograms per square centimeter per 28 days (µg/cm2/28 days) to be released into the outdoor atmosphere from any storage pond, settling basin, ditch, liquid holding tank or other liquid holding or conveying device from operations outlined in Section (1). The concentration of fluorides is to be determined using the calcium formate paper method. Papers must be exposed in a standard Montana Box located not less than 18 inches or more than 48 inches above the level of the liquid in the devices herein enumerated and not more than 16 inches laterally from the liquid's edge. Other locations may be permitted if approved by the department.

(b) At least four such sampling stations must be placed at locations designated by the department. Two or more calcium formate papers, as designated by the department, must be exposed in the

standard Montana Box for a period designated by the department. Regardless of the duration of the sampling period, the values determined must be corrected to 28 days.

(c) A minimum of two calcium formate papers for each sampling period from each sample box must be provided to the department, if requested, within ten days from the date of the request.

(3) Preparation, exposure and analysis:

(a) Preparation of calcium formate papers:

(i) Soak Whatman #2, 11 cm. filter papers in a 10 percent solution of calcium formate for five minutes.

(ii) Dry in a forced air oven at 80°C. Remove immediately when dryness is reached.

(b) Exposure of calcium formate papers:

(i) Two papers, or more, if directed, are suspended in a standard Montana Box on separate hangers at least two inches apart.

(ii) Exposure must be for 28 days + 3 days unless otherwise indicated by the department.

(iii) Calcium formate papers must be kept in an air tight container both before and after exposure until the time of analysis.

(c) Analysis of calcium formate papers is adapted from Standard Methods for the Examination of Water and Waste Water; using Willard-Winter perchloric acid distillations and the Spadns-Zirconium Lake method for fluoride determination.

Rule 6.506 – New Source Performance Standards

(1) For the purpose of this rule, the following definitions apply:

(a) "Administrator", as used in 40 CFR Part 60, means the department, except in the case of those duties that cannot be delegated to the local program by the state and the EPA, in which case "administrator" means the administrator of the EPA.

(b) "Stationary source" means any building, structure, facility, or installation that emits or may emit any air pollutant subject to regulation under the Federal Clean Air Act.

(2) The terms and associated definitions specified in 40 CFR 60.2, apply to this rule, except as specified in subsection (1)(a) above.

(3) The owner and operator of any stationary source or modification, as defined and applied in 40 CFR Part 60, shall comply with the standards and provisions of 40 CFR Part 60.

(4) For the purpose of this rule, the Control Board hereby adopts and incorporates by reference 40 CFR Part 60, which pertains to standards of performance for new stationary sources and modifications.

Rule 6.507 – Hazardous Air Pollutants

(1) For the purpose of this rule, the terms and associated definitions specified in 40 CFR 61.02 apply, except that:

(a) "Administrator", as used in 40 CFR Part 61, means the department, except in the case of those duties that cannot be delegated to the local program by the state and the EPA in which case "administrator" means the administrator of the EPA.

(2) The owner or operator of any existing or new stationary source, as defined and applied in 40 CFR Part 61, shall comply with the standards and provisions of 40 CFR Part 61.

(3) For the purpose of this rule, the Control Board hereby adopts and incorporates by reference 40 CFR Part 61, which pertains to emission standards for hazardous air pollutants.

Rule 6.508 – Hazardous Air Pollutants for Source Categories

(1) For this rule, the following definitions apply:

(a) "112(g) exemption" means a document issued by the department on a case-by-case basis, finding that a major source of HAP meets the criteria contained in 40 CFR 63.41 [definition of "construct a major source", (2)(i) through (vi)], and is thus exempt from the requirements of 42 USC 7412(g).

(b) "Beginning actual construction" means, in general, initiation of physical on-site construction activities of a permanent nature. Such activities include, but are not limited to, installing building supports and foundations, laying underground pipework, and constructing permanent storage structures.

(c) "Construct a major source of HAP" means:

(i) to fabricate, erect, or install a major source of HAP; or

(ii) to reconstruct a major source of HAP, by replacing components at an existing process or production unit that in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, whenever:

(A) the fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable process or production unit; and

(B) it is technically and economically feasible for the reconstructed major source to meet the applicable MACT emission limitation for new sources established under 40 CFR 63 subpart B.

(d) "Greenfield site" means a contiguous area under common control that is an undeveloped site.

(e) "MACT standard" means a standard that has been promulgated pursuant to 42 USC 7412(d), (h), or (j).

(f) "Major source of HAP" means:

(i) at any greenfield site, a stationary source or group of stationary sources that is located within a contiguous area and under common control and emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP; or

(ii) at any developed site, a new process or production unit which in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP.

(g) "Maximum achievable control technology" or "MACT" means the emission limitation that is not less stringent than the emission limitation achieved in practice by the best controlled similar source, and that reflects the maximum degree of reduction in emissions that the department, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by the constructed or reconstructed major source of HAP.

(h) "Notice of MACT approval" means a document issued by the department containing all federally enforceable conditions necessary to enforce MACT or other control technologies such that the MACT emission limitation is met.

(i) "Process or production unit" means any collection of structures and/or equipment, that processes, assembles, applies or otherwise uses material inputs to produce or store an intermediate or final product. A single facility may contain more than one process or production unit.

(2) The owner or operator of any affected source, as defined and applied in 40 CFR Part 63, shall comply with the requirements of 40 CFR 63, incorporated by reference in this rule. All references in 40 CFR 63, Subpart B to "permitting authority" refers to the department.

(3) Any owner or operator who constructs a major source of HAP is required to obtain from the department a notice of MACT approval or a 112(g) exemption pursuant to this rule, prior to beginning actual construction, unless:

(a) the major source has been specifically regulated or exempted from regulation under a MACT standard issued pursuant to 42 USC 7412(d), (h) or (j) and incorporated into 40 CFR Part 63;

(b) the owner or operator of the major source has already received all necessary air quality permits for such construction as of (the effective date of this rule); or

(c) the major source has been excluded from the requirements of 42 USC 7412(g) under 40 CFR 63.40(c), (e) or (f).

(4) Unless granted a 112(g) exemption under (6) below, at least 180 days prior to beginning actual construction, an owner or operator who constructs a major source of HAP shall apply to the department for a notice of MACT approval. The application must be made on forms provided by the department, and must include all information required under 40 CFR 63.43(e).

(5) When acting upon an application for a notice of MACT approval, the department shall comply with the principles of MACT determination specified in 40 CFR 63.43(d).

(6) The owner or operator of a new process or production unit that in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, may apply to the department for a 112(g) exemption, if the process or production unit meets the criteria contained in 40 CFR 63.41 [definition of "construct a major source" (2)(i) through (vi)]. Application must be made on forms provided by the department, at least 180 days prior to beginning actual construction. The application must include such information as may be necessary to demonstrate that the process of production unit meets the criteria referenced herein.

(7) As further described below, and except as expressly modified by this rule, the procedural requirements of Chapter 6, subchapter 1 apply to an application for a notice of MACT approval or 112(g) exemption. For the purpose of this rule:

(a) all references in applicable provisions of Chapter 6, subchapter 1 to "permit", or "air quality permit" mean "notice of MACT approval" or "112(g) exemption," as appropriate;

(b) all references in applicable provisions of Chapter 6, subchapter 1 to "new or altered source" mean "major source of HAP."

(8) The following rules govern the application, review and final approval or denial of a notice of MACT approval or 112 (g) exemption: Rules 5.112, 6.103(2), 6.103(4)-(7), 6.106, 6.107(1) and 6.107(6);

(9) The department shall notify the applicant in writing of any final approval or denial of an application for a notice of MACT approval or 112(g) exemption.

(10) A notice of MACT approval must contain the elements specified in 40 CFR 63.43(g). The notice expires if fabrication, erection, installation or reconstruction has not commenced within 18 months of issuance, except that the department may grant an extension which may not exceed an additional 12 months.

(11) An owner or operator of a major source of HAP that receives a notice of MACT approval or a 112(g) exemption from the department shall comply with all conditions and requirements contained in the notice of MACT approval or 112(g) exemption.

(12) If a MACT standard is promulgated before the date an applicant has received a final and legally effective determination for a major source of HAP subject to the standard, the applicant shall comply with the promulgated standard.

(13) The department may revoke a notice of MACT approval or 112(g) exemption if it determines that the notice or exemption is no longer appropriate because a MACT standard has been promulgated. In pursuing revocation, the department shall follow the procedures specified in Rule 6.108. A revocation under this section may not become effective prior to the date an owner or operator is required to be in compliance with a MACT standard, unless the owner or operator agrees in writing otherwise.

Subchapter 6 – Incinerators

Rule 6.601 – Minimum Standards

(1) A person may not cause or authorize to be discharged into the outdoor atmosphere from any incinerator, particulate matter in excess of 0.10 grains per standard cubic foot of dry flue gas, adjusted to twelve percent (12%) carbon dioxide and calculated as if no auxiliary fuel had been used.

(2) A person may not cause or authorize to be discharged into the outdoor atmosphere from any incinerator emissions that exhibit an opacity of ten percent (10%) or greater averaged over six consecutive minutes.

(3) An incinerator may not be used to burn solid or hazardous waste unless the incinerator is a multiple chamber incinerator or has a design of equal effectiveness approved by the department prior to installation or use.

(4) The department or Control Board shall place additional requirements on the design, testing and operation of incinerators constructed after March 20, 1992. This requirement does not apply to incinerators that burn paper waste or function as a crematorium or are in compliance with Lowest Achievable Emission Rate as defined in Rule 2.101(~~24~~25) for all regulated air pollutants.

Rule 6.602 – Hours of Operation

(1) The department may, for purposes of evaluating compliance with this rule, direct that a person may not operate or authorize the operation of any incinerator at any time other than between the hours of 8:00 AM and 5:00 PM, except that incinerators that burn only gaseous materials will not be subject to this restriction.

(2) When the operation of incinerators is prohibited by the department, the owner or operator of the incinerator shall store the solid or hazardous waste in a manner that will not create a fire hazard or arrange for the removal and disposal of the waste in a manner consistent with ARM Title 17, Chapter 50, Subchapter 5.

Rule 6.603 – Performance Tests

(1) The provisions of this chapter apply to performance tests for determining emissions of particulate matter from incinerators. All performance tests must be conducted while the affected facility is operating at or above the maximum refuse charging rate at which such facility will be operated and the material burned must be representative of normal operation and under such other relevant conditions as the department shall specify based on representative performance of the affected facility. Test methods set forth in 40 CFR, Part 60, or equivalent methods approved by the department must be used.

Rule 6.604 – Hazardous Waste Incinerators

Effective March 20, 1992, a new permit may not be issued to incinerate hazardous wastes as listed in ARM Title 17, Chapter 54, Subchapter 3, inside the Air Stagnation Zone.

Rule 6.605 – Additional Air Quality Permit Requirements

(1) In addition to the permitting requirements of Chapter 6, subchapter 1, an application for an air quality permit for a solid or hazardous waste incinerator must include the following:

(a) A human health risk assessment protocol (hereafter "protocol") detailing the human health risk assessment procedures; and

(b) A human health risk assessment (hereafter "assessment") that shows that ambient concentrations of pollutants from emissions constitute no more than a negligible risk to the public health, safety, and welfare and to the environment.

(2) The protocol must include, at a minimum, methods used in compiling the emission inventory, ambient dispersion models and modeling procedures used, toxicity values for each pollutant, exposure pathways and assumptions, any statistical analysis applied and any other information necessary for the department to review the adequacy of the assessment.

(3) The assessment must include, at a minimum, the following:

(a) a list of potential emissions of all pollutants specified in the federal Clean Air Act Hazardous Air

Pollutants List (as defined in section 112(b) of the FCAA) from the following sources;

(i) emitting unit(s) to be permitted;

(ii) existing incineration unit(s) at the facility;

(iii) new or existing emitting units solely supporting any incineration unit at the facility (such as fugitive emissions from fuel storage); and

(iv) existing units that partially support the incineration unit if the type or amount of any emissions under an existing permit will be changed. If an existing emitting unit, wholly or partially supporting the incineration facility, increases the types or amount of its emissions, so that a permit alteration is required, that portion of the emissions increase attributable to the support of the incineration facility must be considered in the human health risk assessment.

(b) a characterization of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from any existing emission source at the facility; and

(c) an assessment of impacts of all pollutants inventoried in (a) above, except pollutants may be excluded if the department determines that exposure from inhalation is the only appropriate pathway to consider and if:

(i) the potential to emit the pollutant is less than 1.28×10^{-13} grams per second; the source has a stack height of at least 2 meters, a stack velocity of at least 0.645 meters per second, and a stack exit temperature of at least 800°F; and the stack is at least 5 meters from the property boundary; or

(ii) the ambient concentrations of the pollutants (calculated using the potential to emit; enforceable limits or controls may be considered) are less than the levels specified in ARM 17.8.770 (See Tables 1 and 2 in Appendix C).

(4) The assessment must address risks from all appropriate pathways. Incineration facilities that do not emit or emit only minute amounts of hazardous air pollutants contained in Tables 3 or 4 in Appendix C need only address impact from the inhalation exposure pathway and may use a department supplied screening model to assess human health risk.

(5) The assessment must be performed in accordance with accepted human health risk assessment practices, or state or federal guidelines in effect when the assessment is performed, and must address impacts on sensitive populations. The human health risk must be calculated using the source's potential to emit. Enforceable limits or controls may be considered. The department may approve alternative procedures if site-specific conditions warrant.

(6) The department may impose additional requirements for the assessment, on a case-by-case basis, if the department reasonably determines that the type or amount of material being incinerated, the proximity to sensitive populations, short-term emissions variations, acute health impact, or the local topographical or ventilation conditions require a more detailed assessment to adequately define the potential public health impact. Additional requirements for the assessment may include, but are not limited to, specific emission inventory procedures for determining emissions from the incineration facility, requiring use of more sophisticated air dispersion models or modeling procedures and consideration of additional exposure pathways.

(7) The department shall include a summary of the protocol in the permit analysis. The summary must clearly define the scope of the assessment, must describe the exposure pathways used and must specify any pollutants identified in the emission inventory that were not required to be included in the assessment. The summary must also state whether, and to what extent, the impacts of existing emissions, or the synergistic effect of combined pollutants, were considered in the final human health risk level calculated to determine compliance with the negligible risk standard. The summary must also state that environmental effects unrelated to human health were not considered in determining compliance with the negligible risk standard, but were evaluated in determining compliance with all applicable rules or requirements requiring protection of public health, safety and welfare and the environment.

Subchapter 7 – Wood Waste Burners

Rule 6.701 – Opacity Limits

A person may not cause or authorize to be discharged into the outdoor atmosphere from any wood-waste burner any emissions that exhibit an opacity of twenty percent (20%) or greater averaged over six (6) consecutive minutes. The provisions of this section may not be exceeded for more than sixty (60) minutes in eight consecutive hours for building of fires in wood-waste burners.

Rule 6.702 – Operation

(1) A thermocouple and a recording pyrometer or other temperature measurement and recording device approved by the department must be installed and maintained on each wood-waste burner. The thermocouple must be installed at a location near the center of the opening for the exit gases, or at another location approved by the department.

(2) A minimum temperature of 700°F must be maintained during normal operation of all wood-waste burners. A normal start-up period of one (1) hour is allowed during which the 700°F minimum temperature does not apply. The burner must maintain 700°F operating temperature until the fuel feed is stopped for the day.

(3) The owner or operator of a wood-waste burner shall maintain a daily written log of the wood-waste burner's operation to determine optimum patterns of operations for various fuel and atmospheric conditions. The log must include, but not be limited to, the time of day, draft settings, exit gas temperature, type of fuel, and atmospheric conditions. The log or a copy of it must be submitted to the department within ten (10) days after it is requested.

Rule 6.703 – Fuels

(1) A person may not use a wood-waste burner for the burning of other than normal production process wood-waste transported to the burner by continuous flow conveying methods.

(2) Materials that cannot be disposed of through outdoor burning, as specified in Rule 7.103 (1), (2), (4) and (5), may not be burned in a wood-waste burner.

CHAPTER 7
OUTDOOR BURNING

Rule 7.101 - Definitions
For the purpose of this subchapter the following definitions apply:

(1) "Airshed Group" means the Montana-Idaho Interstate Airshed Group.

(2) "Best Available Control Technology (BACT)" means those methods of controlling pollutants from an outdoor burning source that limit emissions to the maximum degree achievable, as determined by the department on a case-by-case basis taking into account impacts on energy use, the environment, and the economy, as well as other costs, including cost to the source. Such methods may include the following: burning during seasons and periods of good or excellent ventilation, using dispersion forecasts and predictive modeling to minimize smoke impacts, limiting the amount of burning at any one time, using burning techniques that minimize smoke production, minimizing dirt in piles and minimizing moisture content of target fuels, ensuring adequate air to fuel ratios, prioritizing burns as to air quality impact and assigning control techniques accordingly, and promoting alternative uses of materials to be burned. BACT includes but is not limited to following all conditions of the outdoor burning permits and all restrictions listed on the outdoor burning hotlines maintained by the department. For members of the Airshed Group, BACT includes but is not limited to following all restrictions called by the Monitoring Unit and DEQ.

(3) "Bonfire" means a fire, generally larger than two feet in diameter, conducted for a festival or by a school, a non-profit organization, a government entity, an association or religious organization for the purpose of celebrating a particular organization-related event.

(4) "Christmas Tree Waste" means wood waste from commercially grown Christmas trees left in the field where the trees were grown, after harvesting and on-site processing.

(5) "Essential Agricultural Outdoor Burning" means any outdoor burning conducted on a farm or ranch to:
(a) eliminate excess vegetative matter from an irrigation ditch when no reasonable alternative method of disposal is available;

(b) eliminate excess vegetative matter from cultivated fields when no reasonable alternative method of disposal is available;

(c) improve range conditions when no reasonable alternative method is available; or

(d) improve wildlife habitat when no reasonable alternative method is available.

(6) "Impact Zone M" means the area defined by:
T11N R17W Sections 1 through 6, 7 through 11, 17 through 18;
T11N R18W Sections 4 through 8, 17 through 20, 30 through 33;
T11N R19W Sections 1 through 36;
T11N R20W Sections 1 through 18, 20 through 29, 32 through 36;
T11N R21W Sections 1 through 13
T11N R22W Sections 1, 2, 11, 12;
T12N R16W Sections 18 through 20, 29 through 32;
T12N R17W Section 2 through 11, 13 through 36;
T12N R18W Sections 1 through 26, 28 through 33, 36;
T12N R19W Sections 1 through 36;
T12N R20W Sections 1 through 36;
T12N R21W Sections 1 through 36;
T12N R22W Sections 1, 2, 11 through 14, 23 through 26, 35, 36;
T13N R16W Sections 6,7;
T13N R17W Sections 1 through 12, 15 through 21, 28 through 33;
T13N R18W Sections 1 through 36;
T13N R19W Sections 1 through 36;
T13N R20W Sections 1 through 36;
T13N R21W Sections 1 through 36;

T13N R22W Sections 1, 2, 11 through 14, 24, 25, 36;
T14N R16W Sections 18, 19, 30, 31;
T14N R17W Sections 5 through 8, 13 through 36;
T14N R18W Sections 1 through 36;
T14N R19W Sections 1 through 36;
T14N R20W Sections 1 through 36;
T14N R21W Sections 1 through 36;
T14N R22W Sections 1, 2, 11 through 14, 22 through 27, 34 through 36;
T15N R18W Sections 7 through 11, 14 through 23, 26 through 35;
T15N R19W Sections 7 through 36;
T15N R20W Sections 7 through 36;
T15N R21W Sections 9 through 16, 20 through 36;
T15N R22W Section 36; as shown on the map in Appendix A.

(7) "Major Outdoor Burning Source" means any person conducting outdoor burning that within Missoula County will emit more than 500 tons per calendar year of carbon monoxide or 50 tons per calendar year of any other pollutant regulated under this Program, except hydrocarbons.

(8) "Minor Outdoor Burning Source" means any person conducting outdoor burning that is not a major outdoor burning source.

(9) "Outdoor Burning" means combustion of material outside with or without a receptacle, with the exception of small recreational fires burning clean wood, construction site heating devices using liquid or gaseous fuels to warm workers or equipment, safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, or burning in a furnace, multiple chamber incinerator or wood waste burner.

(10) "Prescribed Wildland Outdoor Burning" means any planned outdoor burning, either deliberately or naturally ignited, that is conducted on forest land or relatively undeveloped rangeland to:
(a) improve wildlife habitat;

(b) improve range conditions;

(c) promote forest regeneration;

(d) reduce fire hazards resulting from forestry practices, including reduction of log deck debris when the log deck is close to a timber harvest site;

(e) control forest pests and diseases; or

(f) promote any other accepted silvicultural practices.

(11) "Recreational Fire" means a small, attended fire, that does not exceed two feet in diameter. If the primary purpose of the fire is to dispose of the material being burned, it is not considered a recreational fire, regardless of size.

(12) "Trade Waste" means waste material resulting from construction or operation of any business, trade, industry, or demolition project, including wood products industry wastes such as sawdust, bark, peelings, chips, shavings, and cull wood. Trade wastes do not include wastes generally disposed of by essential agricultural outdoor burning, prescribed wildland outdoor burning or Christmas tree waste outdoor burning, as defined in this rule.

(13) "Treated Wood" means wood that has had any foreign material added to it, including, but not limited to paper, glues, paints, resins, chemicals, stains and plastics.

Rule 7.102 - Outdoor Burning Permits Required

(1) A person may not cause or allow outdoor burning unless he has a valid outdoor burning permit from the department or its authorized agent except as provided in (3) of this rule.

(2) The department may place any reasonable requirements in an outdoor burning permit to reduce emissions, minimize the impacts of air pollutants or protect the public health or safety, and the person or agency conducting the burn shall adhere to those conditions.

(3) (a) While the Airshed Group's Monitoring Unit is operating, Major Outdoor Burning Sources who are members of the Airshed Group may satisfy the permit requirements in (1) of this rule by having a valid burning permit issued by DEQ pursuant to ARM 17.8.610. To burn when the Monitoring Unit is not in operation, Major Outdoor Burning Sources shall have a burning permit issued by the department.

(b) Notwithstanding (a) of this rule, the department may require a Major Outdoor Burning Source to have an outdoor burning permit issued by the department for burns conducted any time of the year, if it determines such a permit is necessary to protect air quality in Missoula County or enforce the provisions of this Program.

(c) The department may enforce all the provisions of Rule 7.107 regardless of what permit is in effect.

Rule 7.103 - Materials Prohibited

(1) A person may not dispose of any material other than natural vegetation and untreated lumber through outdoor burning, unless otherwise allowed in this Chapter.

(2) Waste moved from the premises where it was generated, except as permitted in Rule 7.110 (conditional outdoor burning) and Rule 7.112 (emergency outdoor burning), may not be disposed of through outdoor burning.

(3) Trade wastes, except as permitted in Rule 7.110 (conditional outdoor burning) and Rule 7.112 (emergency outdoor burning), may not be disposed of through outdoor burning.

(4) Christmas tree wastes, except as permitted in Rule 7.111 (Christmas tree waste outdoor burning) may not be disposed of through outdoor burning.

(5) Standing or demolished structures, except as permitted in Rule 7.109 (firefighter training), Rule 7.110 (conditional outdoor burning) or Rule 7.113 (commercial film production), may not be disposed of through outdoor burning.

(6) Inside the Missoula Air Stagnation Zone, piles of grass or deciduous leaves may not be disposed of through outdoor burning.

Rule 7.104 - Burning Seasons

(1) The following categories of outdoor burning may be conducted during the entire year:
(a) prescribed wildland burning;

(b) fire fighters training;

(c) emergency outdoor burning;

(d) for the purpose of thawing frozen ground to allow excavation of utilities.

(e) ceremonial bonfires

(2) Commercial film production outdoor burning may be conducted only during the months of March through November.

(3) Essential agricultural burning and conditional outdoor burning may only be conducted March through October.

(4) Outdoor burning other than those categories listed in Sections (1) – (3) above may only be conducted March through August.

Rule 7.105 - Restricted Areas

(1) Outdoor burning is not allowed within the Missoula City limits, or in areas surrounded by the City except when:

(a) it occurs on parcels of at least one acre under single ownership; or

(b) the department determines outdoor burning is necessary:

(i) to eliminate a fire hazard that cannot be abated by any other means;
(ii) for fire fighter training;
(iii) for thawing frozen ground to allow excavation of utilities;
(iv) to eliminate hazards in an emergency;
(v) for bonfires as allowed by the Missoula Municipal Code.

(2) Within Impact Zone M, a person may not conduct prescribed wildland burning except when good or excellent dispersion is forecast for the entire period of expected smoke generation. Prescribed wildland burning is not allowed in "Impact Zone M" December 1 through the end of February, except as allowed under Rule 7.106(2).

(3) The department may place restrictions on outdoor burning by elevation or area for the purpose of managing air quality. The department shall announce such restrictions on the department's outdoor burning hotlines.

Rule 7.106 - Minor Outdoor Burning Source Requirements

(1) A minor outdoor burning source shall:

(a) conform with BACT;

(b) comply with all outdoor burning rules, except Rule 7.107;

(c) comply with any requirements or regulations relating to outdoor burning established by any public agency responsible for protecting public health and welfare, or for fire prevention or control; and

(d) activate their permit prior to burning and adhere to the restrictions posted on the outdoor burning ~~hotlines~~ permit system ~~available by calling (406) 728-2667 for most of Missoula County and (406) 677-2899 for the Clearwater and Swan Drainages north of Clearwater Junction.~~

(2) If a minor outdoor burning source desires to conduct prescribed wildland outdoor burning during December, January, or February, it shall:

(a) submit a written request to the department, demonstrating that the burning must be conducted prior to reopening of outdoor burning in March; and

(b) receive specific permission for the burning from the department;

Rule 7.107 - Major Outdoor Burning Source Requirements

(1) An application for a Major Source Outdoor Burning Permit must be accompanied by the appropriate permit fee and must contain the following information:

(a) a legal description or detailed map showing the location of each planned site of outdoor burning.

(b) the elevation of each site.

(c) the average fuel loading or total fuel loading at each site.

(d) the method of burning to be used at each site.

(2) An application for a Major Source Outdoor Burning Permit must be accompanied by proof of public notice, consistent with Rule 7.114.

(3) A major outdoor burning source shall:

(a) conform with BACT;

(b) adhere to the conditions in the outdoor burning permit issued to it by the department, or, when applicable, by DEQ; and

(c) adhere to the restrictions posted on the outdoor burning hotlines;~~: (406) 728-2667 for most of Missoula County and (406) 677-2899 for the Clearwater and Swan Drainages north of Clearwater Junction, except when the Airshed Group monitoring unit is in operation and its restrictions can be fully enforced by DEQ.~~

(d) comply with all restrictions issued by the Airshed Group Monitoring Unit;

(e) conduct outdoor burning in such a manner such that:
(i) emissions from the burn do not endanger public health or welfare;
(ii) emissions from the burn do not cause or contribute to a violation of a Montana or National Ambient Air Quality Standards; and
(iii) no public nuisance is created.

(4) To burn in a manner other than that described in the application for burning permit, the source shall submit to the department, in writing or by telephone, a request for a change in the permit, including the information required by Section (1) (a)-(d) above, and must receive approval from the department.

(5) A major source outdoor burning permit is valid for one year or for another time frame as specified in the permit by the department.

Rule 7.108 - Bonfire Permits

The department may issue a permit for a bonfire if:

(1) The time and location is approved in writing by the appropriate fire department and law enforcement agency;

(2) No public nuisance will be created; and

(3) The materials to be burned are limited to untreated cordwood, untreated dimensional lumber and woody vegetation.

Rule 7.109 - Fire Fighter Training Permits

(1) The department may issue a fire fighter training outdoor burning permit for burning materials that would otherwise be prohibited by Rule 7.103, if:
(a) the fire will be restricted to a building or structure, a permanent training facility, or other appropriate training site, but not a solid waste disposal site;

(b) the material to be burned will not be allowed to smolder after the training session has ended;

(c) no public nuisance will be created;

(d) all known asbestos-containing material has been removed;

(e) asphalt shingles, flooring material, siding, and insulation that might contain asbestos have been removed, unless samples have been analyzed by a certified laboratory and shown to be asbestos free;

(f) all prohibited material that can be removed safely and reasonably has been removed;

(g) the burning accomplishes a legitimate training need and clear educational objectives have been identified for the training;

(h) burning is limited to that necessary to accomplish the educational objectives;

(i) the training operations and procedures are consistent with nationally accepted standards of good practice; and

(j) emissions from the outdoor burning will not endanger public health or welfare or cause or contribute to a violation of any Montana or federal ambient air quality standard.

(2) A firefighter training permit is valid for only one location.

(3) The department shall inspect the structure or materials to be burned prior to the training to reasonably ensure compliance with this rule.

(4) An application for a fire fighter training outdoor burning permit must be made on a form provided by the department. The applicant shall provide adequate information for the department to determine whether it satisfies the requirements of this rule for a permit.

(5) An application for a firefighter training outdoor burning permit must be accompanied by proof of public notice, consistent with Rule 7.114.

Rule 7.110- Conditional Outdoor Burning Permits

(1) The department may issue a conditional outdoor burning permit to dispose of:

(a) Untreated wood and untreated wood by-product trade wastes by any business, trade, industry;

(b) Untreated wood from a demolition project; or

(c) Untreated wood waste at a licensed landfill site, if the department determines that:

(i) the outdoor burning will occur at an approved burn site, as designated in the solid waste management system license issued by the DEQ; and

(ii) the pile is inspected by the department or its designated representative and only natural vegetation and clean, untreated lumber are present.

(2) The department may issue a conditional outdoor burning permit only if it determines that:

(a) alternative methods of disposal would result in extreme economic hardship to the applicant;

(b) emissions from outdoor burning will not endanger public health or welfare or cause or contribute to a violation of any Montana or federal ambient air quality standard; and

(c) the outdoor burning will not occur within the Air Stagnation Zone. (see Appendix A)

(3) The department shall be reasonable when determining whether alternative methods of disposal would result in extreme economic hardship to the applicant.

(4) Conditional outdoor burning must conform with BACT.

(5) A permit for burning trade waste is a temporary measure to allow time for the generator to develop alternative means of disposal.

(6) A permit issued under this rule is valid for the following periods:

(a) Untreated wood and untreated wood by-products trade waste – up to 1 year; and

(b) Untreated wood waste at licensed landfill sites - single burn.

(7) For a permit granted under Section (1)(a) above, the source may be required, prior to each burn, to receive approval from the department to ensure that good dispersion exists and to assign burn priorities if other sources in the area request to burn on the same day. Approval may be requested by ~~calling~~ contacting the department. ~~at (406) 523-4755.~~

(8) An application for a conditional outdoor burning permit must be accompanied by the appropriate application fee. The application must be made on a form provided by the department and must provide adequate information for the department to determine whether the application satisfies the requirements for a conditional air quality outdoor burning permit contained in this rule.

(9) Proof of publication of public notice, consistent with Rule 7.114, must be submitted to the department before an application is considered complete.

Rule 7.111 - Christmas Tree Waste Outdoor Burning Permits

(1) The department may issue an outdoor burning permit to allow burning of Christmas tree waste if emissions from the outdoor burning will not:

(a) endanger public health or welfare;

(b) cause or contribute to a violation of any Montana or federal ambient air quality standard; or

(c) cause a public nuisance.

(2) Christmas tree waste outdoor burning must comply with BACT.

(3) Christmas Tree Waste permits are valid for up to one year as specified in the permit issued by the department.

(4) An application for a Christmas Tree Waste Outdoor Burning permit must be accompanied by the appropriate application fee. The application must be made on a form provided by the department and must include adequate information for the department to determine whether the requirements of this rule are satisfied.

(5) An application for a Christmas Tree Waste Outdoor Burning permit must be accompanied by proof of public notice, consistent with Rule 7.114.

Rule 7.112 - Emergency Outdoor Burning Permits

(1) The department may issue an emergency outdoor burning permit to allow burning of a substance not otherwise approved for burning if the applicant demonstrates that the substance to be burned poses an immediate threat to public health and safety, or plant or animal life, and that no alternative method of disposal is reasonably available.

(2) The department may authorize emergency outdoor burning, upon receiving the following information:

(a) facts establishing that alternative methods of disposing of the substance are not reasonably available;

(b) facts establishing that the substance to be burned poses an immediate threat to human health and safety or plant or animal life;

(c) the legal description or address of the site where the burn will occur;

(d) the amount of material to be burned;

(e) the date and time of the proposed burn;

(f) the date and time that the spill or incident giving rise to the emergency was first noticed; and

(g) a commitment to pay the appropriate permit application fee within ten (10) working days of permit issuance.

(3) Within ten (10) working days of receiving oral authorization to conduct emergency outdoor burning, the applicant shall submit to the department, in writing, the information required in (2)(a) – (f) of this rule and the appropriate permit application fee.

Rule 7.113 - Commercial Film Production Outdoor Burning Permits

(1) The department may issue a commercial film production outdoor burning permit for burning prohibited material as part of a commercial or educational film or video production for motion pictures or television. Use of pyrotechnic special effects materials, including bulk powder compositions and devices, smoke powder compositions and devices, matches and fuses, squibs and detonators, and fireworks specifically created for use by special effects pyrotechnicians for use in motion picture or video productions is not considered outdoor burning.

(2) Emissions from commercial film production outdoor burning may not endanger public health or welfare or cause or contribute to a violation of any Montana or federal ambient air quality standard.

(3) A permit issued under this rule is valid for a single production.

(4) Outdoor burning under this rule must conform with BACT.

(5) An application for a commercial film production outdoor burning permit must be accompanied by the appropriate application fee. The application must be made on a form provided by the department. The applicant shall provide adequate information for the department to determine whether the application satisfies the requirements of this rule.

(6) Proof of publication of public notice, consistent with Rule 7.114, must be submitted to the department before an application is considered complete.

Rule 7.114 - Public Notice

(1) When an applicant is required by this chapter to give public notice of a permit application, the applicant shall notify the public by legal publication, at least once, in a newspaper of general circulation in the area affected by the application. The notice must be published within 10 days of submittal of the application. The content of the notice must be approved by the department and must include a statement that public comments concerning the application may be submitted to the department within 20 days after publication of notice or after the department receives the application, whichever is later. A single public notice may be published for multiple applicants.

(2) The public comment period may be shortened to ten (10) days for firefighter training permits.

Rule 7.115 - Outdoor Burning Permitting Actions

(1) When the department approves or denies a outdoor burning permit application that requires public notice, a person who is adversely affected by the decision may request an administrative review as provided for in Chapter 14. The request must be filed within 15 days after the department renders its decision and must include the reasons for the request. The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. A request for a hearing postpones the effective date of the department's decision until the conclusion of the appeals process.

(2) The department may immediately revoke an outdoor burning permit under the following conditions:
(a) if the outdoor burning causes a public nuisance;

(b) for a violation of a condition of the permit; or

(c) for a violation of a provision of this Program.

(3) Upon revocation, the department may order a fire be immediately extinguished.

(4) Revocation of a permit may be given verbally, but must be followed with a letter stating the reasons for the revocation or suspension.

(5) An outdoor burning permit may be modified when the department or Control Board determines modifications are necessary to insure compliance with the provisions of this Program.

(6) The department shall notify the permittee in writing of any modifications to the permit.

(7) A party affected by the department's decision to revoke or modify a permit may request an administrative review as provided for in Chapter 14. However, the revocation or permit modifications remain in effect until such time as they are reversed.

(8) Outdoor burning permits are not transferable and are only valid for the location and person to which they were originally issued.

CHAPTER 8
FUGITIVE PARTICULATE

Subchapter 1 General Provisions

Rule 8.101 - Definitions

For purpose of this Chapter, the following definitions apply:

(1) "Approved deicer" means a magnesium chloride based product or other product with similar dust suppression properties, that is approved for use by the department and the Missoula Valley Water Quality District.

(2) "Area of Regulated Road Sanding Materials" means the area defined by:
T13N R19W Sections 2,8,11,14,15,16,17,20,21,22,23,27,28,29, 32,33,34;
T12N R19W Sections 4,5,6,7; as shown on the attached map, (see Appendix A).

(3) "AASHTO" means the American Association of State and Highway Transportation Officials Test Methods.

(4) "Best available control technology (BACT)" means an emission limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under the 1990 amendments to the Federal Clean Air Act or the Clean Air Act of Montana that would be emitted from any proposed stationary source or modification that the department, on a case by case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event may application of BACT result in emission of any pollutant that would exceed the emissions allowed by the applicable standard under 40 CFR Part 60 and 61. If the department determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice or operational standard or combination thereof, to require the application of BACT. Such standard must, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation and must provide for compliance by means which achieve equivalent results.

(5) "Block pavers" means a block or brick made of hard, durable material designed to handle vehicle traffic. A block paver keeps vehicles off the underlying soils while allowing the growth of vegetation through spaces inside or outside the block or paver.

(6) "Bound recycled glass" means a solid, self-draining surface composed of elastomerically bound recycled glass created by bonding post-consumer glass with a mixture of resins, pigments and binding agents.

(~~5~~7) "Commercial" means:
(a) any activity related to the purchase, sale, offering for sale, or other transaction involving the handling or disposition of any article, service, or commodity; or

(b) other facilities including but not limited to office buildings, offices, maintenance, recreational or amusement enterprises, churches, schools, trailer courts, apartments, and three or more dwelling units on one parcel.

(~~6~~8) "Existing source" means a source that was in existence and operating or capable of being operated or had ~~a~~ an air quality permit from the department prior to February 16, 1979.

(~~7~~9) "Extraordinary circumstance" means when a law officer calls for sanding of a roadway to eliminate an existing unsafe traffic situation when deicer would be inadequate or cannot be applied within a reasonable amount of time, or when the slope of a roadway or thickness of ice prevent the use of deicing materials as an adequate method of providing a safe driving surface within a reasonable amount of time.

(~~8~~10) "Fugitive particulate" means any particulate matter discharged into the outdoor atmosphere that is not discharged from the normal exit of a stack or chimney for which a source test can be performed in

accordance with Method 5 (determination of particulate emissions from stationary sources), Appendix A, Part 60.275 (Test Method and Procedures), Title 40, Code of Federal Regulations [CFR] (Revised July 1, 1977).

~~(9) "Geoblock" means a block made of hard, durable material designed to handle vehicle traffic. A geoblock keeps vehicles off the underlying soils while allowing the growth of vegetation through spaces built into the block.~~

(~~10~~11) "Industrial" means activity related to the manufacture, storage, extraction, fabrication, processing, reduction, destruction, conversion, or wholesaling of any article, substance or commodity or any treatment thereof in such a manner as to change the form, character, or appearance thereof.

(~~11~~12) "Long-term parking for heavy equipment or semis" means an area where only heavy equipment or semis are parked, and these vehicles are parked there for longer than 48 hour periods. This does not include loading or unloading areas for semis.

(~~12~~13) "Major arterial" means any roadway eligible for primary or urban funds from the Montana Department of Transportation.

(~~13~~14) "New source" means a source that was constructed, installed or altered on or after February 16, 1979, unless the source had a permit to construct prior to February 16, 1979.

(~~14~~15) "Parking lot" or "parking area" means an area where operable vehicles are parked for more than 15 days of a calendar year including but not limited to areas that contain vehicles offered for sale.

(~~15~~16) "Paved" means having a minimum of two (2) inches of hot mix asphalt or four (4) inches of portland cement concrete with an appropriate base for the soil type. The requirements are for the purpose of minimizing fugitive particulate emissions and do not represent structural standards.

(~~16~~17) "Private driveway" means a privately owned access or egress that serves two or fewer dwelling units.

(~~17~~18) "Private road" means a privately owned access or egress that serves three or more dwelling units or that serves one or more non-residential parcels.

(18~~9~~) "Public road" means a publicly owned or maintained road, a road dedicated to the public, a petitioned road or a prescriptive use road.

(~~19~~20) "Reasonable precautions" means any reasonable measure to control emissions of airborne particulate matter. The department will determine what is reasonable on a case by case basis taking into account energy, environmental, economic, and other costs.

(21) "Reinforced grids" means a solid material composed of connected patterns designed to handle vehicle traffic. A reinforced grid keeps vehicles off the underlying soils while allowing the growth of vegetation through spaces built into the grid.

(~~20~~22) "Required deicing zone" means the area within the City limits, bordered in the north by the northern right-of-way boundary of Interstate 90 and in the south by the southern right-of-way boundary of 39th Street and Southwest Higgins Avenue, but also including those portions of Rattlesnake Drive and Van Buren Street that lie inside the City limits.

(~~21~~23) "Road" means an open way for purposes of vehicular travel including highways, streets, and alleys. A private driveway is considered a new road when its use is increased to serve more than two dwelling units or to serve one or more commercial/industrial sites.

(~~22~~24) "Utility" means unoccupied equipment sites or facilities, including but not limited to communication antennas and power line right of ways.

(~~23~~25) "Vehicle" means every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except bicycles and devices moved by animal power or used exclusively upon stationary rails or tracks.

Rule 8.102 - General Requirements

(1) A person may not cause or authorize the production, handling, transportation, or storage of any material unless reasonable precautions to control fugitive particulate are taken.

(2) Fugitive particulate emissions from any ~~stationary~~ source may not exhibit an opacity of twenty (20) percent or greater averaged over six (6) consecutive minutes.

(3) A person may not cause or permit a building or its appurtenances or a road, or a driveway, or an open area to be constructed, used, repaired or demolished without applying all reasonable precautions to prevent fugitive particulate. The department may require reasonable measures to prevent fugitive particulate emissions, including but not limited to, paving or frequent cleaning of road, driveways, and parking lots; applying dust suppressants; applying water; planting and maintaining vegetative ground cover and using a combination of ~~geoblocks~~ reinforced grids or block pavers with a healthy vegetative cover.

(4) Governmental agencies are subject to the same regulations as commercial enterprises in this chapter.

Rule 8.103 - Stationary Source Requirements

Within any area designated non-attainment for either the primary or secondary NAAQS person who owns or operates:

(1) An existing source of fugitive particulate shall apply reasonably available control technology (RACT);

(2) A new source of fugitive particulate that has a potential to emit less than 100 tons per year of particulate shall apply best available control technology (BACT);

(3) A new source of fugitive particulate that has a potential to emit 100 or more tons per year of particulate shall apply lowest achievable emission rate (LAER).

Rule 8.104 - Construction and Mining Sites

(1) A person in charge of a construction project or mining operation may not cause, suffer or allow dirt, rock, sand and other material from the site to be tracked out onto paved surfaces without taking all reasonable measures to prevent the deposition of the material and/or to promptly clean up the material. Reasonable measures include but are not limited to frequent cleaning of the paved roadway, paving access points, use of dust suppressants, filling and covering trucks so material does not spill in transit and use of a track out control device.

(2) Temporary roads and parking areas at active construction sites and mining operations do not need to be paved and are not subject to the permitting requirements of subchapter 2 of this Chapter. After ~~construction~~ the project(s) or mining is complete, temporary roads and parking areas must be permanently removed or closed off to traffic.

Rule 8.105 - Agricultural Exemption

The provisions of this Chapter do not apply to fugitive particulate originating from any activity or equipment associated with the use of agricultural land or the planting, production, harvesting, or storage of agricultural crops. (This exemption does not apply to the processing of agricultural products by a commercial business).

Subchapter 2 Paving Requirements in the Air Stagnation Zone

Rule 8.201 - Permits Required

(1) After September 16, 1994, a person may not construct or cause to be constructed a new road, private or commercial driveway or parking lot in the Air Stagnation Zone without having a permit from the department except as provided for in Rule 8.104(2), 8.105 and 8.202(4).

(2) The applicant shall supply plans for the proposed construction at the time of the application for the permit.

Plans must be legibly drawn with permanent ink or printed or reproduced by a process guaranteeing a permanent record. The department may require that the plans include the following information:

(a) A complete legal description of the affected parcels and a location map of the proposed construction area.

(b) A scaled plan-view drawing that includes all existing and proposed property boundaries, structures, roads, parking areas and adjoining exterior roads. Proposed construction must be clearly labeled.

(c) The width of proposed roads and driveways and dimensions of proposed parking areas.

(d) The thickness of the base material and the pavement to be used on the proposed construction.

(e) A description of the intended uses of the road, driveway or parking lot, including but not limited to the estimated number and type of vehicles using the road, parking lot or driveway.

(f) A description of adjoining exterior roads, e.g. paved or unpaved, public or private.

(g) Any additional information the department may require to evaluate the application prior to the issuance of a permit.

Rule 8.202 - New Roads in the Air Stagnation Zone

(1) After September 16, 1994, all new roads in the Air Stagnation Zone must be paved, except as provided in (3) through (5) of this rule and in Rule 8.104.

(2) New public and private roads must be paved within 2 years (730 days) after road construction begins or final plat approval, whichever comes first, except that new private roads serving commercial and industrial sites must be paved prior to occupancy.

(3) The department may allow temporary occupancy of a building or use of a road serving a commercial or industrial site before the road is paved if weather prevents paving before occupancy or use. Such an extension may not exceed six months.

(4) Roads used solely for utilities, or solely for agricultural or silvicultural purposes are exempt from paving requirements of Subchapter 8.2, but are subject to dust abatement measures to prevent particulate matter from becoming airborne. If the use of a road changes so that it is no longer used solely for utilities, or solely for agricultural or silvicultural purposes, the road will be considered a new road and all paving regulations pertinent to the new uses on the road must be met.

(5) Temporary roads at landfills do not have to be paved or permitted, but are subject to dust abatement measures. For this rule, a road at a landfill is considered temporary if it exists in the same location less than three years.

Rule 8.203 - New Parking Areas in the Air Stagnation Zone

(1) After September 16, 1994, new public and private parking areas must be paved prior to occupancy, except as provided in (2)~~) and (3)~~-(4) of this rule.

(2) The department may allow temporary occupancy of a building before the parking areas are paved if weather prevents paving before occupancy. Such an extension may not exceed six months.

(3) Exceptions.

(a) The following areas do not have to be paved if they are constructed in accordance with Section (45) of this rule:

(i) Long term parking areas for heavy equipment and semi trucks where the vehicles will be parked for longer than 48 hours at a time and no other vehicular traffic is allowed. (This exemption does not apply to sales lots or loading areas.)

(ii) Long term parking areas for vehicles that will be parked for extended periods of time, if no other vehicular traffic is allowed and if no more than fifteen (15) vehicles travel in or out of the

area per day averaged over any three consecutive days. (This exemption does not apply to sales lots.) for automobiles or RVs)

(iii) Display areas for heavy equipment, where no other vehicles will be displayed or offered for sale and no other vehicular traffic is allowed.

(b) At licensed RV parks, accesses to parking spots must be paved, but parking spots for RVs need not be paved if:

(i) they are constructed in accordance with 4 (a) of this rule; or

(ii) they are constructed using ~~geoblocks~~ reinforced grids and a healthy vegetative cover is maintained that can handle traffic.

(c) Parking areas used exclusively for the sale or display of light tractors and implements with no other vehicular use need not be paved if:

(i) the area is mowed and maintained with a healthy stand of vegetation adequate to be an effective dust suppressant; or

(ii) the area meets the requirements of 4 (a) of this rule.

(d) Parking areas used exclusively for outdoor recreational/entertainment facilities including, but not limited to, outdoor theatres, fairs or athletic fields, may use vegetation or ~~geoblocks~~ reinforced grids with vegetation as an alternative to paving if the following conditions are met.

(i) New access road(s) for the parking area will be paved.

(ii) The parking area will be used less than 61 days per calendar year.

(iii) The department has approved a construction plan showing:

(A) that the parking area soils can support a vegetative cover and the proposed vehicular traffic;

(B) that vegetation able to survive and maintain ground cover with the proposed vehicle use is present or that appropriate vegetation will be planted and established prior to use of the parking area; and

(C) that an irrigation system able to maintain the vegetative cover will be installed.

(iv) The department has approved a maintenance plan that:

(A) states that vehicles will not use the parking area when soil conditions are muddy or excessive damage to the vegetation will occur;

(B) states that vehicles will not use the parking area when carry out of dirt or dust onto surrounding paved surfaces will occur;

(C) states that the parking area will be blocked off with a physical barrier that will prevent vehicle access when the parking area is not in use; and

(D) explains how the ground cover vegetation will be maintained by the appropriate use of irrigation, fertilizer, aeration and other necessary measures.

(E) may include rotation of vehicle use around the parking area to reduce impacts on the soil and vegetation. Any use of the parking area counts as one day of use for the entire parking area.

(e) The department may order that an area that qualifies for one of the above exemptions be paved if:

(i) the area is not constructed or maintained as required by this rule.

(ii) particulate emissions exceed those typical of a clean paved surface; or

(iii) carryout of dirt or dust onto surrounding paved surfaces occurs.

(f) If the use of an area changes so that an exemption no longer applies, the area must meet all regulations for new construction applicable to the new uses of the area.

(4) The department may allow self-draining solid surfaces including, but not limited to, block pavers and bound recycled glass for parking areas provided the following conditions are met.

(i) The surface is rated for the vehicular traffic loads projected for that parking area

(ii) Fugitive emissions from the surface will not exceed those from a clean, paved parking area.

(iii) The surface is cleaned regularly to prevent fugitive particulate

(iv) If the surface is disturbed or destroyed it must be paved or rebuilt before continued use.

(45) Construction Specifications for Exemptions.

(a) Unless otherwise specified in this rule, unpaved parking and display areas must consist of a suitable base material topped with a minimum of four inches of ¾ inch minus gravel, that meets the following specifications:

(i)The material must consist of hard, durable particles or fragments of slag, stone or gravel screened and crushed to the required size and grading specified here.

Sieve Designation	Percent Passing, by Weight
¾ inch	100
No. 4	30 – 60
No. 10	20 - 50
No. 200	less than 8

(ii) That portion of the material passing a No. 40 sieve must have a plasticity index of 4 or less, as determined by AASHTO T-91.

(b) To minimize carry-out of material onto the access road, pavement must be placed between unpaved parking areas allowed in (3)(a) of this rule and the paved or unpaved access road as follows:

(i) At least -60 linear feet of paved surface of adequate width must be placed between an unpaved long term parking area for heavy equipment and semi-trucks and the access road. This paved surface must be placed and used so that heavy equipment and semi-trucks cross 60 feet of paved surface before entering the access road.

(ii) At least 20 linear feet of paved surface of adequate width must be placed between unpaved long term parking areas allowed in (3)(a)(ii) of this rule and the access road. This paved surface must be placed and used so that vehicles cross 20 feet of paved surface before entering the access road.

(iii) The paved surface must begin at the edge of the access road.

Rule 8.204 - New Driveways in the Air Stagnation Zone

(1) After September 16, 1994, before occupancy of a residential unit, -new private driveways accessing a paved road -must be paved or covered with a self-draining solid surface as provided by part (4) of this rule to a minimum of twenty (20) feet back from the paved road or to the outside boundary of the right of way, whichever is longer.

(2) The department may allow temporary occupancy of a residential unit before the driveway is paved if weather prevents paving before occupancy. Such an extension may not exceed six months.

(3) Private driveways accessing an existing unpaved road do not have to be paved, but must meet the requirements of Rule 8.205.

(4) The department may allow a self-draining solid surface including, but not limited to, block pavers and bound recycled glass in lieu of pavement provided the following conditions are met.

(i) The surface is rated for the vehicular traffic loads projected for that driveway

(ii) Fugitive emissions from the surface will not exceed those from a clean, paved driveway.

(iii) The surface is cleaned regularly to prevent fugitive particulate

(iv) If the surface is disturbed or destroyed it must be paved or rebuilt before continued use.

Rule 8.205 - Unpaved Access Roads

(1) The department may not issue a permit for a new roads, commercial site, industrial site, or private driveway in the Air Stagnation Zone accessed by an unpaved road unless:

(a) a waiver of the option to protest an RSID or SID for the paving of the unpaved access road has been recorded at the Clerk and Recorder's Office for the parcel; or

(b) the owner of the real property accessed by the unpaved road executes a deed restriction waiving the option to protest any RSIDs or SIDs for the paving of the unpaved access road using the language set forth below.

I/We, the undersigned, hereby certify that I/we are the owners of the real property located at (legal description) and hereby waive any option to protest an RSID or SID affecting said property

for the purpose of financing the design and construction of a public paved road accessing said property. Further, my/our signatures on this waiver may be used in lieu of my/our signature(s) on an RSID or SID petition for the creation of one or more RSID's or SID petitions for the purpose of financing the design and construction of a public paved road accessing the above-described property.

This waiver runs with the land and is binding on the transferees, successors, and assigns of the owners of the land described herein. All documents of conveyance must refer to and incorporate this waiver.

(2) In the Air Stagnation Zone, property owner who is subdividing land that contains parcels accessing an unpaved road, or whose primary access is an unpaved road, shall waive the option to protest an RSID or SID that upgrades and paves the road and shall include the language set forth in (1)(b)above on the plat.

Rule 8.206 - Maintenance of Pavement Required

(1) All paved roads, driveways, storage areas and parking lots within the Air Stagnation Zone must be cleaned and maintained regularly to prevent fugitive particulate.

(2) Any existing paved surface that is disturbed or destroyed must be re-paved before continued use.

Rule 8.207 - Paving Existing Facilities in the Air Stagnation Zone

(1) The department may require any person owning or operating a commercial establishment which is located on a publicly owned or maintained road which is used by more than 200 vehicles per day averaged over any 3-day period to submit a plan which provides for paving and restricting traffic to paved surfaces for any areas used by said commercial establishment for access, egress, and parking except where said access, egress, and parking is seasonal and intermittent and the area in which said access, egress and parking is located is not in violation of Ambient Air Quality Standards as listed in ARM 17.8.201 - 17.8.230. The plan must include drawings and other information that the department may require to indicate the adequacy of the plan. The plan must provide reasonable time for construction of paved roads or structures limiting traffic to paved surfaces, but this time may not exceed one year from the date of submittal to the department.

(2) The department may require any person owning, leasing, or managing property containing a road or thoroughfare which is used by more than 50 vehicles per day, averaged over any three day period, to submit a plan which provides for paving or for restricting traffic to paved surfaces. Roads located in areas that do not violate the ambient air quality standards (ARM 17.8.201 - 17.8.230), and which are used seasonally and intermittently are exempt from this requirement. The plan must include drawings and other information that the department may require. A reasonable time will be permitted for the construction of paved roads or structures limiting traffic to paved surfaces, but this time may not exceed one year from the date of submittal of the plan to the department unless an extension is granted by the Control Board.

Subchapter 3 - Road Maintenance Inside the Area of Regulated Road Sanding Materials

Rule 8.301 - Deicer Required

(1) When the ambient temperature is above 10°F. a person may not apply street sanding materials other than an approved deicer to those public roadways in the required deicing zone, except under extraordinary circumstances.

Rule 8.302 - Durability Requirements

(1) A person may not place any sanding or chip sealing materials upon any road or parking lot located inside the area of regulated road sanding materials that has a durability of less than or equal to 80 as defined by AASHTO T-210 procedure B and a silt content passing the #200 sieve of greater than 2.5% as defined by AASHTO T-27 and T-11.

Rule 8.303 - Street Sweeping Requirements

(1) Between December 1 and March 31, when the paved road surface is above 32°F for longer than four hours, political subdivisions shall clean the center line and areas immediately adjacent to the travel lane of any major arterials they maintain inside the area of regulated road sanding materials.

(2) The Control Board hereby incorporates Chapter 10.50 of the Missoula Municipal Codes which requires street sweeping.

Rule 8.304 - Contingency Measure

(1) The area of regulated road sanding materials defined by Rule 8.101(2) is expanded to include Section 1, T12N R20W, Sections 5 and 24, T13N R19W, Sections 19, 24, 25, 30, 31 and 36, T13N R20W.

CHAPTER 9
SOLID FUEL BURNING DEVICES

Subchapter 1 – General Provisions

Rule 9.101 – Intent

The intent of this rule is to regulate and control the emissions of air pollutants from solid fuel burning devices in order to further the policy and purpose declared in Chapter 1.

Rule 9.102 – Definitions

For the purpose of this rule the following definitions apply:

(1) "Burning season" means from the first day of July through the last day of June of the following year.

(2) "Alert permit" means an emission permit issued by the department to operate a solid fuel burning device during an air pollution Alert and during periods when the air stagnation plan is not in effect. Solid fuel burning devices must meet Lowest Achievable Emission Rate to qualify for an Alert class emissions permit.

(3) "Install" means to put in position for potential use, and includes bringing a manufactured home or recreational vehicle containing a solid fuel burning device into the County.

(4) "Installation permit" means an emissions permit issued by the department to install and operate a solid fuel burning device within the County.

(5) "EPA method" means 40 CFR Part 60, Subpart AAA, Sections 60.531, 60.534, and 60.535.

(6) "Fireplace" means a solid fuel burning device with an air-to-fuel ratio of greater than thirty which is a permanent structural feature of a building. A fireplace is made up of a concealed masonry or metal flue, and a masonry or metal firebox enclosed in decorative masonry or other building materials.

(7) "New solid fuel burning device" means any solid fuel burning device installed, manufactured, or offered for sale inside the Missoula Air Stagnation Zone after July 1, 1986 or outside the Missoula Air Stagnation Zone in Missoula County after May 14, 2010.

(8) "Oregon method" means Oregon Department of Environmental Quality "Standard Method for Measuring the Emissions and Efficiencies of Woodstoves", Sections 1 through 8 and O.A.R. Chapter 340. Division 21 Sections 100, 130, 140, 145, 160, 161, 163, 164, 165.

(9) "Pellet stove" means a solid fuel burning device designed specifically to burn pellets or other non-fossil biomass pellets that is commercially produced, incorporates induced air flow, is installed with an automatic pellet feeder, and is a free standing room heater or fireplace insert.

(10) "Solid fuel burning device" means any fireplace, fireplace insert, woodstove, wood burning heater, wood fired boiler, coal-fired furnace, coal stove, or similar device burning any solid fuel used for aesthetic, cooking, or heating purposes, that burns less than 1,000,000 BTU's per hour.

(11) "Sole source of heat" means one or more solid fuel burning devices that:

(a) constitute the only source of heat in a private residence for purpose of space heating, or

(b) constitutes the main source of heat in a private residence where the residence is equipped with a heating system that is only minimally sufficient to keep the plumbing from freezing.

(12) "Woodstove" means a wood fired appliance with a heat output of less than 40,000 BTU per hour with a closed fire chamber that maintains an air-to-fuel ratio of less than thirty during the burning

of 90 percent or more of the fuel mass consumed in a low firing cycle. The low firing cycle means less than or equal to 25 percent of the maximum burn rate achieved with doors closed or the minimum burn achievable, whichever is greater. Wood fired forced air combustion furnaces that primarily heat living space, through indirect heat transfer using forced air duct work or pressurized water systems are excluded from the definition of "woodstove".

Rule 9.103 – Fuels

(1) Within Missoula County a person may not burn any material in a solid fuel burning device except uncolored newspaper, untreated wood and lumber, and products manufactured for the sole purpose of use as fuel. Products manufactured or processed for use as fuels must conform to any other applicable provision of this Program.

Rule 9.104 – Non-Alert Visible Emission Standards

(1) A person owning or operating a solid fuel burning device may not cause, allow, or discharge emissions from such device that are of an opacity greater than forty (40) percent.

(2) The provisions of this section do not apply to emissions during the building of a new fire, for a period or periods aggregating no more than ten (10) minutes in any four (4) hour period.

Subchapter 2 – Permits

Rule 9.201 – Swan River Watershed Exempt From Subchapter 2 Rules

(1) Subchapter 2 does not apply to the Swan River watershed of northern Missoula County (also described as those portions of Airshed 2 which lie inside Missoula County.)

Rule 9.202 – Permits Required for Solid Fuel Burning Devices

(1) After July 1, 1986, a person may not install or use any new solid fuel burning device in any structure within the Air Stagnation Zone without an Installation permit.

(2) After May 14, 2010 a person may not install or use a new solid fuel burning device in any structure within Missoula County without an installation permit.

Rule 9.203 – Installation Permits Inside the Air Stagnation Zone

(1) Inside the Air Stagnation Zone, the department may only issue installation permits for the following solid fuel burning devices:

(a) ~~p~~Pellet stoves with emissions that do not exceed 1.0 gram per hour weighted average when tested in conformance with the EPA method.

(b) Solid fuel burning devices installed in a licensed mobile food service establishment if the following conditions are met.

(i) The mobile food service establishment must have a current Montana food purveyor's license. Permit will be considered automatically revoked if the Montana food purveyor's license lapses.

(ii) Mobile food trailer or vehicle must only be used for food preparation purposes.

(iii) The mobile food vendor may not operate the solid fuel burning device in Missoula County from November 1 through the end of February each winter.

(iv) The mobile food vendor shall not operate more than 7 consecutive days at any one location in Missoula County.

(v) The permitted solid fuel burning device must not create a nuisance. The

department may revoke the installation permit and require the removal of the solid fuel burning device for a licensed mobile food service establishment if the department determines that the solid fuel burning device creates a nuisance.

(2) An installation permit expires 180 days after issuance unless a final inspection is conducted or unless the department receives adequate documentation to insure the type of device, and installation are in compliance with the provisions of this Program.

(3) New solid fuel burning devices may not be installed or used with a flue damper unless the device was so equipped when tested in accordance with Rule 9.401.

Rule 9.204 – Installation Permit Requirements outside the Air Stagnation Zone

(1) Outside the Missoula Air Stagnation Zone, only the following solid fuel burning devices may be installed in Missoula County:

(a) A solid fuel burning device equipped with a catalytic combustor with emissions less than or equal to 4.1 grams per hour weighted average when tested in accordance with the EPA method.

(b) A solid fuel burning device not equipped with a catalytic combustor with emissions less than or equal to 7.5 grams per hour weighted average when tested in accordance with the EPA method.

(c) A pellet stove tested at an independent lab which has:

(i) an air to fuel ratio of 35:1 or greater using EPA Method 28A; and

(ii) test results using EPA Method 5H, or Method 5G corrected to 5H, that have been conducted under minimum burn conditions, (category 1 of EPA Method 28) with particulate emissions that do not exceed 4.1 grams per hour.

(d) An Outdoor Wood-Fired Hydronic Heater or Outdoor Pellet-Fired Hydronic Heater that:

(i) has had EPA Test Method 28 OWHH emission test conducted on the model line; and

(ii) has been certified to meet the EPA Hydronic Heater Phase 2 Program emission limit of 0.32 pounds per million Btu heat output; and

(iii) within each of the test burn rate categories, no individual test run exceeds 18 grams per hour; and

(iv) the average emissions are less than or equal to 7.5 grams per hour.

(e) A solid fuel burning device with a heat input capacity between 250,000 and 1,000,000 BTU/hr that has been tested and shown to have emissions less than or equal to .9 grams per hour per 10,000 BTU heat input. Prior to approval for installation, testing methods used to determine compliance with this emission rate and sufficient documentation to show the device meets the emission requirements must be submitted to the department. Approval of the testing method is at the sole discretion of the department.

(f) A solid fuel burning device not included in (a), (b), (c), or (d) above which has been tested by an independent lab using an alternative testing method approved by the department that shows it has a particulate emission rate of less than or equal to 7.5 grams per hour. Prior to approval for installation, testing methods used to determine compliance with this emission rate and sufficient documentation to show the device meets the emission requirements must be submitted to the department. Approval of the alternative testing method is at the sole discretion of the department.

(g) Solid fuel burning devices installed in a licensed mobile food service establishment if the following conditions are met.

(i) The mobile food service establishment must have a current Montana food purveyor's license. Permit will be considered automatically revoked if the Montana food purveyor's license lapses.

(ii) Mobile food trailer or vehicle must only be used for food preparation purposes.

(iii) The mobile food vendor may not operate the solid fuel burning device in Missoula County from November 1 through the end of February each winter.

(iv) The mobile food vendor shall not operate more than 7 consecutive days at any one location in Missoula County.

(v) The permitted solid fuel burning device must not create a nuisance. The department may revoke the installation permit and require the removal of the solid fuel burning device for a licensed mobile food service establishment if the department determines that the solid fuel burning device is creates a nuisance.

(2) An installation permit expires 180 days after issuance unless a final inspection is conducted or the department receives adequate documentation to insure the type of device and installation comply with the provisions of this program.

(3) New solid fuel burning devices may not be installed or used with a flue damper unless the device was so equipped when tested in accordance with Rule ~~9.203(1)~~9.401.

(4) Solid fuel burning devices approved for installation must be installed, maintained and operated in the same fashion under which they were tested.

Rule 9.205 – Alert Permits

(1) Those woodstoves that have a valid alert permit issued by the department may be operated during a Stage I Air Alert subject to the opacity limitations in Rule 9.302.

(2) The department may issue a new alert permit for a pellet stove if the emissions do not exceed 1.0 gram per hour weighted average when tested in conformance with the EPA method.

(3) The department may renew an alert permit for a woodstove that has emissions that do not exceed 6.0 grams per hour weighted average when tested using the Oregon method or 5.5 grams per hour weighted average when tested using the EPA method if the original application for an alert permit was received prior to June 30, 1988 and the permit has never lapsed.

(4) The department may renew an alert permit for a woodstove that has emissions that do not exceed 4.0 grams per hour weighted average when tested using the Oregon Method or 4.1 grams per hour when tested using the EPA method if the original application for the Alert permit was received prior to October 1, 1994 and the permit has never lapsed.

(5) Before renewing an alert permit, the department may require information to determine if the woodstove is capable of meeting emission requirements. If an inspection of the appliance during operation is not allowed by the applicant, the department shall require evidence that any non-durable parts (e.g. catalytic combustor, gaskets, by-pass mechanisms) have been replaced as necessary to meet applicable emission limitations.

(6) To qualify for an alert permit or a renewal, catalyst-equipped woodstoves must be equipped with a permanent provision to accommodate a commercially available temperature sensor that can monitor combustor gas stream temperature within or immediately downstream (within 1.0 inch or 2.5 cm) of the combustor surface.

(7) An alert permit is valid for two years for any woodstove that uses a catalyst or other nondurable

part as an integral part, and five years for other devices.

Rule 9.206 – Sole Source Permits

(1) A solid fuel burning device with a valid sole source permit issued by the department may be operated during Stage I Air Alerts and Stage II Warnings subject to the opacity limitations of Rule 9.302.

(2) Inside the Air Stagnation Zone the department may only issue a new sole source permit for a pellet stove that:

(a) constitutes the sole source of heat in a private residence; and

(b) emits less than 1.0 gram per hour weighted average when tested using the EPA method.

(3) Inside Zone M and outside the Air Stagnation Zone, the department may only issue a sole source permit for a solid fuel burning device that:

(a) constitutes the sole source of heat in a private residence; and

(b) was a sole source of heat prior to May 14, 2010, or the property is not served by an electric utility.

(4) Inside the Air Stagnation Zone the department may renew a sole source permit for a solid fuel burning device that constitutes the sole source of heat in a private residence if the solid fuel burning device is:

(a) a pellet stove that emits less than 1.0 gram per hour weighted average when tested using the EPA method; or

(b) a woodstove that has a continuously renewed sole source permit originally issued prior to July 1, 1985.

(5) In the Air Stagnation Zone, a sole source permit is not eligible for renewal when the ownership of the property is transferred from person to person.

(6) In the Air Stagnation Zone, a sole source permit is valid for one year beginning July 1st through the last day of June the following year.

(7) In Zone M but outside the Air Stagnation Zone, a sole source permit is valid until the property changes ownership or another method of heating is installed for the structure.

Rule 9.207 – Special Need Permits

(1) Woodstoves with a valid special need permit issued by the department may be used during an Alert subject to the opacity limitations of Rule 9.302.

(2) A person who demonstrates an economic need to burn solid fuel for space heating purposes by qualifying for energy assistance according to economic guidelines established by the U.S. Office of Management and Budget under the Low Income Energy Assistance Program (L.I.E.A.P.), as administered in Missoula County by the District XI Human Resources Development Council, is eligible for a Special Need permit.

(3) Special need permits may be renewed providing the applicant meets the applicable need and economic guidelines at the time of application for renewal.

(4) Special need permits are issued at no cost to the applicant.

(5) A special need permit is valid for up to one (1) year from the date it is issued.

Rule 9.208 – Temporary Sole Source Permit

(1) Woodstoves with a valid temporary sole source permit may be used during Stage 1 Air Alerts and Stage 2 Warnings, subject to the opacity limitations of Rule 9.302.

(2) A person may apply for a temporary sole source permit in an emergency situation if their solid fuel burning devices do not qualify for a permit under Rule 9.204 or 9.205. An emergency situation includes, but is not limited to, the following situations:

(a) where a person demonstrates his furnace or central heating system in inoperable other than through his own actions;

(b) where the furnace or central heating system is involuntarily disconnected from its energy source by a utility or fuel supplier; or

(c) where the normal fuel or energy source is unavailable for any reason.

(3) The department may issue a temporary permit if it finds that:

(a) the emissions proposed to occur do not constitute a danger to public health or safety;

(b) compliance with the air stagnation plan and Rule 9.302(1) would produce hardship without equal or greater benefits to the public; and

(c) compliance with the air stagnation plan and Rule 9.302(1) would create unreasonable economic hardship to the applicant or render the residence as equipped severely uncomfortable for human habitation, or cause damage to the building or its mechanical or plumbing systems.

(4) The department may place conditions on a temporary permit to insure that the permittee is in compliance with the Program when the permit expires.

(5) The department shall arrange for an applicant interview to be conducted within five (5) working days of receipt of a written request for a temporary permit and shall render its decision within ten (10) working days of receipt of the written request.

(6) Application to and denial by the department for a temporary permit does not prevent the applicant from applying to the Control Board for a variance under the appropriate provisions of this Program.

(7) A temporary permit issued pursuant to this section is valid for a period determined by the department, but may not exceed one (1) year and is not renewable.

Rule 9.209 – Permit Applications

(1) The department shall issue a permit pursuant to the regulations of this chapter when the applicant has submitted information, on forms supplied by the department, which indicates compliance with this chapter, local building codes, and other applicable provisions of this Program.

(2) The department shall decide whether to issue a permit or permit renewal within ten (10) working days after receiving an application.

Rule 9.210 – Revocation or Modification of Permit

(1) A permit issued under this chapter may be revoked for a violation of:

(a) A condition of the permit;

(b) A provision of this Program;

(c) An applicable regulation, rule or standard adopted pursuant to the FCAA; or

(d) A provision of the Clean Air Act of Montana.

(2) A permit issued under this chapter may be modified for the following reasons:

(a) Changes in an applicable provision of this Program adopted by the Control Board, or rules adopted under the Clean Air Act of Montana;

(b) When the department or Control Board determines modifications are necessary to insure compliance with the provisions of this Program or an implementation plan approved by the Control Board.

(3) The department shall notify the permittee in writing of its intent to revoke or modify the permit. The department's decision to revoke or modify a permit becomes final unless the permittee requests, in writing, an administrative review within fifteen (15) days after receipt of the department's notice. Departmental receipt of a written request for a review initiates the department's appeal process outlined in Chapter 14 of this Program and postpones the effective date of the of the department's decision until the conclusion of the administrative appeals process.

Rule 9.211 – Transfer of Permit

(1) A permit issued under this chapter may not be transferred from one location to another or from one solid fuel burning device to another. A permit may not be transferred from one person to another, unless re-issued by the department.

Subchapter 3 – Alert and Warning Requirements

Rule 9.301 – Applicability

(1) The regulations of Subchapter 3 apply within the Missoula Air Stagnation Zone and Impact Zone M.

Rule 9. 302– Prohibition of Visible Emissions during Air Pollution Alerts and Warnings

(1) Within the Air Stagnation Zone, a person owning, operating or in control of a solid fuel burning device may not cause, allow, or discharge any visible emission from such device during an air pollution Alert declared by the department pursuant to Rule 4.104 unless a sole source permit, a Temporary Sole Source permit, a special need permit, or an Alert permit has been issued for such device pursuant to this chapter.

(2) Within the Air Stagnation Zone, a person owning, operating or in control of a solid fuel burning device for which a sole source permit or special need permit has been issued may not cause, allow, or discharge any emissions from such device that are of an opacity greater than twenty (20) percent during an air pollution Alert declared by the department pursuant to Rule 4.104. The provisions of this paragraph do not apply to emissions during the building of a new fire or for refueling for a period or periods aggregating no more than ten (10) minutes in any four (4) hour period.

(3) Within the Air Stagnation Zone, a person owning, operating, or in control of a solid fuel burning device for which an Alert class permit has been issued may not cause, allow, or discharge any emissions from such device that are of an opacity greater than ten (10) percent during an air pollution Alert declared by the department pursuant to Rule 4.104. The provisions of this subsection do not apply to emissions during the building of a new fire, or for refueling for a period or periods aggregating no more than ten (10) minutes in any four (4) hour period.

(4) When declaring a Stage 1 Air Alert, the department shall take reasonable steps to publicize that information and to make it reasonably available to the public at least three (3) hours before

initiating any enforcement action for a violation of this section.

(5) Every person operating or in control of a solid fuel burning device within the Air Stagnation Zone has a duty to know when an air pollution Alert has been declared by the department.

(6) Within Impact Zone M, a person owning, operating, or in control of a solid fuel burning device may not cause, allow, or discharge any visible emissions from such device during an air pollution Warning declared by the department pursuant to Rule 4.104 unless such device has a sole source permit or a temporary sole source permit. Within Impact Zone M, a person owning, operating or in control of a solid fuel burning device for which a sole source permit has been issued may not cause, allow, or discharge any emissions from such device that are of an opacity greater than twenty (20) percent during an air pollution Warning declared by the department pursuant to Rule 4.104. The provisions of this paragraph do not apply to emissions during the building of a new fire, for a period or periods aggregating no more than ten (10) minutes in any four (4) hour period.

Subchapter 4 – Emissions Certification

Rule 9.401 – Emissions Certification

(1) The Control Board hereby adopts the Oregon method for the sole purpose of establishing an uniform procedure to evaluate the emissions and efficiencies of woodstoves for compliance with the emission limitation imposed in Rules ~~9.202~~ 9.203 and 9.204. Beginning January 1, 1988 the department shall also use the EPA method for the purpose of establishing a uniform procedure to evaluate the emissions and efficiencies of woodstoves.

(2) Devices exempted from the definition of "woodstove" listed in the Oregon method or "wood heater" listed in the EPA method may not be issued an Alert class or Installation class emissions certification unless tested to either method using modifications in the test procedure approved by the department.

(3) The department shall accept as evidence of compliance with the emission limitation imposed in Rules ~~9.204~~ 9.203, 9.204 and 9.501, labels affixed to the stove in compliance with OAR 340-21-150, 40 CFR Part 60, Subpart AAA, Section 60.536, or documentation that, in the opinion of the department, is sufficient to substantiate that the specific model, design, and specifications of the stove meet standards specified in Rules ~~9.202~~ 9.203, 9.204 and 9.501.

Rule 9.402 – Sale of New Solid Fuel Burning Devices

(1) New solid fuel burning devices sold or offered for sale in Missoula County shall be labeled as follows: ~~In the Air Stagnation Zone, a person may not sell or offer for sale a new solid fuel burning device that cannot be legally installed within the Air Stagnation Zone without labeling as follows:~~

(a) A clearly visible, legible label must be placed on each device offered for sale;

(b) The label must clearly state where the solid fuel burning device can legally be installed in Missoula County, the label must use language approved by the department, and the label must include an informational contact phone number for the Missoula City-County Health Department, ~~"It is illegal to install this device within the Air Stagnation Zone. Call the Missoula City-County Health Department (phone #) for more information"~~; and

(c) The lettering on the label must be in block letters no less than 20-point bold type and the letters and numbers shall be in a color that contrasts, ~~in a tone contrasting~~ with the background.

Subchapter 5 – Solid Fuel Burning Device Removal Program

Rule 9.501 – Removal of Solid Fuel Burning Devices Upon Sale of the Property.

(1) After October 1, 1994, in the Air Stagnation Zone, all solid fuel burning devices contained on property to be sold must be removed from the property or rendered permanently inoperable unless they meet the emissions requirements listed in Section (2) of this rule.

(2) The following solid fuel burning devices may remain on a property in the Air Stagnation Zone to be sold:

(a) Woodstoves or Pellet Stoves installed with a valid permit if the emissions do not exceed:

(i) 6.0 grams per hour weighted average when tested in conformance with the Oregon Method; or

(ii) 5.5 grams per hour weighted average when tested in conformance with the EPA Method.

(b) Commercially manufactured pellet stoves:

(i) that have not been tested, but were installed prior to October 1, 1994; or

(ii) with emissions that do not exceed 1.0 grams per hour when tested in conformance with the EPA Method.

(c) Fireplaces meeting the definition of Rule 9.102(6).

(d) Wood-fired, forced-air combustion furnaces that primarily heat living space, through indirect heat transfer using forced air duct work or pressurized water systems.

(3) Within the Air Stagnation Zone, it is unlawful for any person to complete, or allow the completion of the sale, transfer or conveyance of any real property unless a Certificate of Compliance is filed with the Missoula County Clerk and Recorders Office.

(4) (a) Until July 1, 2001, a Certificate of Compliance is valid until the real property is transferred or conveyed to a new owner. At that time, another Certificate must be filed.

(b) After July 1, 2001, once a Certificate of Compliance has been filed for a property, another certificate is not needed if the number and type of stoves on the real property matches what is on file at the department. The department shall list properties with Certificates of Compliance on the internet. A copy of the list must be available at the department for inspection.

(5) The Certificate of Compliance must state that either:

(a) there are no solid fuel burning devices on the property; or

(b) any solid fuel burning devices on the property meet the requirements of Section (2) above.

(6) The Certificate of Compliance must be in a format specified by the department and must be signed by the seller(s), the buyer(s), the real estate agent(s) of the seller(s), and if any solid fuel burning devices will remain on the property, a certified inspector must sign the certificate.

(7) City Building Department inspectors and persons certified by the department to inspect and certify that solid fuel burning devices on the real property meet the criteria described by these regulations shall sign and submit a Certificate of Compliance to the Missoula County Clerk and Recorders Office.

(8) The Certificate of Compliance does not constitute a warranty or guarantee by the department or certified inspectors that the Solid Fuel Burning Device on the property meets any other standards of operation, efficiency or safety, except the emission standards contained in these regulations.

Subchapter 6 – Contingency Measures

Rule 9.601 – Contingency Measures listed below in this subchapter go into affect if the non-

attainment area fails to attain the NAAQS or to make reasonable progress in reducing emissions (see Chapter 3).

(1) Rule 9.302(1) is modified to delete Alert class permitted devices, and Rules 9.302(3) and 9.205(1) are void.

(2) All portions of this chapter that allow Alert permits to burn during alerts or warnings are hereby rescinded.

DRAFT

CHAPTER 14
ENFORCEMENT AND ADMINISTRATIVE PROCEDURES

Rule 14.101 - Notice of Violation

(1) Whenever the department determines that there are reasonable grounds to believe that a violation of any provision of this Program or a condition or limitation imposed by a permit issued by the department has occurred, the department may issue a written notice to be served personally or by registered or certified mail on the alleged violator or his agent.

(2) This notice must specify the provision of the Program or permit condition alleged to have been violated and the facts alleged to constitute the violation.

(3) If the department issues a Notice of Violation to a person for a first violation of any provision of Chapter 9 (Solid Fuel Burning Devices) during any one burning season, as defined in that Chapter, the department shall provide such person with a summary of the regulations that affect solid fuel burning devices.

Rule 14.102 - Order to Take Corrective Action

(1) A Notice of Violation may include an Order to Take Corrective Action within a reasonable period of time stated in the order.

(2) The order may:
(a) require the production of information and records;

(b) may prescribe the date by which the violation must cease; and

(c) may prescribe time limits for particular actions in preventing, abating, or controlling the emissions.

(3) The order becomes final unless, within twenty (20) days after the Notice and Order is received, the person named requests in writing an administrative review as provided for in Rule 14.106.

Rule 14.103 - Appearance Before the Control Board

(1) The department or the Control Board may require alleged violators of this Program to appear before the Control Board for a hearing at a time and place specified in the notice.

Rule 14.104 - Other Remedies

(1) Action under this Chapter does not bar enforcement of this Program by injunction, seeking penalties or other appropriate remedy.

(2) Nothing in this Chapter may be construed to require a hearing prior to the issuance of an emergency order pursuant to Chapter 4 of this Program. When applicable, the emergency procedures of the Missoula County Air Stagnation Plan, Chapter 4 supersede the provisions of this Chapter.

Rule 14.105 - Credible Evidence

(1) For the purpose of establishing compliance with this Program or establishing whether a person has violated or is in violation of any standard or limitation adopted pursuant to this Program or Title 17, Chapter 8 of the Montana Code Annotated, nothing in these rules precludes the use, including the exclusive use, of any relevant evidence.

Rule 14.106 - Administrative Review

(1) A person subject to a Notice of Violation or Order to Take Corrective Action ~~or an action by the department that revokes, suspends or modifies a permit~~ issued under the authority of this Program may request an administrative review by the Health Officer or his or her designee (Hearing Officer).

~~(2) A person that is adversely affected by the department's decision to deny, modify or issue a permit may request an administrative review by the Health Officer or his or her designee. A request for an administrative review must be received with fifteen (15) days of the departments final decision to issue a permit, except as otherwise provided for in this Program. The request for an administrative review must state in writing specific grounds for not issuing the permit or for modifying the permit.~~

(~~3~~2) A request for an administrative review does not suspend or delay the department's notice~~,~~ or order ~~or permit action,~~ except as otherwise provided for in this Program.

(~~4~~3) The Hearing Officer shall schedule a review within ten (10) days after receipt of the request. The review may be scheduled beyond ten days after receipt of the request by mutual consent of the department and the party requesting the review.

(~~5~~4) The Hearing Officer shall provide written or verbal notice to the person requesting the review of the date, time and location of the scheduled hearing.

(~~6~~5) The Hearing Officer may continue the administrative review for a reasonable period following the hearing to obtain information necessary to make a decision.

(~~7~~6) The Hearing Officer shall affirm, modify, or revoke the Notice of Violation, Order to Take Corrective Action, ~~or permitting action,~~ in writing, following the completion of the administrative review. A copy of this decision must be sent by certified mail or hand delivered to the person who requested the review.

Rule 14.107 - Control Board Hearings

(1) Any person subject to an Order to Take Corrective Action ~~or an action by the department that revokes, suspends or modifies a permit~~ issued under the authority of this Program may request a hearing before the Control Board following the conclusion of an administrative review.

(2) A person that is adversely affected by the department's decision to issue, modify or deny a permit under the authority of this Program may request a hearing before the Control Board. A request for a hearing must be received with fifteen (15) days of the department's final decision to issue, modify or deny a permit. The request for a hearing must state in writing specific grounds for issuing the permit, for not issuing the permit or for modifying the permit.

(~~2~~3) The Control Board shall schedule a hearing within sixty (60) days after receipt of a written request and shall notify the applicant of that hearing.

(~~3~~4) The Control Board may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of the parties.

(~~4~~5) Public hearings must proceed in the following order:
(a) first, the department shall present a staff report, if any.

(b) second, the person who requested the hearing shall present relevant evidence to the Board; and

(c) third, the Board shall hear any person in support of or in opposition to the issue being heard and shall accept any related letters, documents or materials.

(56) After a hearing regarding an Order to Take Corrective Action, the Control Board shall issue a final decision that affirms, modifies or rescinds the department's Order to Take Corrective Action. In addition, the Control Board may issue an appropriate order for the prevention, abatement or control of the emissions involved.

(67) After a hearing regarding a permitting action, the Control Board shall issue, deny, modify, suspend or revoke the permit within 30 days following the conclusion of the hearing.

(78) A person aggrieved by an order of the Control Board may apply for rehearing upon one or more of the following grounds and upon no other grounds:
(a) the Control Board acted without or in excess of its powers;

(b) the order was procured by fraud;

(c) the order is contrary to the evidence;

(d) the applicant has discovered new evidence, material to him which he could not with reasonable diligence have discovered and produced at the hearing; or

(e) competent evidence was excluded to the prejudice of the applicant.

(89) The petition for a rehearing must be filed with the Control Board within thirty (30) days of the date of the Control Board's order.

Rule 14.108 - Judicial Review

(1) Within thirty (30) days after the application for rehearing is denied, or if the application is granted, within thirty (30) days after the decision on the rehearing, a party aggrieved thereby may appeal to the Fourth Judicial District Court.

(2) The appeal shall be taken by serving a written notice of appeal upon the chair of the Control Board, which service shall be made by the delivery of a copy of the notice to the chair and by filing the original with the Clerk of Court of the Fourth Judicial District. Immediately after service upon the Control Board, the Control Board shall certify to the District Court the entire record and proceedings, including all testimony and evidence taken by the Control Board. Immediately upon receiving the certified record, the District Court shall fix a day for filing of briefs and hearing arguments on the cause and shall cause a notice of the same to be served upon the Control Board and the appellant.

(3) The District Court shall hear and decide the cause upon the record of the Control Board. The District Court shall determine whether the Control Board regularly pursued its authority, whether the findings of the Control Board were supported by substantial competent evidence, and whether the Control Board made errors of law prejudicial to the appellant.

(4) Either the Control Board or the person aggrieved may appeal from the decision of the District Court to the Supreme Court. The proceedings before the Supreme Court are limited to a review of the record of the hearing before the Control Board and of the district court's review of the record.

Section 2

Missoula City-County Air Pollution Control Board

MISSOULA COUNTY

MISSOULA CITY-COUNTY HEALTH DEPARTMENT
ENVIRONMENTAL HEALTH DIVISION
301 WEST ALDER
MISSOULA, MONTANA 59802-4123
(406) 258-4988 FAX (406) 258-4781

Public Notices Sent Out for Proposed
2012 Missoula City-County Air Pollution Control Program Rule Changes

Independent Adds Publicized: October 4, 2012 and October 11, 2012 for the October 18 Air Pollution Control Board Hearing

Interested Parties Email for October 18 Air Board Hearing: October 1, 2012 and October 4, 2012

2012 Rule Change Web Page Completed: September 28, 2012
http://www.co.missoula.mt.us/airquality/CurrentIssues/RuleChanges2012.html

Letter to Wood Stove Dealers on Proposed Labeling Rule Changes: October 5, 2012

Interested Parties Email for November 15 Air Board Hearing Continuation on air rule changes: October 23, 2012

Independent Adds Publicized: November 1, 2012 and November 8, 2012 for the November 15, 2012 Air Pollution Control Board Hearing which is a continuation of the October 18, 2012 Air Pollution Control Board Hearing.

FREE THINKING

MISSOULA Independent
P.O. Box 8275 Missoula, MT 59807
Ph: 406-543-6609 • Fx: 406-543-4367

Affidavit of Publication

State of Montana

County of Missoula

Tami Allen, being first duly sworn, Deposes that she is a Classified Advertising Representative of the Missoula Independent, a newspaper of general circulation, published in Missoula, Missoula County, Montana and printed in Great Falls, Cascade County, Montana, and that the attached notice has been correctly published in the regular and entire issue of every number of said paper for 2 (two) successive weeks, commencing on the 4th day of October 2012 and published on the following dates thereafter: 10/11 2012.

Signed: Tami Allen

Subscribed and sworn before me this 15th day of October 2012.

LORIE RUSTVOLD

Notary Public for the State of Montana, residing at Missoula, Montana. My commission expires 1/11/2014

LORIE RUSTVOLD NOTARIAL SEAL STATE OF MONTANA

The Missoula City-County Air Pollution Control Board will hold a public hearing on proposed changes to the Missoula City-County Air Pollution Control Program on Thursday, October 18, 2012 at 12:15 p.m. or soon thereafter. The Board meets in the second floor conference room at the Health Department at 301 West Alder in Missoula. The Air Board will consider proposed changes to Chapter 4 "Missoula County Air Stagnation and Emergency Episode Avoidance Plan"; Chapter 6 "Standards for Stationary Sources"; Chapter 7 "Outdoor Burning"; Chapter 8 "Fugitive Particulate"; Chapter 9 "Solid Fuel Burning Devices"; and Chapter 14 "Enforcement and Administrative Procedures." Some of the proposed rule changes include clarify the wildfire smoke emergency episode avoidance plan in Chapter 4; add a temporary permitting process for portable industrial sources in Chapter 6; general outdoor burning procedure clarifications and bonfire definition clarification in Chapter 7; modifying the paving rules in Chapter 8; general rule clarification and the addition of solid fuel burning devices for licensed mobile food vendors in Chapter 9; and removal of the administrative review process for permitting actions in Chapter 14. The Air Board will take public comments at the hearing before making a decision. Written comments may be submitted on or before noon on October 18, 2012 by mailing them to Air Comments, MCCHD, 301 W Alder St., Missoula, MT 59802; faxing them to (406) 258-4781 or emailing them to bschmidt@co.missoula.mt.us. For more information, a copy of the proposed regulations or to sign up for the Interested Parties mailing list, visit www.co.missoula.mt.us/airquality or call 258-4755.

Missoula Independent
P.O. Box 8275 Missoula, M. 07
Ph: 406-543-6609 • Fx: 406-543-4367

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Signed: Tami Allen

Subscribed and sworn before me this 6th day of November 2012.

LORIE RUSTVOLD

Notary Public for the State of Montana, residing at Missoula, Montana. My commission expires 10/11/2014

LORIE RUSTVOLD NOTARIAL SEAL STATE OF MONTANA

The Missoula City-County Air Pollution Control Board will continue to hold a public hearing on proposed changes to the Missoula City-County Air Pollution Control Program on Thursday, November 15, 2012 at 12:15 p.m. or soon thereafter. The Board meets in the second floor conference room at the Health Department at 301 West Alder in Missoula. The Air Board will consider proposed changes to Chapter 4 "Missoula County Air Stagnation and Emergency Episode Avoidance Plan"; Chapter 6 "Standards for Stationary Sources"; Chapter 7 "Outdoor Burning"; Chapter 8 "Fugitive Particulate"; Chapter 9 "Solid Fuel Burning Devices"; and Chapter 14 "Enforcement and Administrative Procedures." Some of the proposed rule changes include clarify the wildfire smoke emergency episode avoidance plan in Chapter 4; add a temporary permitting process for portable industrial sources in Chapter 6; general outdoor burning procedure clarifications and bonfire definition clarification in Chapter 7; modifying the paving rules in Chapter 8; general rule clarification and the addition of solid fuel burning devices for licensed mobile food vendors in Chapter 9; and removal of the administrative review process for permitting actions in Chapter 14. The Air Board will take public comments at the hearing before making a decision. Written comments may be submitted on or before noon on November 15, 2012 by mailing them to Air Comments, MCCHD, 301 W Alder St., Missoula, MT 59802; faxing them to (406) 258-4781 or emailing them to bschmidt@co.missoula.mt.us. For more information, a copy of the proposed regulations or to sign up for the Interested Parties mailing list, visit www.co.missoula.mt.us/airquality or call 258-4755.

From: Ben Schmidt
To: Interested Parties
Date: 10/1/2012 12:13 PM
Subject: Air Rule Changes Board Hearing October 18 at 12:15 PM
Attachments: Ch 14 Enforcement & Administrative_Draft2012.pdf; Ch 4 Air Stag & Emergency Plan 2012.pdf; CH 6 Standards for Stationary Sources_DRAFT 2012.pdf; Ch 7 Outdoor Burning_ DRAFT 2012.pdf; Ch 8 Fugitive Particulate_Draft2012.pdf; Ch 9 Solid Fuel Burning Devices(2) _Draft 2012.pdf; Independent_Legal_Ad_October.pdf

The Missoula City-County Air Pollution Control Board will hold a public hearing on proposed changes to the Missoula City-County Air Pollution Control Program on Thursday, October 18, 2012 at 12:15 p.m. or soon thereafter. The Board meets in the second floor conference room at the Health Department at 301 West Alder in Missoula. The Air Board will consider proposed changes to Chapter 4 "Missoula County Air Stagnation and Emergency Episode Avoidance Plan"; Chapter 6 "Standards for Stationary Sources"; Chapter 7 "Outdoor Burning"; Chapter 8 "Fugitive Particulate"; Chapter 9 "Solid Fuel Burning Devices"; and Chapter 14 "Enforcement and Administrative Procedures." Some of the proposed rule changes include clarify the wildfire smoke emergency episode avoidance plan in Chapter 4; add a temporary permitting process for portable industrial sources in Chapter 6; general outdoor burning procedure clarifications and bonfire definition clarification in Chapter 7; modifying the paving rules in Chapter 8; general rule clarification and the addition of solid fuel burning devices for licensed mobile food vendors in Chapter 9; and removal of the administrative review process for permitting actions in Chapter 14.

The Air Board will take public comments at the hearing before making a decision. Written comments may be submitted on or before noon on October 18, 2012 by mailing them to Air Comments, MCCHD, 301 W Alder St., Missoula, MT 59802; faxing them to (406) 258-4781 or emailing them to bschmidt@co.missoula.mt.us. Information on the proposed regulations will soon be available at www.co.missoula.mt.us/airquality or call 258-4755.

Proposed rule changes are also attached to this email.

Benjamin Schmidt, MS, RS
MCCHD Air Quality Specialist
301 W. Alder Street
Missoula, MT 59802
406-258-3369
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From: Ben Schmidt
To: Interested Parties
CC: Julie Mohr
Date: 10/4/2012 2:03 PM
Subject: Board Hearing October 18 at 12:15 PM for Air Pollution Control Program Rule Changes
Attachments: Ch 14 Enforcement & Administrative_Draft2012.pdf; Ch 4 Air Stag & Emergency Plan 2012.pdf; CH 6 Standards for Stationary Sources_DRAFT 2012.pdf; Ch 7 Outdoor Burning_ DRAFT 2012.pdf; Ch 8 Fugitive Particulate_Draft2012.pdf; Ch 9 Solid Fuel Burning Devices(2) _Draft 2012.pdf

The Missoula City-County Air Pollution Control Board will hold a **public hearing** on proposed changes to the Missoula City-County Air Pollution Control Program on **Thursday, October 18, 2012 at 12:15 p.m.** or soon thereafter. The Board meets in the second floor conference room at the Health Department at 301 West Alder in Missoula. The Air Board will consider proposed changes to Chapter 4 "Missoula County Air Stagnation and Emergency Episode Avoidance Plan"; Chapter 6 "Standards for Stationary Sources"; Chapter 7 "Outdoor Burning"; Chapter 8 "Fugitive Particulate"; Chapter 9 "Solid Fuel Burning Devices"; and Chapter 14 "Enforcement and Administrative Procedures." Some of the proposed rule changes include clarify the wildfire smoke emergency episode avoidance plan in Chapter 4; add a temporary permitting process for portable industrial sources in Chapter 6; general outdoor burning procedure clarifications and bonfire definition clarification in Chapter 7; modifying the paving rules in Chapter 8; general rule clarification and the addition of solid fuel burning devices for licensed mobile food vendors in Chapter 9; and removal of the administrative review process for permitting actions in Chapter 14.

The Air Board will take public comments at the hearing before making a decision. Written comments may be submitted on or before noon on October 18, 2012 by mailing them to Air Comments, MCCHD, 301 W Alder St., Missoula, MT 59802; faxing them to (406) 258-4781 or emailing them to bschmidt@co.missoula.mt.us. Information on the proposed regulations is available at www.co.missoula.mt.us/airquality or call 258-4755. To sign up for the Interested Parties mailing list which sends out information on local air pollution control program rule changes, email bschmidt@co.missoula.mt.us or scoefield@co.missoula.mt.us or call 258-4755.

The Air Pollution Control Board may adopt these rule changes at their November 15 meeting. For the most up to date information, contact the department or click on the following web link.
http://www.co.missoula.mt.us/airquality/CurrentIssues/RuleChanges2012.html

Reason for proposed rule changes:

Chapter 4 Rule 4.112 states that air alerts and warnings must be called during Air Alerts, Warnings, Emergencies and Crisis when wildfire smoke is the cause of high air pollution levels. Health advisories are the appropriate response for wildfire smoke episodes, not regulatory actions. This proposed change fixes this oversight from past rule re-writes.

Chapter 6:
Rule 6.101(8) adds a definition for a portable source.
Rule 6.101(10) corrects a reference error.
Rule 6.102 (3) allows portable industrial sources with a valid State of Montana Air Quality Permit to operate under a temporary Missoula City-County Air Quality Permit while the portable source pursues a permanent Missoula City-County Air Quality Permit. This rule change allows portable sources with a valid state permit to operate in Missoula County in a timely fashion while ensuring that all environmental rules and local, state, and federal air pollution emission standards are met.
Rule 6.102(4) clarifies that the air board may require an air quality permit if a permit is needed to protect the National Ambient Air Quality Standards. Maintaining air pollutant levels below the National Ambient Air Quality Standards is one of the main purposes of the Air Pollution Control Program.
Rule 6.601(4) corrects a reference error.

Rules 6.103(6), 6.106(3), 6.107 (5-6), 6.108(3), 14.106(1-2, 6), and 14.107(1-2) removes the Administrative Review Process from the Air Pollution Control Program permitting actions and clarifies who may request an Air Board Hearing. The administrative review process has never been successfully used to resolve disputes or concerns with permitting actions. All request for an administrative review of an air permitting action have gone to an Air Board Hearing. The administrative review process for air permits is a redundant step that uses up staff, public and permittee's time with no benefit or resolution. The ability for affected parties to request a Hearing before the Air Board for a department permitting action is maintained. Who can request an Air Board Hearing is also clarified and expanded in this rule rewrite.

Rule 7.101(3) clarifies the definition of a bonfire for the county. The previous definition was often interpreted in different and inconsistent ways. This definition re-write will allow the department to give a more consistent interpretation on what constitutes a bonfire.
Rule 7.106(1) updates the rules to agree with how the outdoor burning permit program is now run. The paper and phone methods have gone primarily to an internet and phone program and this change is needed to keep up with the new system.
Rule 7.107(3) clarifies major outdoor burning source requirements in the county so that outdoor burning smoke episodes can be eliminated.

The purpose of the **Chapter 8** changes are to allow alternatives to asphalt or concrete paving in situations where other surfaces with low fugitive emissions are technically feasible. The rule changes also clarify that temporary roads at mining sites may not need to be paved and that material carry out at mining sites must be controlled to reduce fugitive emissions.
Rule 8.101(5) adds a definition for block pavers

Rule 8.101(6) adds a definition for bound recycled glass
Rule 8.101(21) adds a definition for reinforced grids. This replaces the "geoblock" definition that was in Rule 8.101(9)
Rule 8.102(2) clarifies opacity rules for sources
Rule 8.102(3) replaces the term "geoblocks" with reinforced grids and block pavers
Rule 8.104 clarifies that roads at mining sites are temporary
Rule 8.104(1) clarifies that temporary roads at mining sites are required to control material carry out.
Rule 8.104(2) clarifies that temporary roads at mining sites may not be required to pave
Rule 8.202(4) clarifies that roads used for solely for utilities, agricultural or silvicultral purposes are exempt from the paving requirements of Subchapter 8.2
Rule 8.202(5) clarifies that only landfill roads may be considered temporary if they exist in the same location for less than three years
Rule 8.203(1) acknowledges the addition of 8.203(4)
Rule 8.203(3)(a)(ii) clarifies that long term parking area exemptions do not apply to sales lots for automobiles or RVs
Rule 8.203(b)(ii) and Rule 8.203(d) replaces the term geoblock with reinforced grids since geoblock is a trade name and needs to be replaced
Rule 8.203(4) adds a provision to allow self-draining solid surfaces (i.e. permeable paving) in parking areas as long as certain conditions are met
Rule 8.204(1) allows a self-draining solid surface as an option for new private driveways
Rule 8.204(4) adds a provision to allow self-draining solid surface in lieu of paving for new driveways in the air stagnation zone as long as certain conditions are met

Rules 9.203(1)(b) and 9.204(1)(g) allows licensed mobile food service establishment to get a solid fuel burning device permit throughout the county. This change will allow the air rules to mesh better with goals of the county licensed establishment food handling program. To comply with the air rules, mobile food service establishments currently place their solid fuel cooking devices outside the mobile unit. Best food

handling practices would allow for the cooking to occur inside the mobile unit. This rule change would allow the solid fuel burning/cooking devices to be inside the mobile unit and the rule does not allow the solid fuel burning device to be used in the winter months when we have air pollution problems from these types of devices.

Rule 9.401 corrects reference errors.

Rule 9.402 changes labeling requirements for businesses that sale solid fuel burning devices. This change is need to reflect previous changes in solid fuel burning device installation requirements through out the county. This requirement will make it clearer to customers what devices can be installed where in the county.

Proposed rule changes are attached to this email.

Benjamin Schmidt, MS, RS
MCCHD Air Quality Specialist
301 W. Alder Street
Missoula, MT 59802
406-258-3369
bschmidt@co.missoula.mt.us

MISSOULA COUNTY

MISSOULA CITY-COUNTY HEALTH DEPARTMENT
ENVIRONMENTAL HEALTH DIVISION
301 WEST ALDER
MISSOULA, MONTANA 59802-4123
(406) 258-4988 FAX (406) 258-4781

October 5, 2012

To: Solid Fuel Burning Device Dealers (Wood Stoves), Missoula County
From: Missoula City-County Health Department
Re: Changes in labeling requirements for solid fuel burning devices.

To make it clearer to customers where specific stoves can be installed in Missoula County, changes to the Missoula City-County Air Pollution Control Program stove labeling requirements have been proposed. The proposed changes, copied below, will require that information be placed on every device explaining where that device can legally be installed in Missoula County.

Rule 9.402 – Sale of New Solid Fuel Burning Devices

(1) New solid fuel burning devices sold or offered for sale in Missoula County shall be labeled as follows: ~~In the Air Stagnation Zone, a person may not sell or offer for sale a new solid fuel burning device that cannot be legally installed within the Air Stagnation Zone without labeling as follows:~~

(a) A clearly visible, legible label must be placed on each device offered for sale;

(b) The label must clearly state where the solid fuel burning device can legally be installed in Missoula County, the label must use language approved by the department, and the label must include an informational contact phone number for the Missoula City-County Health Department; and

(c) The lettering on the label must be in block letters no less than 20-point bold type and the letters and numbers shall be in a color that contrasts with the background

Information on all the proposed rule changes can be found on the air web page http://www.co.missoula.mt.us/airquality/CurrentIssues/RuleChanges2012.html.

The Missoula City-County Air Pollution Control Board will hold a public hearing on proposed changes to the Missoula City-County Air Pollution Control Program on Thursday, October 18, 2012 at 12:15 p.m. or soon thereafter. The Board meets in the second floor conference room at the Health Department at 301 West Alder in Missoula.

The Air Board will take public comments at the hearing before making a decision. The Air Pollution Control Board may make a final decision on the proposed rule changes at their November 15 meeting. Written comments may be submitted on or before noon on October 18, 2012 by mailing them to Air Comments, MCCHD, 301 W Alder St., Missoula, MT 59802;

faxing them to (406) 258-4781 or emailing them to bschmidt@co.missoula.mt.us. To sign up for the Interested Parties mailing list which sends out information on local air pollution control program rule changes, email bschmidt@co.missoula.mt.us, scoefield@co.missoula.mt.us or call 258-4755.

Sincerely,

Benjamin Schmidt, MS, RS
Air Quality Specialist

MISSOULA COUNTY

MISSOULA CITY-COUNTY HEALTH DEPARTMENT
ENVIRONMENTAL HEALTH DIVISION
301 WEST ALDER
MISSOULA, MONTANA 59802-4123
(406) 258-4988 FAX (406) 258-4781

October 5, 2012

To: Solid Fuel Burning Device Dealers (Wood Stoves), Missoula County
From: Missoula City-County Health Department
Re: Changes in labeling requirements for solid fuel burning devices.

Informational letters on solid fuel burning devices labeling rules sent to list of vendors noted below.

Lowe's – Stove Labeling Rules
3100 North Reserve Street
Missoula, MT 59808

Home Depot – Stove Labeling Rules
2725 Radio Way
Missoula, MT 59808

Chad Schneiter – Stove Labeling Rules – also emailed to Chad
Trader Brothers
Old US Highway 93
Lolo, MT 59847

Anderson's Masonry Hearth and Home
2630 West Broadway Street
Missoula, MT 59808

Montana Ace Hardware – Stove Labeling Rules
2301 Brooks Street
Missoula, MT 59801-7911

Murdoch's – Stove Labeling Rules
2801 West Broadway Street
Missoula, MT 59808

Enviroheat – Stove Labeling Rules
3757 North Reserve Street
Missoula, MT 59808

Axmen – Stove Labeling Rules
7655 US Highway 10 W
Missoula, MT 59808

Grizzly Fireplace
emailed to john@grizzlyfireplace.com

From: Ben Schmidt
To:
Date: 10/23/2012 10:02 AM
Subject: Air Board Hearing on Rule Changes Continues on November 15

The Missoula City-County Air Pollution Control Board will continue to hold a public hearing on proposed changes to the Missoula City-County Air Pollution Control Program on Thursday, November 15, 2012 at 12:15 p.m. or soon thereafter. The Board meets in the second floor conference room at the Health Department at 301 West Alder in Missoula. The Air Board will consider proposed changes to Chapter 4 "Missoula County Air Stagnation and Emergency Episode Avoidance Plan"; Chapter 6 "Standards for Stationary Sources"; Chapter 7 "Outdoor Burning"; Chapter 8 "Fugitive Particulate"; Chapter 9 "Solid Fuel Burning Devices"; and Chapter 14 "Enforcement and Administrative Procedures." Some of the proposed rule changes include clarify the wildfire smoke emergency episode avoidance plan in Chapter 4; add a temporary permitting process for portable industrial sources in Chapter 6; general outdoor burning procedure clarifications and bonfire definition clarification in Chapter 7; modifying the paving rules in Chapter 8; general rule clarification and the addition of solid fuel burning devices for licensed mobile food vendors in Chapter 9; and removal of the administrative review process for permitting actions in Chapter 14.

The Air Board will take public comments at the hearing before making a decision. Written comments may be submitted on or before noon on November 15, 2012 by mailing them to Air Comments, MCCHD, 301 W Alder St., Missoula, MT 59802; faxing them to (406) 258-4781 or emailing them to bschmidt@co.missoula.mt.us . For more information, a copy of the proposed regulations or to sign up for the Interested Parties mailing list, visit www.co.missoula.mt.us/airquality or call 258-4755.

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MISSOULA CITY-COUNTY HEALTH, AIR POLLUTION CONTROL, & WATER QUALITY DISTRICT BOARDS

October 18, 2012 – 12:15 p.m. – 3:00 p.m.
Missoula City-County Health Department
2nd Floor - Health Board Conference Room
301 West Alder, Missoula, MT 59802

AGENDA

AIR POLLUTION CONTROL BOARD

1. **Approve September 20, 2012 minutes** ..... Dr. Garon Smith
2. **Hearing and possible action on proposed amendments to the Missoula City-County Air Pollution Control Program (Chapters 4, 6, 7, 8, 9 and 14)** ..... Jim Carlson and Ben Schmidt
3. Air Quality Advisory Council update ..... Sarah Coefield
4. Transportation Policy Coordinating Committee (TPCC) update ..... Dr. Garon Smith
5. Public comments on items not on the agenda ..... Dr. Garon Smith
6. Board and staff comments on items not on the agenda ..... Dr. Garon Smith

WATER QUALITY DISTRICT BOARD

1. **Approve July 19, 2012 and September 20, 2012 minutes** ..... Dr. Garon Smith
2. Water Quality Advisory Council update ..... Peter Nielsen
3. Staff report on the Smurfit-Stone mill site ..... Peter Nielsen
4. Public comments on items not on the agenda ..... Dr. Garon Smith
5. Board and staff comments on items not on the agenda ..... Dr. Garon Smith

BOARD OF HEALTH

1. **Approve September 20, 2012 minutes** ..... Dr. Garon Smith
2. Journal report ..... Debbie Johnston
3. Staff report on Animal Control ..... Ed Franceschina
4. Maternal Child Health Advisory Council update ..... Teresa Henry
5. Director's report and accreditation update ..... Ellen Leahy
6. Public comments on items not on the agenda ..... Dr. Garon Smith
7. Board and staff comments on items not on the agenda ..... Dr. Garon Smith
7. Director's FY 2012 performance evaluation and FY 2013 goals [closed session] ..... Dr. Garon Smith
8. **Action on Director's FY 2012 evaluation and FY 2013 goals** [open session] ..... Dr. Garon Smith

ADDITIONAL INFORMATION

Agenda items and their order are subject to change. For the current agenda, call the Health Department at 258-4770 or go to the website for the three Boards as noted below. To receive the agenda monthly by e-mail, send an e-mail request to JMohr@co.missoula.mt.us and provide your e-mail address. Unless the meeting schedule is adjusted, the agenda is posted on the 2nd Thursday of the month via the Internet at http://www.co.missoula.mt.us/healthboards/boardagendas.htm.

If you need special assistance to attend this meeting, please provide notice 48 hours in advance by calling the Health Department at 258-4770 or e-mail your request to JMohr@co.missoula.mt.us.

Published 10/11/12

MISSOULA CITY-COUNTY HEALTH, AIR POLLUTION CONTROL, & WATER QUALITY DISTRICT BOARDS

November 15, 2012 – 12:15 p.m. – 3:00 p.m.
Missoula City-County Health Department
2nd Floor - Health Board Conference Room
301 West Alder, Missoula, MT 59802

AGENDA

AIR POLLUTION CONTROL BOARD

1. **Approve October 18, 2012 minutes** ..... Dr. Garon Smith
2. **Hearing and possible action on proposed amendments to the Missoula City-County Air Pollution Control Program - Chapters 4, 6, 7, 8, 9 and 14 [scheduled for 12:15 p.m. or shortly thereafter** ..... Jim Carlson and Ben Schmidt
3. Public comments on items not on the agenda ..... Dr. Garon Smith
4. Board and staff comments on items not on the agenda ..... Dr. Garon Smith

Note: There is no November update from the Air Quality Advisory Council—the November 6th meeting was canceled. There is no November update from the Transportation Policy Coordinating Committee—the November meeting is scheduled on the 20th.

WATER QUALITY DISTRICT BOARD

1. **Approve October 18, 2012 minutes** ..... Dr. Garon Smith
2. Water Quality Advisory Council update ..... Peter Nielsen
3. **Action on a proposed letter to support Superfund listing of the former Smurfit-Stone site** ..... Peter Nielsen
4. Public comments on items not on the agenda ..... Dr. Garon Smith
5. Board and staff comments on items not on the agenda ..... Dr. Garon Smith

BOARD OF HEALTH

1. **Approve October 18, 2012 minutes** ..... Dr. Garon Smith
2. **Action on a proposed letter to support Superfund listing of the former Smurfit-Stone site** ..... Peter Nielsen
3. Journal report ..... Jean Curtiss
4. Director's report and accreditation update ..... Ellen Leahy
5. Public comments on items not on the agenda ..... Dr. Garon Smith
6. Board and staff comments on items not on the agenda ..... Dr. Garon Smith

ADDITIONAL INFORMATION

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Published 11/08/12; Revised and republished 11/14/12

MISSOULA COUNTY

MISSOULA CITY-COUNTY HEALTH DEPARTMENT
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Summary and Explanation for Changes to the Missoula City-County Air Pollution Control Program For Missoula City-County Air Pollution Control Board, Missoula City Council and Missoula Board of County Commissioners

Chapter 4: Missoula County Air Stagnation and Emergency Episode Avoidance Plan

- **Chapter 4 Rule 4.112** states that air alerts and warnings with regulatory requirements must be called during Air Alerts, Warnings, Emergencies and Crisis when wildfire smoke is the cause of high air pollution levels. The proposed rule change removes the requirement that air alerts be called when wildfire smoke causes high air pollution levels. Health advisories are the appropriate response for wildfire smoke episodes, not regulatory actions. This change would fix an oversight from previous rule revisions.

Chapter 6: Standards for Stationary (Industrial) Sources

- **Rule 6.101(8)** adds a definition for a portable source.
- **Rule 6.101(10)** corrects a reference error.
- **Rule 6.102 (3-4)** allows portable industrial sources with a valid State of Montana Air Quality Permit to operate under a temporary Missoula City-County Air Quality Permit while the portable source pursues a permanent Missoula City-County Air Quality Permit. This rule change allows portable sources with a valid state permit to operate in Missoula County in a timely fashion while ensuring that all environmental rules and local, state, and federal air pollution emission standards are met.
- **Rule 6.102(5)** clarifies that the Air Board may require an air quality permit if a permit is needed to protect the National Ambient Air Quality Standards. Maintaining air pollutant levels below the National Ambient Air Quality Standards is one of the main purposes of the Air Pollution Control Program.
- **Rule 6.601(4)** corrects a reference error.
- **Rules 6.103(6), 6.106(3), 6.107 (5-6) and 6.108(3)** removes the Administrative Review Process from the Air Pollution Control Program permitting actions and clarifies who may request an Air Board Hearing. The administrative review process has never been successfully used to resolve disputes or concerns with permitting actions. Every request for an administrative review of an air permitting action has gone to an Air Board Hearing. The administrative review process for air permits is a redundant step that uses up staff, public and permittees' time with no benefit or resolution. The ability for affected parties to request a Hearing before the Air Board for a department permitting action is maintained. Who can request an Air Board Hearing is also clarified and expanded in this rule rewrite.

Chapter 7: Outdoor Burning

- **Rule 7.101(3)** clarifies the definition of a bonfire for the county. The previous

definition was often interpreted in different and inconsistent ways. This definition re-write will allow the department to give a more consistent interpretation of what constitutes a bonfire.

- **Rule 7.106(1)** updates the rules to agree with how the outdoor burning permit program is now run. The paper and phone methods have gone primarily to an internet and phone program and this change is needed to keep up with the new system.
- **Rule 7.107(3)** clarifies major outdoor burning source requirements in the county.
- **Rule 7.110(7)** removes an out of date phone number.

Chapter 8: Fugitive Particulate

Chapter 8 was changed to allow alternatives to asphalt or concrete paving in situations where other surfaces with low fugitive emissions are technically feasible. Over the years, the Missoula City-County Health Department has received several requests to allow paving options other than asphalt or concrete in appropriate situations; these changes address those requests. The rule changes clarify that temporary roads at mining sites may not need to be paved and that material carry out at mining sites must be controlled to reduce fugitive emissions.

- **Rule 8.101(5)** adds a definition for block pavers.
- **Rule 8.101(6)** adds a definition for bound recycled glass.
- **Rule 8.101(21)** adds a definition for reinforced grids. This replaces the "geoblock" definition that was in Rule 8.101(9).
- **Rule 8.102(2)** clarifies opacity rules for sources.
- **Rule 8.102(3)** replaces the term "geoblocks" with reinforced grids and block pavers.
- **Rule 8.104** clarifies that roads at mining sites are temporary.
- **Rule 8.104(1)** clarifies that temporary roads at mining sites are required to control material carry out.
- **Rule 8.104(2)** clarifies that temporary roads at mining sites may not be required to pave.
- **Rule 8.202(4)** clarifies that roads used for solely for utilities, agricultural or silvicultral purposes are exempt from the paving requirements of Subchapter 8.2.
- **Rule 8.202(5)** clarifies that landfill roads may be considered temporary if they exist in the same location for less than three years.
- **Rule 8.203(1)** acknowledges the addition of 8.203(4).
- **Rule 8.203(3)(a)(ii)** clarifies that long term parking area exemptions do not apply to sales lots for automobiles or RVs.
- **Rule 8.203(b)(ii) and Rule 8.203(d)** replaces the term geoblock with reinforced grids since geoblock is a trade name and needs to be replaced.
- **Rule 8.203(4)** adds a provision to allow self-draining solid surfaces (i.e. permeable paving) in parking areas as long as certain conditions are met.
- **Rule 8.204(1)** allows a self-draining solid surface as an option for new private driveways.
- **Rule 8.204(4)** adds a provision to allow self-draining solid surfaces in lieu of paving for new driveways in the air stagnation zone as long as certain conditions are met.

Chapter 9: Solid Fuel Burning Devices (Wood Stoves)

- **Rules 9.203(1)(b) and 9.204(1)(g)** allows licensed mobile food service establishment to obtain a solid fuel burning device permit throughout the county.

This change will allow the air rules to mesh better with the goals of the county licensed establishment food handling program. To comply with the air rules, mobile food service establishments currently place their solid fuel cooking devices outside the mobile unit. Best food handling practices require cooking to occur inside the mobile unit. This rule change would allow the solid fuel burning/cooking devices to be inside the mobile unit and the rule does not allow the solid fuel burning device to be used in the winter months when we have air pollution problems from these types of devices.

- **Rule 9.401** corrects reference errors.
- **Rule 9.402** changes labeling requirements for businesses that sell solid fuel burning devices. This change is needed to reflect previous changes in solid fuel burning device installation requirements through out the county. This requirement will make it clearer to customers where different devices may be installed in the county.

Chapter 14: Enforcement and Administrative Procedures

- **Rules 14.106(1-2, 6), and 14.107(1-2)** removes the Administrative Review Process from the Air Pollution Control Program permitting actions and clarifies who may request an Air Board Hearing. The administrative review process has never been successfully used to resolve disputes or concerns with permitting actions. All requests for administrative reviews of air permitting actions have gone to Air Board Hearings. The administrative review process for air permits is a redundant step that uses up staff, public and permittees' time with no benefit or resolution. The ability for affected parties to request a Hearing before the Air Board for a department permitting action is maintained. Who can request an Air Board Hearing is also clarified and expanded in this rule rewrite.

Missoula City-County Health Department Response to Comments
11/13/2012

Comments to Missoula County Health Board on Proposed Changes to Air Permitting

Diane R. Lorenzen, P.E.

1. These proposed changes introduce industrial concerns about air permitting:
   - Uncertainty
   - Delay

   Department Response: Comment 1 raises the concern that a source may apply for and receive a Temporary Missoula County Air Quality Permit, but then be denied a permanent Air Quality Permit from the county. If this were to happen, the source would need to cease operation in the county. While this situation is unlikely to occur, it is a possibility. The department has recommended no changes to the proposed rules based on this comment. The other concern- that the proposed Temporary Missoula County Air Quality Permit may create delays- is not applicable because this change would allow a portable source to operate in the county before a final Missoula Air Quality Permit is finalized, and therefore shortens the amount of time required before a source can start operations.

2. The definition of "portable industrial source" is inconsistent with MDEQ rules.
   - MDEQ just defines sources. Anything can be moved.
   - The concept of Portable Sources permitting is done through policy, not rule.
   - Cannot define "industrial"- as opposed to agricultural or forestry, it's just a source.
   - To move into a PM10 non-attainment area, the Montana portable source permit must already have a non-attainment area (NAA) addendum. This is established by policy, not by rule.
   - Getting the addendum would likely constitute a permit modification, triggering the DEQ 75-day timeline.
   - Montana portable sources with an addendum have to file a Notice of Intent to Move and publish a newspaper notice with 15-day public comment period.

   Department Response: While local air rules must be at least as stringent as state and federal rules, the Missoula City-County Air Pollution Control Program's rules and permits are separate from the state rules and permits. What is a portable source at the local level will be set by rules and policy set at the local level. The Missoula City-County Health Department agrees that "industrial" should not be defined.

   The last three bullets deal with state permits that do not have authority in Missoula County. Sources operating in the Missoula Air Stagnation Zone, which contains the Missoula County PM_{10} nonattainment area, must follow limits on operation and procedures set by the Missoula City-County Health Department. Because state air quality permits do not contain restrictions applicable to Missoula County, there are no conflicts with the state permits under this proposed Temporary Missoula County Air Quality Permit rule change.

3. Advantages of this proposed rule change:
   - The rule change could shorten permitting time for sources with Montana permits, with NAA addendums already attached.

     Department Response: The Department agrees that allowing "Temporary Missoula County Air Quality Permits" would allow sources with Montana Air Quality Permits to begin operation quicker in Missoula County. However, the full permitting process with public comment periods must be completed by the source before a full Missoula City-County Air Quality Permit is obtained.

     Concerns with the state Non-Attainment Area addendums are not relevant because state permits are not valid in Missoula County. All sources operating in the Missoula Air Stagnation Zone, which contains the Missoula County PM_{10} nonattainment area, must follow limits on operation and procedures set by the Missoula City-County Health Department and items from the Montana permit dealing with non-attainment areas do not transfer over to the Temporary Missoula City-County Air Quality Permit.

4. Disadvantages of this propose rule change:
   - Dual permits required for the same source
   - MDEQ permit and Missoula Permit may not match
   - MDEQ NAA addendums are usually very strict
   - Source could operate before the Missoula County public comment process is complete
   - When you run over the public during the permitting process, you risk an appeal of the permit

     Department Response: Under the current and proposed rule changes, a source needs a Missoula County Air Quality Permit to operate in Missoula County. If the source operates both inside and outside of Missoula County, they will also need a Montana Air Quality Permit. Since the county and the state air quality permitting programs do not have overlapping jurisdiction, specific permit conditions may not be identical. Permits do not need to be identical and the MDEQ NAA does not apply in Missoula County.

     Under the proposed "Temporary Missoula Air Quality Permit" program, a source could operate before the air quality permitting comment period was over. The proposed temporary permit would allow a source to operate until completion of the permitting process. After the air quality permit became final, it would automatically replace the temporary permit. If the permit application was denied and the appeal process completed, the temporary permit would immediately expire and the source would need to cease operation in Missoula County.

     Before the source can operate under their Temporary Missoula City-County Air Quality Permit, a legal add must be published giving the public 15 days to comment on the temporary permit. Therefore, the public does have an opportunity to comment on the Temporary Missoula City-County Air Quality Permit and appeal the permit to the Air Pollution Control Board. This 15-day commenting period can run concurrent with the

full Missoula City-County Air Quality permitting comment period. It is possible for the public to appeal the permit, the temporary permit transfer process, or both.

5. Typical MDEQ Permit Language:

LHC operates a portable drum mix asphalt plant. The legal description of the facility's home pit is in Sections 25 and 26, Township 29N, Range 22W, Flathead County, Montana. However, MAQP #4741-01 applies while operating at any location in Montana, except those areas having a Department of Environmental Quality (Department)-approved permitting program, areas considered tribal lands, or areas in or within 10 kilometers (km) of certain particulate matter with an aerodynamic diameter of 10 microns or less (PM10) nonattainment areas. *A Missoula County air quality permit will be required for locations within Missoula County, Montana.* An addendum will be required for locations in or within 10 km of certain PM10 nonattainment areas.

Addendum 2 applies to the LHC facility while operating at any location in or within 10 km of certain PM10 nonattainment areas during the summer months (April 1 – September 30) and at sites approved by the Department during the winter months (October 1 – March 31).

Department Response: Concerns with the state Non-Attainment Area addendums are not relevant since state permits are not valid in Missoula County. Sources operating in the Missoula Air Stagnation Zone, which contains the Missoula County PM_{10} nonattainment area, follow limits on operation and procedures set by the Missoula City-County Health Department.

MIST COMMENTS ON CHAPTER 8 CHANGES- PUBLIC HEARING 10-18-12

1st MIST comment:

Concerning: "Paved" means having a minimum of two (2) inches of hot mix asphalt or four (4) inches of portland cement concrete with an appropriate base for the soil type. "

MIST comment: Asphalt is known to leach toxins over time and the concrete manufacturing process contributes substantially to greenhouse gas emissions. We believe that the definition of 'paved' should include 'clay bricks, concrete bricks, paving stones and other surfaces that meet Department standards'. We suggest these additions in order to help the community as a whole become healthier.

Kalispell, Montana, another city with air quality challenges, has for their paving requirement: "All off-street parking spaces and associated access areas shall be improved with asphalt or concrete or a comparable permanent hard surface."

Missoula could adopt similar language, except without the word 'permanent', as no surface is permanent, including asphalt and concrete.

Department Response: The definition for "paved" was not part of the proposed rule changes.

2nd MIST comment
There are lots of examples of roadways that are non-toxic and hold up well if installed correctly. We suggest language in the roadway section similar to the language in the driveway section and parking lot section, with regards to allowable surfaces:

4) The department may allow a self-draining solid surface including, but not limited to, block pavers and
bound recycled glass in lieu of pavement provided the following conditions are met.
(i) The surface is rated for the vehicular traffic loads projected for that roadway
(ii) Fugitive emissions from the surface will not exceed those from a clean, paved driveway.
(iii) The surface is cleaned regularly to prevent fugitive particulate
(iv) If the surface is disturbed or destroyed it must be paved or rebuilt before continued use.

Department Response: This section was not part of the proposed rule changes.

The Air Quality Advisory Council's (AQAC) recommendation regarding proposed revisions to Rule 6.102(3) of the Missoula City-County Air Pollution Control Program, which would allow state-permitted portable air pollution sources to operate during the local permitting process
-statement approved by AQAC (unanimous vote) September 4, 2012.

"The overall mission of the Missoula City-County Air Pollution Control Program (APCP) is to use local oversight to protect our air shed to the best of our ability. As presented to the Air Quality Advisory Council (AQAC), the proposed changes to the APCP, Chapter 6 – Standards for Stationary Sources Rule 6.102(3), weakens and circumvents the necessary local oversight inherent in the APCP. The proposed changes will neither lead to better physical health of County residents nor to better fiscal health of local businesses. Moreover, they have the potential of doing damage to both. It is still unclear why these changes are being proposed, as there is no proof that the existing air quality permitting process has historically put an undue burden on businesses applying for such permits.

While it is not within the purview of the AQAC to address economic impacts of the APCP, the Council nonetheless acknowledges that all environmental protections have both benefits and costs. In this instance, local businesses bear the costs of compliance with, and participation in, the APCP, to the benefit of Missoula County's air shed and residents' health. To loosen requirements and allow non-local businesses to operate within Missoula County without similar investment in the APCP puts local businesses at a disadvantage. This is a disservice to those businesses which make an effort to meet APCP requirements to operate in Missoula County. Such action does nothing to maintain or improve air quality or the wellbeing of the citizenry.

We therefore respectfully suggest the APCB reject the proposed changes to the permitting process that are provided in Chapter 6 Rule 6.102(3). We do, however, look forward to working with you in the near future to make other meaningful changes to improve Missoula's air quality program."

1. The proposed changes circumvent local oversight

Department Response: Local oversight will remain intact because sources will be required to obtain a temporary Missoula County air pollution permit before they can operate. The Missoula City-County Air Pollution Control Program will have authority and oversight over this temporary permit.

2. The proposed changes will not lead to better physical health of County residents

Department Response: The emission standards for air pollutants will not be less strict under the Temporary Missoula City-County Air Quality Permit than they are under a Missoula City-County Air Quality Permit. In addition, the operation controls required for a Temporary Missoula City-County Air Quality Permit will be identical to the emission controls required by a Missoula City-County Air Quality Permit.

3. The proposed changes will not lead to better fiscal health of local businesses

Department response: This concern is outside the purview of the Missoula City-County Air Pollution Control Program

4. It is unclear why these changes are being proposed, as there is no proof that the existing air quality permitting process has historically put an undue burden on businesses applying for such permits.

Department response: In 2011, a road in Missoula County needed gravel applied to reduce very high road dust emissions. The crushing operation with the contract did not have a Missoula City-County Air Quality Permit. Because the source had to apply for and wait for completion of a Missoula County Air Quality Permit, people living near and using the very dusty road were impacted by road dust emissions for months. A Temporary Missoula City-County Air Quality Permit would allow a source to start operation sooner while the permitting process was in progress.

The Montana Department of Environmental Quality (DEQ) submitted a letter dated October 12, 2012 with comments on the proposed rule changes. Below is a summary of the DEQ comments and the department's responses.

1. Does the comment period for the proposed rule changes meet the requirement of a 30 day notice before adoption, revision or repeal of a local rule as specified in 75-2-301(13(b))?

Department Response: The first written add in the Independent was published on October 4, 2012 and the first email notification on the proposed changes was sent out on October 1, 2012. The earliest that the Air Pollution Control Board can adopt the proposed rule changes is November 15, 2012. More than 30 days of notice and public comment will be completed before adoption of the proposed rule changes by the Air Board.

2. The DEQ had concerns with the revisions proposed in industrial chapter 6. The two main concerns were to make it clear where the county authority came from for the Temporary Missoula City-County Air Quality Permit, and that not all wood chippers in the state may have a state permit.

Department Response: The Missoula City-County Health Department has coordinated with DEQ and a version of Chapter 6 that addresses those concerns has been drafted. Provisions from the state permit, excluding any language about non-attainment areas, will be transferred verbatim to the Temporary Missoula City-County Air Quality Permit. This will avoid jurisdictional conflicts and the Temporary Permit is under Missoula County's jurisdiction.

Wood chippers without a state permit would not be eligible for a Temporary Missoula City-County Air Quality Permit. A chipper could still operate in the forest in Missoula County without a permit. Wood chippers in Montana may operate in the forest with out an air quality permit; so Missoula County and the State of Montana are consistent on this issue. If the wood chipper chooses to operate out of the forest and potentially near populated areas, then an air quality permit is required.

3. The Oregon Method referenced in Missoula City-County Air Pollution Control Program Rule 9.101(8) is no longer in use. The DEQ urges the Air Board to review this obsolete reference.

Department Response: Several stoves were legally installed in the Missoula Air Stagnation Zone based on the Oregon Method emissions test. These stoves were given a Class I designation and under the woodstove removal program in the Air Stagnation Zone these stoves can remain when property changes ownership. Because of the wood stove removal program for older stoves in the Missoula Air Stagnation Zone, this rule and the Oregon Method reference are not obsolete.

4. DEQ reminds the Missoula City-County Health Department that a stringency analysis as required by the Montana Code Annotated 75-2-301(4) may be required. Any rule revisions contained in the Montana State Implementation Plan (SIP) will require demonstration upon submittal to EPA as a SIP revision.

Department Response: The stringency determination and analysis for 75-2-301(4) have been prepared by the Department for the Air Pollution Control Board. Any changes that are in Montana's SIP will be submitted to the EPA as a SIP revision.

Christine Johnson had verbal comments at the October 18, 2012 Air Board Hearing. A summary of her comments and the Departments responses are below.

1. Per Senate Bill 47 of Montana's 62 legislative session, portable sources for forestry products are exempt from permitting.

Department Response: Portable forestry product sources such as chippers are required to have a State DEQ and Missoula County permit when operating at industrial locations and more populated areas than the forest. Portable chippers in the state, such as Glacier Gold, that operate at industrial locations do have state air quality permits. Per Senate Bill

47, forestry equipment operating in the forest is not required to have a state or county air quality permit.

2. Christine Johnson is in support of Missoula County recognizing and accepting Montana State air quality permits as active in the Missoula County.

Department Response: The proposed changes to chapter 6 would not make Montana State air quality permits active in Missoula County. The proposed changes would allow portable sources with an active Montana State air quality permit to acquire a Temporary Missoula City-County Air Quality Permit while they complete the full local air permitting process. This would allow portable sources moving into Missoula County to set up and operate in a quicker fashion.

OFFICIAL RECORD OF PROCEEDINGS

Missoula City-County Air Pollution Control Board
November 15, 2012

Board Members Present: Ed Childers, Jean Curtiss, Teresa Henry, Debbie Johnston, Ross Miller (Vice Chair), and Dr. Tom Roberts

Board Members Excused: Dr. Garon Smith (Chair)

Staff Members Present: Administration: Ellen Leahy, Julie Mohr and Kathy Potwin; and Environmental Health: Jim Carlson, Ben Schmidt and Sarah Coefield

Legal Counsel Excused: Marnie McClain (Chief Civil Deputy County Attorney)

Others Present: Brad Gillespie, Andy Huntsberger, Frank Maradeo, Brent Olson, Kristel Peterson and Ron Scholl (Missoula Community Access Television)

MEETING CALLED TO ORDER

Mr. Ross Miller called the meeting to order at 12:20 p.m.

ITEM 1 APPROVE OCTOBER 18, 2012 MINUTES

Approval of the minutes was deferred to the December 20, 2012 meeting.

ITEM 2 HEARING AND POSSIBLE ACTION ON PROPOSED AMENDMENTS TO THE AIR POLLUTION CONTROL PROGRAM REGULATIONS (CHAPTERS 4, 6, 7, 8, 9, 14)

- **Attachment A**, "Air Pollution Control Program: Draft Chapter 4 Missoula County Air Stagnation and Emergency Episode Avoidance Plan"
- **Attachment B**, "Air Pollution Control Program: November 9, 2012 Draft – Chapter 6 Standards for Stationary Sources"
- **Attachment C**, "Air Pollution Control Program: November 9, 2012 Draft – Chapter 7 Outdoor Burning"
- **Attachment D**, "Air Pollution Control Program: Draft Chapter 8 Fugitive Particulate"
- **Attachment E**, "Air Pollution Control Program: Draft Chapter 9 Solid Fuel Burning Devices"
- **Attachment F**, "Air Pollution Control Program: Draft Chapter 14 Enforcement and Administrative Procedures"
- **Attachment G**, "November 14, 2012 Letter from Ian Magruder, Missoula City-County Water Quality Advisory Council: Air Pollution Control Program Rule Changes Regarding Pervious Pavement"
- **Attachment H**, "Missoula City-County Health Department Response to Comments: 11/13/2012"
- **Attachment I**, "75-2-301 Written Findings Draft for Rule Changes Proposed to the Missoula City-County Air Pollution Control Program: November 15, 2012"
- **Attachment J**, "Proposed Applicability of 75-2-301 Findings for Rule Changes Proposed to the Missoula City-County Air Pollution Control Program: November 15, 2012"

- **Attachment K**, "Proposed Amendments to the Missoula City-County Air Pollution Control Board" (PowerPoint presentation – November 15, 2012 version)

Mr. Miller convened the hearing on proposed changes to the Air Pollution Control Program regulations.

Health Department's Response to Public Comments: Christine Johnson's comments were not included in **Attachment H**. They were similar to those of Diane Lorenzen and the Montana Department of Environmental Quality (DEQ) and are covered in the responses to those parties. If the hearing continues and the Board asks for them to be included, they will be added.

Attachment H contains an extensive summary of public comments and the health department's detailed response. Ben Schmidt (Air Quality Specialist, Environmental Health) reported to the Board as follows:

Response to comments from Diane Lorenzen:

- He remarked on Items 1 through 3 as found in **Attachment H**.
- Regarding Item 4, the public does have the opportunity to appeal both the temporary permit transfer process and the regular permit. Thus, it is possible that a source could be caught in limbo—that a protest over issuance of a temporary permit might stall the process to obtain the long-term permit. However, he believes this is not likely to occur.
- He did not review Item 5.

Response to comments from the Missoula Institute for Sustainable Transportation (MIST):
The MIST comments dealt with sections of Chapter 8 that were not opened as part of this hearing process. The sections mentioned cannot be revised unless they are opened and the hearing process is restarted.

Response to comments from the Air Quality Advisory Council:
Mr. Schmidt remarked on the items as found in **Attachment H**.

Response to comments from DEQ:

- The health department had several conversations with DEQ before the October hearing. Staff members have also held subsequent conversations individually and as a group with DEQ by phone. Issues have been resolved. The department believes that the proposed changes are legal and will meet the requirements of the Montana Clean Air Act.
- Mr. Schmidt remarked on Items 1 and 4 as found in **Attachment H**. He did not discuss Item 3.
- Regarding Item 2, it is correct that not all wood chippers in the state have a Montana permit. Christine Johnson commented that there is a dispute about the interpretation of a state law that was passed during the last legislative session as to whether chippers need to obtain a permit when they move into neighborhoods, towns and industrial sites. To Mr. Schmidt's knowledge, currently all of the wood chippers located in the state are obtaining Montana permits when they are located at industrial sites near areas where people are living. Thus, regarding DEQ's original concern, the proposed changes to our local regulations do not differ from the State's regulations.

Stringency Analysis: Sarah Coefield (Air Quality Specialist, Environmental Health) explained that the health department is required under MCA 75-2-301 to complete a stringency analysis and to show that proposed rule changes will protect public health and the environment, that they will mitigate harm to public health and that they can be achieved with current technology. The health department's analysis confirmed that the proposed changes meet stringency requirements. She reviewed the information provided in **Attachment I** and added the following:

- A correction needs to be made on page 1 of **Attachment I**. Where it says "Rule 6.102(4) – Air Quality Permits Required", it should read "Rule 6.102(5) – Air Quality Permits Required".
- The only item that potentially increases stringency is in Chapter 6 (Standards for Stationary Sources) where the requirement was added that sources that normally do not need a permit must obtain one if necessary to ensure compliance with the National Ambient Air Quality Standards (NAAQS).

Staff Recommendation: If the Board approves a motion to adopt proposed changes, the motion should also authorize staff to correct the error identified above.

Staff Recommendation Regarding New Changes Proposed in Chapters 6 and 7: Jim Carlson said that, as a result of the health department's discussions with DEQ, the department recommends that additional revisions be included in the proposed changes to the regulations.

- In Chapter 6, Rule 6.101(8)—on page 1 of **Attachment B**—the original language is shown in green. The department recommends striking the word "industrial" from the definition of "portable source". In the second sentence, revise the definition of the term to include the additions and strikeouts shown in red.
- Regarding Chapter 6, Rule 6.103—on page 2 of **Attachment B**—the language has been rewritten and split into 2 sections. The primary section for permit issuance basically indicates that the health department may issue a temporary permit if the source sends a Notice of Intent to Transfer and the location (as required by both State and local rules) and they have submitted a complete application.
- The rewrite of Rule 6.104—on pages 2 and 3 of **Attachment B**—outlines the conditions. The emission control requirements of the State permit are transferred verbatim, with the exception of the PM_{10} nonattainment area language. The source may operate after the department has approved the transfer permit. It expires in 180 days or upon completion of the process of issuing a regular Missoula County permit, whichever occurs first. The County may revoke the permit prior to expiration if there are violations of any provision.
- For Chapter 7, Rule 7.110(7), staff members recommend removing the health department's phone number. The department can be contacted at different phone numbers and by using various types of systems other than the telephone.

Board Questions: Ms. Curtiss posed a question regarding a matter that does not relate to portions of the regulations that are open for review. Can the health department authorize fire department personnel to update the online outdoor burn permitting system on weekends? Currently, the department may adjust the system late in the work week to prohibit activation of permits due to unfavorable weekend forecasts. Even though weather conditions may prove favorable for burning, users are then unable to activate their permits. Mr. Carlson said that the department does not update this aspect of the system on weekends due to the substantial cost to keep an employee

on duty or on call. The department can arrange for fire departments to be given administrative rights to make this type of change in the system for fire protection purposes. The department will not give them that authority for the purposes of air quality control.

Follow-up: *Ms. Curtiss asked that this discussion be taken up with appropriate fire chiefs prior to the next fire permit season.*

Additional Staff Recommendation: Director Leahy referred back to the request to remove the department's phone number from Chapter 7, Rule 7.110(7). There are various means of contacting the department. She proposed that the language should say "Approval may be requested by contacting the department." instead of saying "...by calling the department." Mr. Carlson concurred. Ms. Curtiss noted that the Board's motion should make provision for staff to make this correction in any additional sections of the regulations that are open for review.

Public Comments: Mr. Miller opened the public comment portion of the hearing. There were no comments specific to the hearing. Comments that follow were on topics not on the agenda.

Frank Maradeo (Fire Chief, Seeley Lake Fire Department; Chair of the Missoula County Fire Protection Association): Use of the new online burn permit system this first year resulted in snafus that adversely impacted fire departments and other agencies. On behalf of the Missoula County Fire Protection Association (MCFPA), he asked which venue they should use in order to discuss the problems. Area fire departments need to plan and coordinate activities with government agencies that are based in Flathead and Lake Counties but have projects in Missoula County. When the health department prohibits outdoor burning in areas of Missoula County during the winter due to air quality issues, this prevents other agencies from successfully planning for and completing winter projects, such as controlled outdoor burns, and precludes completion of later activities, such as spring planting. Coordination of projects becomes difficult.

Mr. Maradeo's comment does not relate to the proposed rule changes. Mr. Miller gave approval for Mr. Carlson to respond immediately, rather than postponing the discussion until Item 3 on the agenda. Mr. Carlson explained that under State and County rules there are 2 types of permits issued. Major burners—very large landowners—receive permits through the State Smoke Management Group. Missoula County has primacy within the county but recognizes the State permits in a manner similar to what is being proposed for the temporary permitting process—as long as burners are operating under, and in compliance with, the State Smoke Management Group. He explained how that group does its forecasting. Most of the agencies Mr. Maradeo mentioned are probably operating under that type of permit. Other people that have smaller amounts of land, or who do not belong to the Smoke Management Group, must obtain an individual permit from Missoula County. Under the new system, you can have a single permit but it can be active at a number of different locations. Many parties who do contract burning as part of fuels management for forestry management like this system for that reason. In either case, there are restrictions that apply to the burning that is conducted. The large burners are operating largely under the wildland category of open burning, which is not allowed December through February of each year. Also, the Smoke Management Group has to be in operation in order for them to be burning under that permit. The Smoke Management Group used to operate primarily in the fall. More recently, they have also started operating in the spring for certain kinds of burns.

The answer as to where a burner should direct their questions and concerns for discussion is determined by the permit under which the burner is operating.

Staff Recommendation: Mr. Carlson recommended that the Board adopt the stringency compliance document and—with appropriate amendments—also adopt the proposed regulations so that the department can move forward with scheduling public hearings with the City Council and the Board of County Commissioners, either separately or in a combined hearing. Mr. Miller called for additional questions and comments from the Board and staff. There were none.

Motion: The motion by Dr. Roberts was approved as follows:

- **Adopt the proposed changes to Chapters 4, 8, 9 and 14 of the Air Pollution Control Program—with amendments as discussed at the October hearing and as presented today in the November 9, 2012 drafts of Chapters 6 and 7.**
- **Authorize staff to revise Chapter 7, Rule 7.110(7) to read "Approval may be requested by contacting the department." and allow them to make the same adjustment elsewhere—and other minor changes—as needed.**
- **Adopt the MCA 75-2-301 findings as presented, allowing staff to correct page 1 of Attachment I to read "Rule 6.102(5) – Air Quality Permits Required".**

The motion carried as follows: Ayes – 6 (Childers, Curtiss, Henry, Johnston, Miller and Dr. Roberts); Nays – 0; Excused – 1 (Dr. Smith); Abstained – 0; Absent – 0).

ITEM 3 PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

Brent Olson (Assistant Fire Officer, Swan Lake District, Flathead National Forest): As a large outdoor burner, the Swan Lake District does have a permit from DEQ for outdoor burning. However, in certain circumstances, they do need to obtain an additional permit. As a large outdoor burner, they are concerned with the amount of time required to obtain a Missoula County permit because of the required public comment period. For Forest Service projects, there is a comment period on the analysis that they perform. The implementation portion of the analysis often addresses burning and the smoke created by those burns. The additional time required by the permitting process can put them out of prescription, preventing them from accomplishing the intended project. This did occur this fall.

Director Leahy noted that Mr. Carlson and Ms. Coefield thought that this part of the meeting was over and left the meeting. Mr. Maradeo indicated that he just met with Mr. Carlson and Ms. Coefield outside of this meeting and mentioned the concerns brought forward by Mr. Olson. Mr. Carlson and Ms. Coefield are available now to meet with all interested parties in another conference room to begin discussing issues. In response to a question from the public, Director Leahy explained that when the department is ironing out administrative issues, rather than policy issues, discussions can take place without a requirement for public notice. The department—up through and including Director Leahy—will help to identify administrative versus policy issues and whether there are any interpretive gray areas. In the latter case, the matter will be referred to the Board. Various members of the public opted to meet with Mr. Carlson and Ms. Carlson.

Andy Huntsberger (Assistant Fire Management Officer of Fuels, Swan Lake District, Flathead National Forest): A portion of the district is in Missoula County. He is present today because the

Missoula County Air Pollution Control Program's rules and policies—and the decisions made by the Board—have an impact the activities of larger burners. He and other staff members came in order to learn more so that they can perform their jobs and remain in compliance with the regulations. Director Leahy recommended that members of the public provide their contact information to health department personnel in order to be included in *Interested Parties* lists for the boards and advisory councils and so forth.

Follow-up: *At a future date, the health department will report back to the Board on the outcome of today's conversation and any subsequent discussion about the concerns identified during the public comments.*

Note: there is no November update from the Air Quality Advisory Council—the November 6th meeting was canceled. There is no update for the Transportation Policy Coordinating Committee—their meeting is scheduled on November 20th.

ITEM 4 BOARD AND STAFF COMMENTS ON ITEMS NOT ON THE AGENDA

No comments were given.

ADJOURNMENT: Mr. Miller adjourned the meeting at 1:05 p.m.

Ellen Leahy Health Officer	Ross Miller Vice Chair

Section 3

Joint Missoula City Council & Board of County Commissioners Hearing

FREE THINKING

Independent

P.O. Box 8275 Missoula, MT 59807
Ph: 406-543-6609 • Fx: 406-543-4367

Affidavit of Publication

State of Montana

County of Missoula

Tami Allen, being first duly sworn, Deposes that she is a Classified Advertising Representative of the Missoula Independent, a newspaper of general circulation, published in Missoula, Missoula County, Montana and printed in Great Falls, Cascade County, Montana, and that the attached notice has been correctly published in the regular and entire issue of every number of said paper for 2 (two) successive weeks, commencing on the 31st day of January 2013 and published on the following dates thereafter: 2/7 2013.

Signed: Tami Allen

Subscribed and sworn before me this 6th day of February 2013.

Terrie Rustvold

TERRIE RUSTVOLD

Notary Public for the State of Montana, residing at Missoula, Montana. My commission expires 10/11/2014

NOTARIAL SEAL

NOTICE OF JOINT CITY/COUNTY PUBLIC HEARING The Missoula City Council and the Missoula County Commissioners will hold a joint public hearing on Monday, February 25, 2013 at 7:00 p.m. in the City Council Chambers, 140 West Pine, Missoula, Montana, to consider a resolution on proposed changes to the Missoula City-County Air Pollution Control Program. The proposed rule changes are in Chapter 4 "Missoula County Air Stagnation and Emergency Episode Avoidance Plan"; Chapter 6 "Standards for Stationary Sources"; Chapter 7 "Outdoor Burning"; Chapter 8 "Fugitive Particulate"; Chapter 9 "Solid Fuel Burning Devices"; and Chapter 14 "Enforcement and Administrative Procedures." Some of the proposed rule changes include clarifying the wildfire smoke emergency episode avoidance plan in Chapter 4; adding a temporary permitting process for portable industrial sources in Chapter 6; clarifying general outdoor burning procedure and the bonfire definition in Chapter 7; modifying the paving rules in Chapter 8; clarifying rules and the adding solid fuel burning devices for licensed mobile food vendors in Chapter 9; and removing the administrative review process for permitting actions in Chapter 14. A copy of the resolution is available in the City Clerk Office, 435 Ryman, Missoula, MT 59802. For further information, contact Jim Carlson, City/County Health Department at 258-4996. Citizens are encouraged to attend the meeting and comment on the proposal. If you cannot attend, you may e-mail your comments to the City Council at council@ci.missoula.mt.us and the Board of County Commissioners at bcc@co.missoula.mt.us. You can also mail them to the City Clerk at the address listed above. /s/ Martha L. Rehbein, CMC City Clerk

City of Missoula, Montana
Item to be Referred to City Council Committee

Committee: Public Health and Safety

Agenda item title: Set Hearing Date for Ratification of Amendments to the Missoula City-County Air Pollution Control Program

Date: 1-9-2013

Sponsor: City-County Health Department

Prepared by: Jim Carlson

Ward(s) affected: All

Action Required: To set hearing date, hold public hearing and pass a motion to approve amendments to the Missoula City-County Air Pollution Control Program. The County Commissioners could be invited to have a joint hearing.

Recommended Motion: To adopt the attached resolution.

Timeline:

Referred to committee: 1-9-2013
Committee discussion: 1-16-2013
Public hearing (if necessary): As scheduling allows
Deadline: As scheduling allows

Background and Alternatives Explored: See attached document:

Financial Implications: Minimal to City-County Health Department and to public

Request for Commission Action

- Please fill out each field on this form completely. Incomplete requests will not be accepted.
- Please obtain all signatures except Clerk & Recorder before submitting.
- Please ensure your request is appropriately reviewed before submitting to the Commissioners for action.
- Please ensure appropriate staff attends the Commissioners' administrative meeting or provide for other arrangements.
- To the extent possible, please ensure all contracts conform to the approved county contract template.
- If your contract does not conform, in whole or in part, you must submit the contract for legal review. Please specify which contract sections differ from the county contract template in the space provided below. Risk management review is required when insurance stipulations do not conform with the contract template.

Requestor Information

Submitted by/Dept: Health Department
Date Submitted: 2-26-13
Reviewed by/Dept: Jim Carlson
E-mail: jcarlson@co.missoula.mt.us
Phone: 4996

Action Information

Date Required: As soon as time allows
Action/Motion Requested: Sign Resolution Approving AQ regs ammendments
Project/Item:
Parties Involved: DEQ & Health
Fiscal Impact: $ 0
Budget Action Required? no
Project Location: health
Project Begin: ongoing
Project End: ongoing

Legal Review Required?

(•) Yes ( ) No

Reviewed By: M. McClain

HR Review Required?

(Independent Contractor Agreements Only)

( ) Yes (•) No

Reviewed By:

Risk Management Review Required?

( ) Yes (•) No

Reviewed By:

Internal Use Only

Handled By:	Journal:	Date:

Chair _____

Commissioner _____

Commissioner _____

Action Date _____

( ) BCC Approved

( ) Chair Authorized to Sign

BCC Notes:

Please describe the action requested in detail:

To sign resolution approving amendments to the Missoula City-County Air Pollution Control Program. This documents the approval action that the Commissioners took at the joint City-County hearing on 2-25-13.

FORMAL AGENDA
MISSOULA CITY COUNCIL MEETING
CITY COUNCIL CHAMBERS
140 WEST PINE STREET, MISSOULA, MT
February 25, 2013, 7:00 PM

I. CALL TO ORDER AND ROLL CALL

II. APPROVAL OF THE MINUTES

1. Minutes dated February 11, 2013 -- History

III. SCHEDULE OF COMMITTEE MEETINGS

1. Committee Schedule for the week of February 25, 2013 -- History

IV. PUBLIC COMMENTS

V. CONSENT AGENDA

(Items on the consent agenda were approved in City Council committees by a unanimous vote. We save time at Council meetings by voting on these items as a package. The City Clerk will read the list aloud, so citizens watching on MCAT will know what is on the consent agenda. We'll invite community comment on these items before we vote.)

1. Claims totaling $402,720.25 with checks dated February 19, 2013. -- History

Recommended motion
Approve claims totaling $402,720.25 with checks dated February 19, 2013.

2. Claims totaling $392,047.51 dated February 26, 2013 -- History

Recommended motion
Approve claims totaling $392,047.51 with checks dated February 26, 2013.

3. Impact Fee Advisory Committee Council Appointment --Kelly Elam History

Recommended motion
Appoint Elaine Hawk to the Impact Fee Advisory Committee for the term commencing immediately through November 30, 2014.

4. Approve the Economic Development Subcommittee's recommendation to contract with BREDD to write a grant to fund a feasibility study on GigaPOP History

Recommended motion
Approve the Economic Development Subcommittee's recommendation to contract with BREDD to write a grant to fund a feasibility study on GigaPOP.

5. Council appointments to the Design Review Board --Kelly Elam History

Recommended motion
Appoint Karen Slobod to the Design Review Board for the term beginning

immediately and ending on December 31, 2015.

6. Approve the additional funding implementing the Metro Ethernet Project. History

Recommended motion
Support the fiber optic upgrade using the State of Montana contract with Century Link.

7. Award bid for physical security electronics and video surveillance. History

Recommended motion
Award the bid for physical security electronics and video surveillance to Integrated Security Solutions, Inc. in the amount of $76,524.30 with 10 percent ($7,600) contingency in budget and authorize the return of bid bonds.

8. Review contract for Professional Services for Upgrades to the East Broadway Lift Station History

Recommended motion
Approve and authorize the Mayor to sign the contract between the City of Missoula and Morrison-Maierle Engineering Inc. for professional services for upgrades to the East Broadway Lift Station.

VI. COMMENTS FROM CITY STAFF, AGENCIES, BOARDS, COMMISSIONS, AUTHORITIES AND THE COMMUNITY FORUM

VII. PUBLIC HEARINGS

(State law and City Council rules set guidelines for inviting community comment in a formal way on certain issues. Following a staff report on each item, the City Council and the Mayor invite community comment. The City Council normally votes on the same night as the public hearing unless one Council member requests that it be returned to a City Council committee for further consideration.)

1. (Joint Public Hearing with the County Commissioners) Amendments to the Missoula City-County Air Pollution Control Program. -- History

Recommended motion
Adopt a resolution to support new Missoula City/County Air Pollution Control Program rules.

2. City Subdivision Exemption Request--714 & 714 1/2 Cooley Street--Rock Boundary Line Relocation --Mary McCrea History

Recommended motion
Approve/Adopt/Deny the entitlement to claim an exemption for the boundary line relocation proposed for 714 & 714 1/2 Cooley Street, as required by Section 8.040.4.E.(2)(d) of the Missoula City Subdivision Regulations when lots with fee simple access to two (or fewer) public roads are to be redesigned or rearranged in a manner that results in the elimination of an existing fee simple access or reduction of access to less than five feet (5') in width, subject to the conditions included in the planning staff comment.

3. Ordinance establishing residency requirements for certain city department heads. History

Recommended motion
(First reading and preliminary adoption) Preliminary adopt an ordinance of the Missoula City Council establishing Chapter 2.82, Sections 2.82.010 through 2.82.050 Missoula Municipal Code entitled "Establishment of Continuous Residency Requirements within the City Limits for City Department Heads."

VIII. COMMUNICATIONS FROM THE MAYOR

IX. GENERAL COMMENTS OF CITY COUNCIL

X. COMMITTEE REPORTS

(Items listed under Committee Reports were not approved unanimously in City Council committees. The chairperson of the standing City Council committee will make a motion reflecting the committee's actions. We invite community comment on each item.)

1. Administration and Finance Committee -- History
   a. Minutes dated February 13, 2013-- History
   b. Minutes dated February 20, 2013-- History
2. Plat, Annexation and Zoning Committee -- History
   a. Minutes dated February 20, 2013-- History
3. Public Safety and Health Committee -- History
   a. Minutes dated February 13, 2013-- History
   b. Minutes dated February 20, 2013-- History
4. Public Works Committee -- History
   a. Minutes dated February 13, 2013-- History

XI. NEW BUSINESS

1. Legislative Updates and Action on Bills -- History
   a. Energy and Climate Team Recommendations--Ben Schmidt History

XII. ITEMS TO BE REFERRED

(Items listed here have been proposed by Council members, staff, or the Mayor for consideration in City Council committees. Committee chairs are responsible for scheduling consideration of these items in their respective committee meetings. These items are listed on our agenda for information only. They will not be considered at this meeting. For further information about any item, contact the person listed in parenthesis.)

1. Administration and Finance Committee -- History
   a. A Resolution relating to the issuance and sale of $5,750,000 in Tax Increment Urban Renewal Revenue Bonds in Urban Renewal District II, Series 2013. History

b. Amend the FY 2013 budget to appropriate expenditures that were not identified in the original budget for the Tourism Business Improvement District — History

2. Committee of the Whole -- — History

a. FY14 Budget Discussion--John Engen — History

b. Consultant Presentation for Wayfinding Planning — History

3. Conservation Committee -- — History

a. Annual Conservation Lands Management update--Morgan Valliant — History

b. Greenough Park Advisory Committee Dissolution--Morgan Valliant — History

4. Plat, Annexation and Zoning Committee -- — History

a. Petition 9604--Dorothy Garner, 2601 & 2601 1/2 South 3rd Street West; A tract of land located in the N2 SE4 SE4 of Section 19, T13N, R19W, M.C.M.; Petition for Annexation — History

b. City Zoning Ordinance Amendments to 20.45.060 entitled Accessory Dwelling Units and 20.60.020 entitled Required Motor Vehicle Parking of Title 20, Missoula City Zoning Ordinance--Missoula City Council — History

5. Public Safety and Health Committee -- — History

a. Award bid for scheduling software for the Police department and Municipal Court. — History

6. Public Works Committee -- — History

a. Acceptance of Wyoming Street public right-of-way, utility easements, sidewalk easements and public non-motorized access easement. In addition, create a utility easement on Silver Park (City land) adjacent to the Wyoming Street public right-of-way.--Kevin Slovarp — History

7. Economic Development Subcommittee -- — History

XIII. MISCELLANEOUS COMMUNICATIONS, PETITIONS, REPORTS AND ANNOUNCEMENTS

XIV. ADJOURNMENT

The City makes reasonable accommodations for any known disability that may interfere with a person's ability to participate in this meeting. Persons needing accommodation must notify the City Clerk's Office to make needed arrangements. Please call 552-6080 or write to Martha Rehbein, 435 Ryman Street, Missoula, Montana 59802, to make your request known.

JOURNAL OF PROCEEDINGS
MISSOULA CITY COUNCIL MEETING
February 25, 2013

I. CALL TO ORDER AND ROLL CALL

The meeting of the Missoula City Council was called to order by Mayor John Engen at 7:00 PM in the City Council Chambers at 140 West Pine Street. The following members were present: Caitlin Copple, Dick Haines, Adam Hertz, Bob Jaffe, Marilyn Marler, Mike O'Herron, Dave Strohmaier, Alex Taft, Jon Wilkins, Cynthia Wolken, Ed Childers. The following members were absent: Jason Wiener. The following staff members were also present: Mayor John Engen, Chief Administrative Officer Bruce Bender, Communications Director Ginny Merriam, City Attorney Jim Nugent, Deputy City Clerk Nikki Rogers. The Board of County Commissioners were present: Jean Curtiss, Bill Carey, and Michele Landquist. The following staff members were absent: City Clerk Marty Rehbein, Finance Director/Treasurer Brentt Ramharter.

II. APPROVAL OF THE MINUTES

1. Minutes dated February 11, 2013

Minutes were approved as submitted.

III. SCHEDULE OF COMMITTEE MEETINGS

1. Committee Schedule for the week of February 25, 2013

Public Safety & Health, February 27, 2013, 9:40 – 10:00 a.m.
Parks & Conservation, February 27, 2013, 10:05 – 11:00 a.m.
PAZ (Land Use and Planning Committee, February 27, 2013, 11:05 a.m. – Noon
Administration and Finance, February 27, 2013, 1:10 – 1:55 p.m.
Public Works Committee, February 27, 2013, 2:00 – 2:25 p.m.
Committee of the Whole, February 27, 2013, 2:30 – 3:55 p.m.
Economic Development Subcommittee, February 27, 2013, 4:00 – 5:30 p.m.

IV. PUBLIC COMMENTS

Marcinda Hammond, 1900 Strand, said she was here about five months ago. She said she was assaulted at a trailer that she owned, in the process of evicting a tenant from her trailer. The tenant moved and gave the keys to someone else. That person then put a hasp on her lock making it illegal for her to even get into her house. That person made a forged bill of sale. Nothing in the five months has been done. She has a restraining order against the person that attacked her but she's also had them at her house. They have been at her house twice and she has to get another restraining order because her house which is supposed to be under her protection, she didn't put her address on it and now they're coming to her house. She had an officer call her and tell her an assault with a weapon has been changed to misdemeanor disorderly conduct. And now because nothing's been done, she's here looking at City Council with a laceration on her face that will not make her any better and nothing's been done.

V. CONSENT AGENDA

1. Claims totaling $402,720.25 with checks dated February 19, 2013.

Recommended motion:
Approve claims totaling $402,720.25 with checks dated February 19, 2013.

2. Claims totaling $392,047.51 dated February 26, 2013

Recommended motion:
Approve claims totaling $392,047.51 with checks dated February 26, 2013.

3. Impact Fee Advisory Committee Council Appointment

Recommended motion:
Appoint Elaine Hawk to the Impact Fee Advisory Committee for the term commencing immediately through November 30, 2014.

4. Approve the Economic Development Subcommittee's recommendation to contract with BREDD to write a grant to fund a feasibility study on GigaPOP

Recommended motion:
Approve the Economic Development Subcommittee's recommendation to contract with BREDD to write a grant to fund a feasibility study on GigaPOP.

5. Council appointments to the Design Review Board

Recommended motion:
Appoint Karen Slobod to the Design Review Board for the term beginning immediately and ending on December 31, 2015.

6. Approve the additional funding implementing the Metro Ethernet Project.

Recommended motion:
Support the fiber optic upgrade using the State of Montana contract with Century Link.

7. Award bid for physical security electronics and video surveillance.

Recommended motion:
Award the bid for physical security electronics and video surveillance to Integrated Security Solutions, Inc. in the amount of $76,524.30 with 10 percent ($7,600) contingency in budget and authorize the return of bid bonds.

8. Review contract for Professional Services for Upgrades to the East Broadway Lift Station

Recommended motion:
Approve and authorize the Mayor to sign the contract between the City of Missoula and Morrison-Maierle Engineering Inc. for professional services for upgrades to the East Broadway Lift Station.

Mayor Engen said, thank you, Ms. Rogers. Anyone in the audience care to comment on any of the items on the consent agenda this evening? Seeing none, questions or comments from Councilmembers? Seeing none, we'll have a roll call vote.

Upon a roll call vote, the vote on the consent agenda was as follows:

AYES: Childers, Copple, Haines, Hertz, Jaffe, Marler, O'Herron, Strohmaier, Taft, Wilkins, Wolken

NAYS: None

ABSTAIN: None

ABSENT: Wiener

Motion carried: 11 Ayes, 0 Nays, 0 Abstain, 1 Absent

Mayor Engen said, and the consent agenda stands approved.

VI. COMMENTS FROM CITY STAFF, AGENCIES, BOARDS, COMMISSIONS, AUTHORITIES AND THE COMMUNITY FORUM – None

VII. PUBLIC HEARINGS

1. (Joint Public Hearing with the County Commissioners) Amendments to the Missoula City-County Air Pollution Control Program.

Recommended motion:

Adopt a resolution to support new Missoula City/County Air Pollution Control Program rules.

Mayor Engen said, we are joined this evening for a joint public hearing on an Air Pollution Control matter by members of the Missoula County Board of Commissioners. Commissioners, welcome. Thank you for being here this evening and we have a staff report from Mr. Carlson.

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, also with me this evening are Ben Schmidt and Sara Coffield who will assist me in answering questions if necessary. We're here to consider amendments that have been through two public hearings at the Air Pollution Control Board for the City-County Air Pollution Control Program. It's...the program is actually a regulatory document. The changes that we'll be talking about are from Chapters 4, 6, 7, 8, 9 and 14. You have received in your packet full copies of the regulations as well as resolutions for both the City and County Commissioners, and a summary, a more in depth summary of the regulatory changes that I will be giving in this presentation a sheet that notes a correspondence that we've had and mailings and publications concerning the hearings for the Air Pollution Control Board, a detailed record of comments during those hearings as well as response to comments, and findings concerning Montana Code Annotated 75-2-301 which are necessary findings that the Air Pollution Control Board must make to approve regulations. The timeline and process for approving amendments to the Air Pollution Control Program is that the Air Pollution Control Board may approve, amend or reject amendments after public hearing. As I indicated, two public hearings have taken place. After Board approval, amendments must be approved or vetoed by the City Council and the County Commissioners. These bodies, however, do not have a mandatory authority so this is either a ratification or a denial with regard to these rules. And then to finally have the regulations go into effect, we submit them to the Montana Board of Environmental Review for approval as to compliance with the Montana Clean Air Act and they become effective upon the approval of the Board of Review. As I indicated, the Air Pollution Control Board held hearings on the changes October 18th, 2012 and November 15th, 2012 and approved those amendments on November 15th, 2012, and forwarded them to the City Council and County Commissioners. The point we're at legally is the Board of County Commissioners and the City Council may approve or veto the Board's Amendments and revisions by resolution at a public meeting. I'll go quickly through the proposed amendments. In Chapter 4 there's a rule change that fixes a mistake or typographical error to ensure that the amendment would ensure that we don't have mandatory shut-down of industry when forest fire smoke is the primary pollutant. Of course, it wouldn't serve no purpose when we're being predominated by nearby forest fires. Chapter 6, the main changes provide for portable industrial sources such as gravel crushers, portable asphalt plants, portable wood chippers that are not located in the woods but instead in an industrial site. Maybe issue a temporary permit in Missoula County while the source is submitting a full application for permitting in Missoula County if they already have a DEQ permit. Missoula County is the only county in the state that has the authority to issue permits for industrial sources that are of a size up to about 250 tons per year emissions. So these smaller sources sometimes want to move into the County quickly because someone has a need for that device to be used, a paving project, a crushing project, a wood chipping project, and there's a lengthy

application process that they've already been through with the State of Montana. We would recognize the fact that they've gone through that process. They'd also be required to apply to our program but while they're in the process of switching their permit to a valid one in Missoula County, we would give them the right to operate under the...essentially under the state permit, although it would be a Missoula County temporary permit that's being issued. There's also some changes that deal with clarifying the process for contested case permits in three different rules in Chapter 6. In Chapter 7 we're refining the definition of bonfire and, in fact, making it very similar to the City's definition of bonfire because we've had some folks in the County celebrating birthdays and other private parties. The definition of bonfire essentially requires that to have a large fire like that it has to be for an educational or institutional event like homecomings and those sorts of things, not to celebrate birthdays or the fact that beer's on sale or whatever. In Rule 7.106, there's a modification to require permit activation in order to follow the electronic permitting process and this chapter deals with outdoor burning. As you're probably all aware, last year we switched over to electronic permitting of outdoor burning in Missoula County and this allows us to coordinate our regulations to that new process. In 7.107, we're also clarifying major burners' responsibilities in following air shed restrictions when in the fall primarily we have some days when it's okay to burn and other days when it's not okay to burn and we're making some changes to make sure that people that are operating under a major burner permit have the legal responsibility to follow all the restrictions that our office issues. In Chapter 8, most of the changes are essentially to provide for allowing people to pave with block pavers rather than just asphalt and concrete and making some word changes because, for example, the term "geoblock" which is currently used in the regulation is actually a trademark word and has caused some confusion. So, there's a number of changes there but we feel they're appropriate and they allow more options for people to pave with pavers as opposed to just concrete and asphalt. In Chapter 9, there's a couple of changes. Currently, in our Air Pollution Regulations we do not allow, some point by accident, licensed mobile food services to use a solid fuel burning device that's installed inside of the mobile facility because we have restrictions that limit what can be installed in the air stagnation zone essentially to pellet stoves. However, folks that have a device that's sitting outside of their mobile food establishment are allowed to do that. It's actually safer from a food safety standpoint to have the device inside where they don't have the potential of contamination, taking the meat in and out and that sort of thing. And we've had requests from people that operate these kinds of facilities to do that and we are providing for that except that they wouldn't be able to use them during the winter months when woodstove emissions are a problem. In 401, there's some correction for incorrect references and in 402 we require...would be requiring now that all new solid fuel burning devices sold in the County must be labeled as to where they can legally installed. Currently, now, we have three sets of regulations, one that applies to the air stagnation zone which is essentially pellets only, the rest...most of the rest of the County people can install new stoves but they have to be EPA certified and then north of the divide or essentially in the Swan River drainage in the County, there are no regulations. So, this is to make sure that when people have devices in their store that they're labeled as to where they can be installed because we have had situations where people have purchased either uncertified devices and installed them in the County or certified devices and installed them in the air stagnation zone but they aren't pellet stoves, simply from confusion. So, that's the intent there. And in Chapter 14, in conjunction with the chapters...the changes made in Chapter 6, it disallows a request for administrative review during a permitting action but continues to allow for administrative review and enforcement action. A few years ago we amended our regulations to allow for administrative review in all enforcement and permitting actions but recently we found that in the permitting process, because the department is so careful and so thorough in issuing its permits, that when somebody asks for an administrative review in a permitting process, the department ends up essentially reviewing its own work and its own activities and it simply serves to use up time but not much other purpose. So, we're pulling that back out of this process, however, in an enforcement action where we give somebody a notice of violation in order to take corrective action, they do have the ability to ask for a departmental review before they can go on to the Air Pollution Control Board. And, finally, in Chapter 14.107, we're clarifying the timing and process for requesting a Board hearing during a source permitting process. And that is a summary of these rule changes. The request is that the Missoula City Council and the County Commissioners pass respected resolutions approving the

amendments to the Missoula City-County Air Pollution Control Program. If there are any questions, we stand ready to attempt to answer them.
Mayor Engen said, thank you, sir. On behalf of the City of Missoula, I will open the public hearing on this question.
Commissioner Landquist said, on behalf of Missoula County, I will open the hearing on this question.

Mayor Engen said, anyone care to comment on these changes? Seeing none, on behalf of the City, I'll close the public hearing.

Commissioner Landquist said, I'll ask the same question. Does anybody care to make any comment on these? Any questions from my fellow Commissioners at this point? Then I'll close the public hearing.

Mayor Engen said, and are there questions from Council? Mr. Jaffe?

Alderman Jaffe said, thank you. I had a few for Mr. Carlson.

Mayor Engen said, Mr. Carlson?

Alderman Jaffe said, first is could you touch on the process again as far as gaining input on this...these changes? Some of these things are the sort of things that will have an impact on a number of different industries and commercial entities and I'm...just want to find out or just confirm that people who are going to be impacted by the new regulations...have you gotten any feedback from people?

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, of course you have in your packet the comments from the hearings in the Air Pollution Control Board and with regard to public outreach, of course, we've had ads that were in the paper, actually in the *Independent* October 4th and October 11th and mailings were made to all of the interested parties on the Air Pollution Control Program's interested party list. These regulations are also sent through the Air Pollution Advisory Council for their comment. The information was posted on the web. Because we recognize probably the major impact here with regard to regulatory tightening was the woodstove labeling change, we sent a letter to all of the woodstove dealers in Missoula County with a copy of those regulatory changes on October 5th, and another interested party's email went out for the November 15th second hearing that the Air Pollution Control Board held.

Alderman Jaffe said, alright, thanks. The other question I have, first, on the pavers, the part about allowing for more flexibility on paving materials, do you know if...I think that's also regulated, I think, in our Title 12 with the Engineering...has there been any coordination to line those things up or do you know anything about it? Has our Engineering Department adjusted the rules there also?

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, I'm not aware of that. I know a lot of the requests that we've had for pavers have been for parking areas.

Alderman Jaffe said, right and anyway I think we have some City regulations that might need to be put in sync with that. And then the last thing was with the outdoor burning for the bonfires.

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, uh-huh.

Alderman Jaffe said, could you clarify what sort of bonfires, as defined here, it's defined as anything with more than a two-foot diameter.

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, that's correct.

Alderman Jaffe said, so, is it...are you allowed to have fires bigger than two feet across or is it only during burn restriction periods or when does that come into play?

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, a fire that's outside of the City, a fire that's two-feet in diameter or larger is considered a bonfire and you can have recreational fires in and out of the City essentially. In the City it has to be being used for cooking and now likewise in the County. But the bonfire, excuse me, the bonfire...yes, a fire's that's bigger than two feet in diameter requires a permit essentially and it's...

Alderman Jaffe said, all year round?

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, yes, all year round.

Alderman Jaffe said, okay.

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, when there are general fire restrictions, sometimes they get severe enough that the Mayor or the Commissioners or both restrict all burning and then those recreational fires aren't allowed at all due to fire changer. And that's for fire purposes, not air quality purposes.

Alderman Jaffe said, yeah. I have a little con...that might be an area I might wish to make an amendment on. I mean, I think the fire rings at the sled hill at Blue Mountain are bigger than that, you know, now there's those rings up there.

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, yeah, of course you can have rings that are bigger than that but the fuel itself should be two feet in length or less.

Mayor Engen said, Mr. Carlson, my recollection Mr. Jaffe mentioned amendment. This is an up or down for us, correct?

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, that's correct.

Mayor Engen said, other questions? Mr. Hertz?

Alderman Hertz said, is there a significant difference in standards between the Missoula County Air Quality permit and the Montana permit that might result in somebody having their Montana permit and not meeting the guidelines of the Missoula permit?

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, for industrial sources the emissions requirement are the same...

Alderman Hertz said, I guess...

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, under our rules and under the state rules for industrial sources.

Alderman Hertz said, so then why is there a Missoula County Industrial Source Permit for this if they're the same?

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, we have a local program and when we're able to get out quickly and make inspections, the state sometimes may take up to eight months and, in fact, not inspect sources like gravel crushers or asphalt plants before they've completed their job and moved on. And the main controls, especially for gravel crushers, are spray bars and having water available and because we are here in Missoula and can respond quickly, once they set up, we usually go out within a day or so and make an inspection and make sure they have all they're push

control equipment in place. But the reason for it underlying is that Missoula County and City years and years ago applied for that authority under the Montana Clean Air Act and were granted it by the state at that time, Department of Health and Environmental Sciences Board, and now that's become the Board of Environmental Review.

Alderman Hertz said, so the County may be quicker to respond and get those people in business quicker than the state?

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, in business and make sure they're in compliance with what they're supposed to be doing when they set up to make asphalt or crush gravel.

Alderman Hertz said, thanks.

Mayor Engen said, Mr. Haines?

Alderman Haines said, we've burn on our property every year for 15 years in the spring, brush and dead limbs and stuff like that and we've always had the Fire Department issue the permit, come and look at where we were working and this kind of thing. Is that process gone now?

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, no, the process isn't gone but it's electronic and they will wait until they've gone out and take a look at it, I believe. Sara's here to answer that. She handles that part of the program until they'll take a look at it and make sure it's okay and then the...

Alderman Haines said, yeah, I...

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, permits are released on the computer system.

Alderman Haines said, let me interrupt you just a minute. I...I...yeah, I'm not worried about the electronic permission. We've got that down. I'm just trying to reconcile this kind of burning with this bonfire-type thing. You know...

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, okay.

Alderman Haines said,...you throw on a bunch of dead limbs and stuff and for 10 minutes or so there's a pretty good blaze and then it settles down and you can...

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, right.

Alderman Haines said, I always have the water and everything like that there and the Fire Department's been happy but I'm not sure how that...it almost seems to me like a bonfire.

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, burning in wild lands areas or undeveloped areas for the purpose of fuel reduction is still allowed and those fires can be and are much larger than two feet.

Alderman Haines said, no, this is in a backyard.

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, right, in the City or in the County?

Alderman Haines said, it's in the City.

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, if you are on a parcel of...

Alderman Haines said, it's one acre or larger...

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, larger than an acre, you may burn in the City for fire reduction purposes. If you transport the wood out of the wild area or unkempt area or whatever for whatever purposes, you're still allowed to do that as long as you're burning natural materials.

Alderman Haines said, it looks to me like maybe time will tell. I guess there could be some confusion there about what you can or cannot do. Thank you.

Mayor Engen said, any other questions? Mr. Wilkins?

Alderman Wilkins said, so, is there any...is there a restriction on a business that might use solid fuels in there...like a steakhouse or a, you know, I guess we have pizza ovens that are sometimes use, that they use with wood and stuff like that.

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, you can use the minimum amounts of wood in cooking based on a policy that we've adopted but you cannot install a device in the air stagnation zone that's entirely solid fuel fed. So, people do use small amounts of wood for flavorant and that sort of thing but they can't have a wholly wood fired pizza or something like that because that violates the emissions standards of the regulations for solid fuel burning devices.

Mayor Engen said, Commissioner?

Commissioner Carey said, thank you, Mayor. Jim, MIST made a couple of comments on this and the Department's response was that they weren't part of the proposed rule changes. Did their comments just kind of die on the vine or what's the status of what they suggested in terms of different language?

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, they were addressing sections that weren't being amended in therefore there was no public notice and, yeah, that...the comment can only be on the regulatory changes or the sections that are affected by regulatory changes. If you talk on, you know, comment on something else that isn't being changed, then we're not allowed to consider that in that hearing.

Commissioner Carey said, is there...yeah, is there or will there be an effort to perhaps take a look at their proposals and see if we can use them?

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, as I recall, are you talking about using...]

Commissioner Carey said, their definition of paved was broader than what you've got here and they also wanted to take a look at the roadway section language with regards to allowable surfaces.

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, yeah, I know one of their comments where, and I may ask Ben to come up and talk about that a little too, but one of their comments was using soils cements which can be things like liquipel sulphonate and other organic cements, pulp mill wastes, that sort of thing. They tend to do a good job of taking care of emissions from dusty roads and that sort of thing but during the winter and spring when it's wet, they get muddy and not that the road is emitting at that time, then there's a huge amount of carryout onto paved surfaces, the sun comes out and things dry and we have a large amount of emissions. So, those kinds of materials work great for controlling dust on County roads and that sort of thing but in a situation where you're trying to have continuous clean paving surfaces that don't emit a lot of particulate, they do not work well and I'm not sure that they understood the difference or our needs for requiring paving. It has to be durable essentially in all weather conditions. I hope I answered your question.

Commissioner Carey said, thank you.

Mayor Engen said, Commissioner?

Commissioner Curtiss said, Mr. Mayor, the...I sit on the Air Pollution Control Board and so we didn't ignore their comments by any means and I know that the Advisory Council also listened to it and there are some projects in town where they're using it on some of the trails so in the future maybe they can use there and they're being monitored and that kind of thing, but they weren't part of the regulations that were noticed for the hearing but we did listen to their concerns.

Mayor Engen said, any additional questions? Mr. Jaffe?

Alderman Jaffe said, a question for Mr. Nugent or maybe, I don't know, for one of you guys to...as far as...I'm not quite clear on why this can't be amended. I mean, are these our regulations or someone else's regulations and if they're not ours, why are we talking about it?

Mayor Engen said, Mr. Nugent, do you want to take a pass at that?

City Attorney Nugent said, we're not the legal advisors to the Health Department so we're not involved in this process at all.

Alderman Jaffe said, so why are we voting on this at all?

City Attorney Nugent said, ask the Health Department. They brought it to us.

Mayor Engen said, Mr. Carlson.

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, okay.

Mayor Engen said, that was a punt.

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, the Montana Clean Air Act provides for local air pollution control programs and in the process of setting up that program these regulations have to provide for administrative process. Those regulations were approved originally by the Board of...excuse me, the Air Pollution Control Board which is the same membership as the City-County Health Board. They have quasi legislative authority but the Clean Air Act also require that the County Commissioners in any cities that exist within the regulatory authority of that program have approval authority. But to be able to have an amendatory legislative process that could include the Air Pollution Control Board and then the City Council and then the County Commissioners, any one of which could make amendments, is difficult. The Air Pollution Control Board, of course, is made of half appointees by the City and half by the County and one that's jointly appointed as...and includes an elected official from both local bodies. So, when you originally approved these regulations, we set up this regulatory approval process that must include the Air Pollution Control Board, local elected officials, bodies and the Board of Environmental Review but it only provides for approval or veto after the amendatory public hearings have been held by the Air Pollution Control Board.

Mayor Engen said, Mr. Carlson, is that a product of an interlocal agreement?

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, no, it's a...well, the Air Pollution Control Board's membership is a product of the interlocal but the regulations themselves are a product of the Montana Clean Air Act, which contains an entire section that deals with local air pollution control programs.

Mayor Engen said, so, they that act defines this process.

Jim Carlson, Director of Environmental Health for the City-County Health Department, said,

to a degree and then this process in previous amendments defines how it works. I mean, it's been up to us to set it up and we've made many, many changes over the years and this is the way it's been done, so the Air Pollution Control Board is the primary legislative body and the elected officials, at this point, have approval or denial power.

Mayor Engen said, Commissioner?

Commissioner Curtiss said, I think maybe to put it in more layman terms, the Board of Health, the Air Quality Control Board and the Water Quality Board all have, as Jim explains, some legislative authorities and then this Board, your Board and ours, ratify. So, the amendatory part of it takes place in the public hearings where it should and you have... Mr. Childers is now your representative on that Board but that's where if you had an amendment, you as a member of the public or as a Councilperson could have amended it.

Alderman Jaffe said, just a quick follow-up.

Mayor Engen said, Mr. Jaffe?

Alderman Jaffe said, yeah, I believe this is a public hearing as well. I, you know, this is all good stuff and I support it. There's just one goofy thing and they're about bonfires that I think is ridiculous and it should be fixed, but it's not...I'm not going to vote against it because of that. I think the process should be looked at. I mean, we actually have something that says we can't amend it, you know, I'd like to see that...maybe review that but it can be done in the context of another, you know, something outside the moment of trying to do this. But, in any case, I'll still...I still intend to support it.

Mayor Engen said, Mr. Strohmaier?

Alderman Strohmaier said, yeah, that seems...it all seems pretty crazy in terms of our inability to amend. In fact, I would certainly want to keep that in mind for the next legislative session is something to maybe fix by statute. But my question would be, if there is some item, be it bonfires or something else that we would want to see changed or addressed and run through the process, what might that look like? I would be ashamed to deny the whole thing tonight and send it all back to start from scratch. Would we, as the governing body, make a recommendation to take a look at some specific piece of language for potential amendment for a subsequent amendment?

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, yeah, actually I had the language up on the wall but a section of the regulations specifies the process for approving these and those too can be amended by the three bodies and I'm sure if the City wants to request that we do that, we would bring that forward to the Air Pollution Control Board. I should point out with the bonfire language that what we're doing with the bonfire language that what we're doing with the bonfire language is bringing the County language into line with the current language that's in the City ordinance, so...to make sure people aren't just, like I said, there's been a number of public nuisance problems caused by people just having big fires continuously in their yard all summer long and causing a lot of problems for their neighbors and their neighbors' children.

Mayor Engen said, Commissioner?

Commissioner Landquist said, I guess I'm also having problems with the definition of the bonfire permit for the County process because the County is not the City and I know of at least one business, and I'm not going to rat them out publicly, that has a large area all clear and everything on a regular basis for recreational bonfires, and a lot of people sit around that great big ring. Is there some process...first of all, and I don't think that this definition that the people in the County have followed any of your ads and have any idea what's happening to them. I think it's going to be problematic for the County and take a lot of people by surprise, this bonfire definition and the size of it. But is there some process that, this one particular business that I'm thinking of, could go through to bring it to your attention to be permitted for their bonfire. It's part of their business, part of what they offer, winter and summer.

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, if it's part of a legitimate celebration, you've got the definition there, that's what we're supposed to be approving, but we've also had lots and lots of requests, as you may be aware, particularly in a neighborhood down in Lolo where there's been a lot of problems by people taking advantage of the recreational fire aspect of it...

Commissioner Landquist said, I know.

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, and we've been unable to protect those neighbors from the adverse consequences of that situation and there's been a number of other ones that haven't been quite as persistent.

Mayor Engen said, additional questions? Mr. Hertz?

Alderman Hertz said, yeah, I'm also concerned about the bonfire issue and I'm just curious what the enforcement of that is. I mean, let's say that somebody is on Seeley Lake in the summer, having a 2-1/2 foot bonfire. Does the Sheriff's office show up and measure it and put it out and...

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, we respond to things on the basis of complaints and for the most part, you know, if there's de minimis violations of things, we talk to people, so does the City Fire Departments and the County Rural Departments and people generally comply, but it has been a problem for some neighborhoods. And, as I said, the current language in the City is what we're shadowing for what happens outside of the City.

Mayor Engen said, Mr. Carlson, how long have the current bonfire regulations been in place in the City of Missoula?

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, I want to say the last time we made those changes was somewhere on the order of 20 years.

Mayor Engen said, thank you. Mr. Childers?

Alderman Childers said, thanks, Mayor. If I can just make a comment on process, would you be offended? Nah, you wouldn't be offended. The complexity of something when you've got at least three and more bodies that all have to go through the same thing and all have to come up with the same answer is immense and there's a reason why it's set up so that this body and the County Commissioners can either approve or deny, but that's a choice. If the bonfire piece is sufficiently egregious that either body wants to deny, that's the way it is and the Health Department will understand why and the Health Department and the Health Board and Air Quality Board will all go back through and if it's in the public interest, try to modify such things so that they approve it...everybody approves them. But, I mean, there's no reason why everybody that it gets in front of should try to amend to their satisfaction. There's...it's too hard. So, why don't we just pass it. I don't think anybody's really mad at what's in there now and if there are amendments that either body thinks should be made, we'll take them back and take a look at them. If the City Council wants something, I'd be happy to carry it. If the Commissioners want something, I'm sure Ms. Curtiss would be happy to do the same.

Mayor Engen said, are there further questions? Mr. Haines?

Alderman Haines said, it's not a question, Mr. Mayor, but I'd sure like to talk...I'll support this but I don't think you and I are on the same page yet and I'm just trying to get that so we have an understanding of that. Thank you.

Mayor Engen said, other questions? Alright, which committee handled this for us? Committee of the Whole? Public Safety? Thank you. Mr. Wilkins?

Alderman Wilkins said, Mr. Mayor, City Council, adopt a resolution to support new Missoula City-County Air Pollution Control Program rules.

Mayor Engen said, Mr. Wilkins' motion is in order. Is there discussion on the motion? Mr. Jaffe?

Alderman Jaffe said, I'd like us to consider amending our resolution, not the draft but possibly a resolution. Are there any other changes in Chapter 7 besides that bonfire piece?

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, yes, there are. There were some changes that...

Mayor Engen said, I've got you, Ms. Matthew-Jenkins. We've had a public hearing but I'll let you talk as soon as we're done with...

Kandi Matthew-Jenkins said, before the vote?

Mayor Engen said, yes, ma'am.

Kandi Matthew-Jenkins said, thank you.

Alderman Jaffe said, did you have a slide that highlighted just those changes?

Jim Carlson, Director of Environmental Health for the City-County Health Department, said, yeah, and actually my...

Alderman Jaffe said, thanks. Alright, never mind. I was going to consider dropping our approval of those changes in that section but there's other stuff that's relevant.

Mayor Engen said, further discussion on the motion? Alright, before we vote, Ms. Matthew-Jenkins on the motion before the body.

Kandi Mathew-Jenkins said, I just wanted to add to the information because I have personal information of the situation that I didn't know I had until everything was said. I think that we're talking about a situation, although it's my mother-in-law's home and it's my brother-in-law that has been... they're having small fires in the... in his yard in the evenings or whenever, maybe all night, I'm not quite sure and that the Lolo Rural Fire Department and everybody's paid attention to it so I think you're getting a little bit of a snow job here, that it's not massive problems throughout the County, so I think you better take into consideration that maybe one complaint from one person that's already been dealt with within the community and it's just that there are some disgruntled people that keep pushing it forward. So, I think you need to find out exactly how many bonfires there are in the County that are not supposed to be, before you vote. Just wanted to let you know.

Mayor Engen said, in the interest of fairness, anyone else care to comment? Alright, with that, we've had a public hearing. We've got a motion before the body. We've had discussion on that motion. We'll have a roll call vote on the motion.

RESOLUTION 7757

MOTION

Alderman Wilkins made a motion to adopt a resolution to support new Missoula City/County Air Pollution Control Program rules.

Upon a roll call vote, the vote on Resolution 7757 was as follows:

AYES: Childers, Copple, Jaffe, Marler, O'Herron, Strohmaier, Taft, Wilkins, Wolken

NAYS: Haines, Hertz

ABSTAIN: None

ABSENT: Wiener

Resolution 7757 carried: 9 Ayes, 2 Nays, 0 Abstain, 1 Absent

Mayor Engen said, thank you, the motion is approved. Commissioner?

Commissioner Landquist said, fellow Commissioners, do you have any more questions or comments on this? I guess the only comment I have and I support the work that the Air Board has done, but I still have heartburn over the County folks being treated like City folks and I think that if I felt comfortable that amendment would be made to it for clarifying, I mean, maybe people that live in subdivisions in the County portion should have a size attached to theirs, but when you're a little bit more rural, you think a little bit bigger. You probably have more people over and your fire may be a little bigger. And, in particular, this one business that I'm looking at, I think that maybe they should be able to have a permit and I don't think it's been vetted well, so on that basis I, for one, will not be voting in favor of it but I'm confident that you probably will be. So, if you want to make a motion, that's fine. I've said my piece.

Commissioner Curtiss said, I would move that we adopt the resolution ratifying the amendments to the Missoula City-County Air Pollution Control Board as proposed.

Commissioner Landquist said, is there a second?

Commissioner Carey said, I second the motion.

Commissioner Landquist said, okay, there's a motion and a second. All those in favor say aye.

Commissioners said, aye.

Commissioner Landquist said, any opposed, say nay. Nay. Motion carries, two to one.

Mayor Engen said, thank you, folks. Thanks, Commissioners, for joining us this evening. We appreciate your time and efforts.

2. City Subdivision Exemption Request--714 & 714 1/2 Cooley Street--Rock Boundary Line Relocation

Recommended motion:

Approve/Adopt/Deny the entitlement to claim an exemption for the boundary line relocation proposed for 714 & 714 1/2 Cooley Street, as required by Section 8.040.4.E.(2)(d) of the Missoula City Subdivision Regulations when lots with fee simple access to two (or fewer) public roads are to be redesigned or rearranged in a manner that results in the elimination of an existing fee simple access or reduction of access to less than five feet (5') in width, subject to the conditions included in the planning staff comment.

Mayor Engen said, with the staff report this evening is Ms. McCrea and we'll work on a little technology while the Commissioners depart. Mr. O'Herron, would you like to reclaim a comfortable chair?

Mary McCrea, Senior Planner, Development Services, said, I'll be presenting a subdivision exemption to relocate common boundaries. NormanJoseph Rock, Jr., represented by Tanner Wilson of Granite Creek Engineering and Ed Flemings of Ed Flemings Surveying request to refigure the boundary lines for property located at 714 & 714 1/2 Cooley Street. The property is located in Northside Neighborhood on Cooley Street near the intersection

of Holmes Street. The property consists of two lots with two existing houses. The rear house was constructed in 1956 and the front house in 1971. The left diagram shows the layout currently with the common boundary between Lot 41 and Lot 42, running through both existing homes. The applicant's goal is to place both homes on their own lot. City Subdivision Regulations require a public hearing at City Council for this exemption because the front lot will not have fee simple access to both Cooley Street and the alley. The front lot will have an easement to the alley but not fee simple access. The center diagram shows the original exemption request with both lots maintaining fee simple access to both the alley and Cooley Street, however, this layout creates a nonconforming sideyard setback between the existing house and the new proposed boundary line. The reconfigured boundary line is shown in blue and the center diagram and the nonconforming sideyard setback is shown in red. There's no reconfiguration of boundary lines that would provide fee simple access to the street and the alley for both existing homes without creating a nonconforming sideyard setback. The right diagram shows an amended site map with the reconfigured boundary line in blue and a five-foot wide pedestrian access easement from the front lot to the alley shown in gold. The applicant also provided a 10-foot by 20-foot parking easement on the rear lot to maintain the off-street parking space for the front lot. The property is zoned RM1-45. The minimum lot size is 3,000 in this zoning district. The rear house will be on a 5,765 square-foot lot. The front house will be on a 3,212 square-foot lot. Both lots will conform to the minimum lot size of the zoning district. All setbacks on the rear house are conforming currently and will remain conforming after the boundary line relocation. The front house is conforming to the zoning setbacks for the rear and side yards. The current front yard setback is nonconforming, however, the nonconformity will not increase as a result of the boundary line relocation. There are three existing parking spaces accessed from the alley, two are for the rear lot and one is for the front lot. Title 20 requires two off-street parking spaces for each home. The front lot is nonconforming as to the zoning parking requirements. The amended site map includes a parking easement for one parking space thereby retaining the existing parking for the front lot. The utility easement has been provided for the existing sewer line serving the front house to cross the rear lot. City Engineering recommended a 15-foot wide utility easement along the eastern property boundary extending from Cooley Street to the alley. This easement will allow sewer and water lines to be replaced if and when existing lines are in need of major repair. The amended site map shows the utility easement per City Engineering's recommendation. If Council chooses to approve the boundary line relocation, staff recommends the following motion upon the screen. Essentially it's approval of the exemption subject to three conditions. Condition #1 requires the parking easement to retain the single parking space for the front lot. Condition #2 requires the pedestrian access easement providing access for the front lot to the alley and their parking space. And Condition #3 requires the 15-foot wide utility easement along the eastern property boundary for both lots as recommended by City Engineering. And that concludes my presentation. Ed Fleming, with Ed Fleming Surveying, is here if you would have questions for him as well.

Mayor Engen said, thank you, Ms. McCrea. Mr. Fleming, would you like to speak on behalf of the applicant?

Mr. Fleming was off the microphone.

Mayor Engen said, thank you, sir. That was a no at this point. I'll open the public hearing. Anyone care to address any questions on this boundary line relocation proposal? Seeing none, I'll close the public hearing. Are there questions from Council? Mr. Wilkins?

Alderman Wilkins said, so is the alley paved?

Mr. Fleming said yeah.

Alderman Wilkins said, all the way through, the alley's paved?

Mayor Engen said, we're getting nods from the audience that the alley is indeed paved.

Alderman Wilkins said, thank you.

Mayor Engen said, any additional questions? Seeing none, Mr. Jaffe?

Alderman Jaffe said, thank you. I move that the City Council approve the exemption with the conditions outlined in the staff report.

Mayor Engen said, that motion is in order. Is there discussion on the motion? Seeing none, we've had a public hearing. We'll have a roll call vote.

MOTION

Alderman Jaffe made a motion to approve the entitlement to claim an exemption for the boundary line relocation proposed for 714 & 714 1/2 Cooley Street, as required by Section 8.040.4.E.(2)(d) of the Missoula City Subdivision Regulations when lots with fee simple access to two (or fewer) public roads are to be redesigned or rearranged in a manner that results in the elimination of an existing fee simple access or reduction of access to less than five feet (5') in width, subject to the conditions included in the planning staff comment.

Upon a roll call vote, the vote on the motion was as follows:

AYES: Childers, Copple, Haines, Hertz, Jaffe, Marler, O'Herron, Strohmaier, Taft, Wilkins, Wolken

NAYS: None

ABSTAIN: None

ABSENT: Wiener

Motion carried: 11 Ayes, 0 Nays, 0 Abstain, 1 Absent

3. Ordinance establishing residency requirements for certain city department heads.

Recommended motion:

(First reading and preliminary adoption) Preliminary adopt an ordinance of the Missoula City Council establishing Chapter 2.82, Sections 2.82.010 through 2.82.050 Missoula Municipal Code entitled "Establishment of Continuous Residency Requirements within the City Limits for City Department Heads."

Mayor Engen said, and this evening I'll ask Councilwoman Wolken to offer her staff report, as it were, on this item.

Alderwoman Wolken said, sure. Well, I had actually talked with several Council people about this and I got some amendments from Mr. O'Herron this afternoon, some proposed amendments, so I'm happy if we can just send it back to the committee after the public hearing and have further discussion there so a staff can and employees can familiarize themselves with the two proposals out there. Your proposal, which I...completely acceptable, that's fine with me and then the other proposal. So, I'm hoping that maybe we can do that and get some clarification from the full Council on what they'd like to talk about in committee, if there's anything else anybody else would want to discuss.

Mayor Engen said, thank you, Ms. Wolken. With that, I will open the public hearing with a reminder that the item will most likely head back to committee for further consideration. Anyone care to comment on the residency requirement this evening? Commissioner Curtiss?

Jean Curtiss said, I live in the City. I've lived here since 1974, paid taxes all that time. I just would like to say that I would hope that you would look at hiring people for the skills that they bring to the job and not where they live. So, my reason is that sometimes when

people move here I know that you are in the process of looking for a new Director for your Development Services Department, for example. When that person moves here, when we bring in folks of the caliber that we want to work in some of those higher paying jobs, they often come with a spouse who will need to look for work and that sometimes means they choose to locate somewhere where they can kind of share the distance to work. We've seen that happen with some of the folks that we've hired, where they wanted to live between here and Hamilton cause maybe their spouse worked at the labs in Hamilton or something like that. Also, I know the property that I own, I bought from my grandmother's estate. Sometimes people want to live where they live because of family connections. And I think that your past Public Works Director is a fine example of someone who did not live in the City limits but definitely always represented urban ideas and urban requirements with things like complete streets. So, I just think that where people live does not make them a better employee than where they don't. Thank you.

Mayor Engen said, thank you, Commissioner. Anyone else this evening? Ms. Matthew-Jenkins?

Kandi Mathew-Jenkins, 1211 Cooper, said, since apparently the last...didn't take on the tape recording, I should quickly say what I said then and that's I support employees of the City living in the City very much and also I would like to see that any employee that is going to work for the City government be in residence in the City for at least five years before applying for any position in the City. And, I can't remember the other one but I think that Missoula, for as long as I can remember, I have been here since 1971, and for as long as I can remember we've always imported out of staters to do the job that Missoulians should be able to do. We have a University up here that has...if we're concerned about environment, we have environmental students up there. If we're concerned about our legal system, we have a law school up there but yet we bring in other people from New York, California and all over to sit on our boards, to run our planning and zoning and to eventually become Councilmembers of an area that they have no real vested interest in. And I think that it's tantamount anymore to a community to be...their government to be participatory in the living environment that they're also making rules over. And I really think this is a great idea, I really do, and I would love to see it extended. And I don't want anybody's job to go away. I think that as we change jobs, I forget what that's called when you turn over jobs, that we take those into consideration and I think that that should be part of the deal. And I think it's about time that Missoulians run Missoula.

Mayor Engen said, anyone else care to comment this evening? With that, I will close the public hearing and would someone like to make a motion to return the item to committee? Mr. O'Herron?

Alderman O'Herron said, I would like to make that motion and may I comment on it as well?

Mayor Engen said, yeah, you know, I should take some questions if anyone has any this evening that you'll want to address on Wednesday. Okay. Questions? Mr. Jaffe?

Alderman Jaffe said, the only part I have a question about was the one sentence that said any individual employed by the City of Missoula that resides within the City limits on the effective date of this ordinance, including department heads and supervisory managers, may move outside the City limits but may only move within Missoula County. The part... the restriction of non-department heads...if I'm reading this right, all employees of the City of Missoula will be required to live within the County. Am I reading that right?

Mayor Engen said, you're probably reading it right. I don't know whether that's the intention, we can certainly address that.

Alderman Jaffe said, alright, anyway, that...

Mayor Engen said, okay.

Alderman Jaffe said, I'm not sure that...why we do that.

Mayor Engen said, okay. Mr. Haines?

Alderman Haines said, are you taking just general comments?

Mayor Engen said, well, you know, it will be available for comment in committee.

Alderman Haines said, I understand that. I just wanted...

Mayor Engen said, particular questions tonight?

Alderman Haines said, I wanted to put something on the...in the record now that would... might...somebody may want to do some work before they get to committee.

Mayor Engen said, yes, sir.

Alderman Haines said, okay. I just would like to see, and I think you touched on it in some of your proposal, looking at it earlier today, I'd like to see some kind of a process for somebody coming in here either coming here or already here, it that could say to appeal to, I don't know, like City Council or appeal to you and say, can I have an exception to this? I think with somebody that might have a 4-Her, for instance. You know, it's kind of tough to raise a steer in downtown Missoula. It might be some reason that they might want to live out in there where they have a couple of horses or something like that. And I think there should be a process where they come and make the case for that and let us say, okay, we can do this, this is not setting a precedent for everybody but it is for this one particular situation, something like that, which I think we discuss in committee, but I want to see people thinking about it. Thank you.

Mayor Engen said, thank you, Mr. Haines. Anyone else? Mr. O'Herron?

Alderman O'Herron said, thank you. I did also pick up on what Bob was talking about and I've got some comments that somebody posed...I think the Clerk's office posted a version that I...of the last one...the last thing that we saw coming to our inbox I think was the Mayor's deliverable on Saturday morning and I took that version in Word, excuse me, Microsoft Word and put in some fairly non-substantive edits but also some comments in comment boxes that show up in the right hand margin, but I don't think they showed up in the pdf on the...what's posted right now on our website. But a couple of comments I made, one of the one that Bob made, I think we have to clarify what the intent is because right now it sounds like a current City employee can move out of the City but can't move out of the County and it's not related to being a department head or not, so I think we have to clarify what the intent is or fix it. Also, there's a...the next little paragraph which ends in the termination of the individual as a department head, so it's failure of the department head or supervisory manager to comply would result in automatic termination as a department head but it's not clear whether they would then take another status as a City employee or be terminated completely from City employment, so I think we have to clear that up too, whatever the intent was there. And I'm not sure if I'm going to support this or not when it comes out for vote but I did read through and find these edits and I wanted to at least get this part clarified before we deliberate for final consideration.

Mayor Engen said, thank you, Mr. O'Herron. Anyone else for anything on Wednesday, is that when we'll be able to take it, Ms. Wolken?

Alderwoman Wolken said, I'd like to schedule it a week from Wednesday.

Mayor Engen said, a week from Wednesday. Thank you very much. Alright, well we'll work on some of those puzzles and be back. Anything else on this item? Mr. Strohmaier?

Alderman Strohmaier said, yeah, one thing that would be helpful and maybe this has been discussed previously in A&F but one thing that would be helpful to know is which of the list of City department heads and supervisory managers are already subject to Council confirmation. I'm not at all real enthusiastic about the proposal on the table right now but I

think it would be a helpful discussion point to know what overlap, if any, there is between the positions listed here and the ones that we confirm already.

Mayor Engen said, alright.

Alderman O'Herron said, Mr. Mayor.

Mayor Engen said, yes, sir.

Alderman O'Herron said, Mayor, may I make one more comment?

Mayor Engen said, sure.

Alderman O'Herron said, just for people paying attention to the process, whether it's on TV or in the...if the paper covers it, it should be clear that at least the last couple of proposals we're seeing for consideration only apply to people that are hired in the future. All City employees are exempt from residency requirements as are being proposed to be changed with this ordinance. So, anyone who's employed by the City now, no matter where they live, are eligible to become department heads or supervisory managers but this would take...this would apply to people that are hired after it was adopted, so I think that has to be clear to everybody that cares because a lot of the comments we got through email were about all City employees and how it would affect them. So, at least we have to make sure everybody knows that the scope is narrow. Thanks.

Mayor Engen said, thank you. Alright, with that, that item has been returned to committee. We have no additional public hearings this evening.

VIII. COMMUNICATIONS FROM THE MAYOR - None

IX. GENERAL COMMENTS OF CITY COUNCIL

Alderwoman Marler said it's great to be back. She had a wonderful time in Viet Nam and wanted to thank the U.S. State Department for sending her there on a fellowship. Her father went to Viet Nam during the Viet Nam war and now she had a chance to go. It was a completely different experience from his but it was wonderful and she looks forward to talking to anyone who would like to hear about that trip. She has a lot of pictures. Thanks again to the U.S. State Department and to the Mansfield Center at the University of Montana. Also, she welcomed Dave Strohmaier back to the Landuse Planning Committee so he should from now on be listed as a committee member.

Alderman Strohmaier announced that Tuesday evening, from 7 to 8:45 at the Missoula Public Library, the City Parks and Rec Department will be hosting a workshop to take input on park facilities throughout the City of Missoula. Also, there will be a ribbon cutting ceremony on Friday at the new parking structure at the corner of Pattee and Front Street, which has been under construction for quite a while. This is an opportunity for people to take a look at it and to witness the Mayor cut the ribbon. The festivities begin at 4:00 p.m. and the ribbon cutting will be at 5:00 p.m. Also, Alderman Strohmaier will be participating in the Public Safety and Security Committee of the Missoula County Public Schools. This is in the aftermath of the Sandy Hook massacre recently. We're looking here in the City of Missoula about how we can improve safety within our schools so if folks have any comments that they would like him to take to that committee, they can contact him. Currently there is an application being reviewed by the Surface Transportation Board of the U.S. Department of Transportation to construct the so-called Tongue River Railroad in southeast Montana. We've had discussion here before about the proposed coal export facilities on the west coast and what that might mean for coal train traffic through the City of Missoula. To make that proposal happen there has to be a new railroad built in southeast Montana so if folks have an interest in that, he'd encourage them to write the Surface Transportation Board. He was in Washington, D.C. a couple of weeks ago making his case to members of Congress that the Surface Transportation Board should not only look at the environmental impacts of the corridor

for the Tongue River Railroad but look at all the down line impacts from southeast Montana to Bellingham, Washington, which passes right through Missoula. If interested in that, contact either the Surface Transportation Board or your congressional delegation here in the state of Montana.

Alderman Wilkins announced that Wednesday at 11:05 a.m. to noon, they're going to be talking about the amendments to accessory dwelling units and the parking that goes along with it. He knows there's a lot of people interested in it because his phone keeps ringing off the wall. Here's your time to chime in on some of this so he hopes to see people there.

Alderwoman Wolken said something exciting happened at the Legislature this afternoon. Senate Judiciary Committee passed out of their committee Senate Joint Resolution 19 which is a resolution encouraging the implementation of I-166 which is basically our state's call to end corporate personhood and something that the *Missoulian* got to voice their opinion on at ballot referendum in 2011, so that's very exciting. Hopefully, if people are interested, they can contact their Senators and ask them to vote for it on the floor. This was sponsored by Missoula County Senator Cliff Larsen. It's pretty exciting and she hopes it passes the Senate and roll the dice in the house.

X. COMMITTEE REPORTS

1. Administration and Finance Committee
   a. Minutes dated February 13, 2013
   b. Minutes dated February 20, 2013
2. Plat, Annexation and Zoning Committee
   a. Minutes dated February 20, 2013
3. Public Safety and Health Committee
   a. Minutes dated February 13, 2013
   b. Minutes dated February 20, 2013
4. Public Works Committee
   a. Minutes dated February 13, 2013

XI. NEW BUSINESS

1. Legislative Updates and Action on Bills
   a. Energy and Climate Team Recommendations

Ben Schmidt, Energy and Climate Team, said, I only have five bills to really comment on today and I did try to look them all up this morning to get their current status. Hopefully, it's still their current status. I'll summarize them all in a group again, the same as last time. First recommendation would be for HJ-9, joint resolution supporting coal. If you read the resolution, you'll basically find a bunch of whereas statements, just stating the economic benefits of coal. Mentions none of the negatives or anything of that nature. We, of course, oppose that being the Energy and Climate Team. We recommend that you oppose that bill. That has passed the House is my understanding. Next one is HJ-10, is a resolution to support climate change as being a scientifically valid occurrence. That has been tabled at this time. I don't know if it will ever become un-tabled. It seems a little unlikely. All I can

say is at least the Legislation is sending a consistent message. The next...oh, we do say support for HJ-10 is our recommendation. House Bill 394, we recommend a strongly support of that. Basically, all that does is allow for aggregate net metering. That just means you could combine several different households or businesses all into like one area. It's sort of like aggregated...combine it basically. Won't get into a lot of the details. Right now that bill is also tabled. It's probably dead but if it does somehow resurface, we can definitely give more explanation at that time on it and look at the specific wording. The last two bills that we have recommendation for are Senate Bill 247. This is a bill to increase the net metering cap and energy production from 50 kilowatts to 100 kilowatts. It just allows them, you know, your smaller turbines that aren't tiny to allow people to be able to install them if they so choose to or a little bit bigger solar panel raise, if they so choose to instill, attached them into the electrical network, or excuse me, grid. This was...the first time when this was passed in the state legislator, I think it was in the late 1990s, I can't remember the exact year, it passed almost unanimously, the idea that residents to being able to put up to 50 kilowatts. So, I had some hope that this one would actually go forward and we'd be seeing that go from 50 to 100. This is probably dead at this point in time, even though it has had some movement in the House, or, excuse me, Senate. The last one is Senate Bill 295. We strongly support this one also is our recommendation. What this one does is it would eliminate the oil and gas tax holiday for the first 18 months of a well's production when it's at its most productive time. Right now they basically don't have to pay the state taxes of any kind for that first 18 months of production. We strongly support removable of that basically 18 months of tax holiday I guess you could call it. At this time, this bill is alive but no action has been taken on it. Thank you.

Mayor Engen said, thank you, Mr. Schmidt. Would anyone care to make a motion regarding those recommendations? Mr. Strohmaier?

Alderman Strohmaier said, yeah, I would move that we support the recommendations of the committee.

Mayor Engen said, the motion's in order. Is there discussion on the motion? Seeing none, anyone in the audience care to comment on the motion? Seeing none, those in favor please say aye. Those opposed. Motion carries.

MOTION

Alderman Strohmaier made a motion to support the recommendations of the committee.

Upon a voice vote the motion carried.

XII. ITEMS TO BE REFERRED

1. Administration and Finance Committee

   a. A Resolution relating to the issuance and sale of $5,750,000 in Tax Increment Urban Renewal Revenue Bonds in Urban Renewal District II, Series 2013.

   b. Amend the FY 2013 budget to appropriate expenditures that were not identified in the original budget for the Tourism Business Improvement District

2. Committee of the Whole

   a. FY14 Budget Discussion

   b. Consultant Presentation for Wayfinding Planning

3. Conservation Committee

a. Annual Conservation Lands Management update

b. Greenough Park Advisory Committee Dissolution

4. Plat, Annexation and Zoning Committee

a. Petition 9604--Dorothy Garner, 2601 & 2601 1/2 South 3rd Street West; A tract of land located in the N2 SE4 SE4 of Section 19, T13N, R19W, M.C.M.; Petition for Annexation

b. City Zoning Ordinance Amendments to 20.45.060 entitled Accessory Dwelling Units and 20.60.020 entitled Required Motor Vehicle Parking of Title 20, Missoula City Zoning Ordinance

5. Public Safety and Health Committee

a. Award bid for scheduling software for the Police department and Municipal Court.

6. Public Works Committee

a. Acceptance of Wyoming Street public right-of-way, utility easements, sidewalk easements and public non-motorized access easement. In addition, create a utility easement on Silver Park (City land) adjacent to the Wyoming Street public right-of-way.

7. Economic Development Subcommittee

XIII. MISCELLANEOUS COMMUNICATIONS, PETITIONS, REPORTS AND ANNOUNCEMENTS - None

XIV. ADJOURNMENT

Mayor Engen thanked the council members and the staff for their service.

The meeting adjourned at 8:23 PM

ATTEST: APPROVED:

Martha L. Rehbein, CMC
City Clerk

John Engen
Mayor

Respectfully submitted by,

Nikki Rogers, Deputy City Clerk

Resolution Number 7757

A resolution of the Missoula City Council to support new Missoula City-County air pollution control program rules.

WHEREAS, the 24-hour National Ambient Air Quality Standards for $PM_{2.5}$ (particulate matter with an aerodynamic diameter of 2.5 microns and smaller) was lowered by the United States Environmental Protection Agency from 65 ug/m^3 to 35 ug/m^3 on September 21, 2006; and

WHEREAS, air pollution studies in Missoula and other communities of western Montana have found wood combustion to be the largest source of $PM_{2.5}$ air pollution in the winter when high $PM_{2.5}$ levels are present; and

WHEREAS, Several chapters of the Missoula City-County Air Pollution Control Program have been in need of updating to correct clarity issues, omissions, and needed revisions; and

WHEREAS, the Missoula City County Air Pollution Control Board proposed revisions to the Missoula City-County Air Pollution Control Program Chapters 4, 6, 7, 8, 9 and 14 to address the high $PM_{2.5}$ concentrations found throughout the county, and after due notice, conducted public hearings on October 18 and November 15, 2012 and approved and passed those revisions at a public meeting on November 18, 2012; and

WHEREAS, the proposed revisions of the Missoula City-County Air Pollution Control Program have been submitted to the Missoula City Council by the Missoula City-County Air Pollution Control Board for this Councils approval; and

WHEREAS, the Missoula City Council held a public hearing on February 25, 2013 to consider the revisions of the Missoula City-County Air Pollution Control Program;

NOW THEREFORE BE IT RESOLVED that the City Council approves and adopts the revised Missoula Air Pollution Control Program, Chapter 4 Missoula County Air Stagnation and Emergency Episode Avoidance Plan, Chapter 6 Standards For Stationary Sources, Chapter 7 Outdoor Burning, Chapter 8 Fugitive Particulate, Chapter 9 Solid Fuel Burning Devices, and Chapter 14 Enforcement and Administrative Procedures which are attached hereto and by this reference incorporated herein as part of this Resolution, to be effective upon approval by the Montana Board of Environmental Review.

PASSED AND ADOPTED this 25th day of February, 2013.

ATTEST:

/s/ Martha L. Rehbein
Martha L. Rehbein, CMC
City Clerk

APPROVED:

/s/ John Engen
John Engen
Mayor

(SEAL)

RESOLUTION NO. 2013 - 014

RESOLUTION RATIFYING AMENDMENTS TO THE MISSOULA CITY-COUNTY AIR POLLUTION CONTROL PROGRAM

WHEREAS, it is the public policy of the County of Missoula to preserve, protect, improve and maintain such levels of air quality in the County of Missoula as will protect human health and safety, animal life, and property, will foster the comfort and convenience of the inhabitants of the County of Missoula, and will promote the economic and social development of the County of Missoula. To this end, it is the policy of the County of Missoula to require the use of all practicable methods to reduce, prevent, and control air pollution in the County of Missoula; and

WHEREAS, the 24-hour National Ambient Air Quality Standards for $PM_{2.5}$ (particulate matter with an aerodynamic diameter of 2.5 microns and smaller) was lowered by the United States Environmental Protection Agency from 65 ug/m^3 to 35 ug/m^3 on September 21, 2006; and

WHEREAS, air pollution studies in Missoula and other communities of western Montana have found wood combustion to be the largest source of $PM_{2.5}$ air pollution in the winter when high $PM_{2.5}$ levels are present; and

WHEREAS, several chapters of the Missoula City-County Air Pollution Control Program are in need of updating to correct clarity issues, omissions, and needed revisions; and

WHEREAS, the Missoula City-County Air Pollution Control Board proposed revisions to the Missoula City-County Air Pollution Control Program Chapters 4, 6, 7, 8, 9 and 14 to address the high $PM_{2.5}$ concentrations found throughout the county, and after due notice, conducted public hearings on October 18, 2012 and November 15, 2012, and approved and passed those revisions at a public meeting on November 18, 2012; and

WHEREAS, the proposed revisions of the Missoula City-County Air Pollution Control Program have been submitted to the Missoula Board of County Commissioners by the Missoula City-County Air Pollution Control Board for the Commissioner's approval; and

WHEREAS, the Missoula Board of County Commissioners held a joint public hearing with the City Council on February 25, 2013, to consider the revisions of the Missoula City-County Air Pollution Control Program;

NOW, THEREFORE, BE IT RESOLVED that the Missoula Board of County Commissioners approves and adopts the revised Missoula City-County Air Pollution Control Program, Chapter 4 Missoula County Air Stagnation and Emergency Episode Avoidance Plan, Chapter 6 Standards For Stationary Sources, Chapter 7 Outdoor Burning, Chapter 8 Fugitive Particulate, Chapter 9 Solid Fuel Burning Devices, and Chapter 14 Enforcement and Administrative Procedures, which are attached hereto and by this reference, incorporated herein as part of this Resolution, to be effective upon approval by the Montana Board of Environmental Review.

DATED this 27th **day of** February, **2013**

BOARD OF COUNTY COMMISSIONERS
MISSOULA COUNTY, MONTANA

Opposed
Michele Landquist, Chair

ATTEST:

Vicki M Zeier
County Clerk & Recorder

Bill Carey
Bill Carey, Commissioner

Jean Curtiss
Jean Curtiss, Commissioner

Section 4

Air Quality Advisory Council Meetings

MISSOULA
COUNTY

MISSOULA CITY-COUNTY HEALTH DEPARTMENT
ENVIRONMENTAL HEALTH DIVISION
301 WEST ALDER
MISSOULA, MONTANA 59802-4123
(406) 258-4755 FAX # (406) 258-4781

AIR QUALITY ADVISORY COUNCIL
MEETING AGENDA
Tuesday August 7, 2012 at 7 pm
Health Board Conference Room #210 (Second Floor)
Missoula City-County Health Department—301 West Alder

1. Call to order
2. Recognize excused absences, establish voting membership
3. Approve agenda
4. Approve June minutes
5. Public comment on non-agenda items
6. Article presentation
7. Discussion and Action Item: Missoula City-County Air Pollution Control Program Rule changes

    a.) Chapters 6 and 14 – Industrial permitting

        i.) Temporary acceptance of state permits for portable sources

        ii.) Eliminate the administrative review process for industrial permitting.

    b.) Chapter 8 – Permeable paving in parking areas and driveways

    c.) Chapter 9 – Solid fuel burning devices

        i.) Solid fuel burning devices in mobile licensed establishments (food vendors).

        ii.) Stove labeling requirements for sale of solid fuel burning devices in Missoula County.

    d.) General cleanup – fixing typos, working on agreement between chapters, etc.

9. Staff report
10. Public comment
11. Announcements, other business
12. Adjourn

If you need special assistance to attend this meeting, please contact:
Sarah Coefield, Air Quality Specialist
Missoula City-County Health Department
301 W. Alder, Missoula, MT 59802
Phone: 258-4755 FAX: 258-4781
Email: scoefield@co.missoula.mt.us

MISSOULA COUNTY

MISSOULA CITY-COUNTY HEALTH DEPARTMENT
ENVIRONMENTAL HEALTH DIVISION
301 WEST ALDER
MISSOULA, MONTANA 59802-4123
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AIR QUALITY ADVISORY COUNCIL
MEETING AGENDA
Tuesday September 4, 2012 at 7 pm
Health Board Conference Room #210 (Second Floor)
Missoula City-County Health Department—301 West Alder

1. Call to order
2. Recognize excused absences, establish voting membership
3. Approve agenda
4. Approve August minutes
5. Public comment on non-agenda items
6. Article presentation
7. Discussion and Action Item: Missoula City-County Air Pollution Control Program Rule changes

    a.) Chapter 6 – Industrial permitting

        i.) Temporary acceptance of state permits for portable sources

    b.) Chapter 9 – Solid fuel burning devices

        i.) Stove labeling requirements for sale of solid fuel burning devices in Missoula County.

    c.) Additional changes proposed by Council members

8. Membership renewals/vacancy
9. Staff report
10. Public comment
11. Announcements, other business
12. Adjourn

If you need special assistance to attend this meeting, please contact:
Sarah Coefield, Air Quality Specialist
Missoula City-County Health Department
301 W. Alder, Missoula, MT 59802
Phone: 258-4755 FAX: 258-4781
Email: scoefield@co.missoula.mt.us

Section 5

Findings for HB521

MISSOULA COUNTY

MISSOULA CITY-COUNTY HEALTH DEPARTMENT
ENVIRONMENTAL HEALTH DIVISION
301 WEST ALDER
MISSOULA, MONTANA 59802-4123
(406) 258-4755 FAX # (406) 258-4781

Proposed Applicability of 75-2-301 Findings

For Rule Changes Proposed to the Missoula City-County Air Pollution Control Program

November 15, 2012

MCA 75-2-301(3)(b) requires the Air Pollution Control Board to fulfill the provisions of MCA 75-2-301(4) when adopting an ordinance or local law that is more stringent than the comparable state law.

MCA 75-2-301(4) allows the Board to adopt a rule more stringent than comparable state law if they make a written finding after a public hearing and public comment and based on evidence that the proposed local standard or requirement:

(A) protects public health or the environment of the area;
(B) can mitigate harm to the public health or the environment; and
(C) is achievable with current technology.

The written finding must reference information and peer-reviewed scientific studies contained in the record that form the basis for the board's or the local air pollution control program's conclusion. The written finding must also include information from the hearing record regarding costs to the regulated community that are directly attributable to the proposed local standard or requirement.

If Missoula's Program includes a rule that is currently more stringent than state rules, and the amendments do not make the rule even more strict, MCA 75-2-301(4) does not apply. In addition, if an amendment is purely clarifying an existing rule, it is not subject to MCA 75-2-301(4).

This document identifies which proposed changes to the Missoula City-County Air Pollution Control Program are more stringent than comparable state law and therefore subject to MCA 75-2-301(4).

Chapter 4 – Missoula County Air Stagnation and Emergency Episode Avoidance Plan

1. Rule 4.112 – Wildfire Smoke Emergency Episode Avoidance Plan

   Proposed changes clarify that health advisories are the appropriate response for wildfire smoke episodes, not regulatory actions such as Alerts or Warnings. This change fixes an omission from the previous rule re-write. The rule is not more stringent than existing requirements.

   MCA 75-2-301(4) does not apply.

Chapter 6- Standards for Stationary Sources

1. Rule 6.101(8) - Definitions

   This rule defines portable industrial sources. This change is for clarification purposes and does not increase stringency.

   MCA 75-2-301(4) does not apply.

2. Rule 6.101(10) – Definitions

   Change corrects a reference error and is therefore not more stringent than existing requirements.

   MCA 75-2-301(4) does not apply.

3. Rule 6.102 (3) – Air Quality Permit Required

   This rule change allows portable industrial sources with a valid State of Montana Air Quality Permit to operate under a temporary Missoula City-County Air Quality Permit while the portable source pursues a permanent Missoula City-County Air Quality Permit. New regulations are no more stringent than the current requirements.

   MCA 75-2-301(4) does not apply.

4. Rule 6.102(4) – Air Quality Permit Required

   Clarifies that the air board may require an air quality permit if a permit is needed to protect the National Ambient Air Quality Standards. Maintaining air pollutant levels below the National Ambient Air Quality Standards is one of the main purposes of the Air Pollution Control Program and has been shown to protect public health (see EPA NAAQS summary online at http://www.epa.gov/air/criteria.html).

   MCA 75-2-301(4) justification will be in written findings document.

5. Rule 6.601(4)

Change corrects a reference error and is therefore not more stringent than existing requirements.
MCA 75-2-301(4) does not apply.

6. Rules 6.103(6), 6.106(3), 6.107 (5-6), and 6.108(3)
   Removes the Administrative Review Process from the Air Pollution Control Program permitting actions and clarifies who may request an Air Board Hearing. Who can request an Air Board Hearing is also clarified and expanded in this rule rewrite. These are clarifications to administrative procedures and are not more stringent than existing requirements.
   MCA 75-2-301(4) does not apply.

Chapter 7- Outdoor Burning

1. Rule 7.101(3) – Definitions
   The rule change clarifies the definition of bonfire. The previous definition was often interpreted inconsistently. This definition re-write allows the department to give a more consistent interpretation on what is a bonfire and follows department policy on what constitutes a bonfire. The proposed change is not more stringent than existing requirements.
   MCA 75-2-301(4) does not apply.

Rule 7.106(1) – Minor Outdoor Burning Source Requirements
Updates the rules to agree with how the outdoor burning permit program is now run. The paper and phone methods have gone primarily to an internet and phone program and this change is needed to keep up with the new system. The proposed change is not more stringent than existing requirements.
MCA 75-2-301(4) does not apply.

Rule 7.107(3) – Major Outdoor Burning Source Requirements
Clarifies major outdoor burning source requirements in the county and is not more stringent than existing requirements.
MCA 75-2-301(4) does not apply.

Chapter 8 – Fugitive Particulate

There are no comparable state requirements or the proposed changes clarify existing rules. The proposed rules allow for more paving alternatives and are therefore not more stringent than existing requirements. **MCA 75-2-301(4) does not apply.**

The purpose of the Chapter 8 changes are to allow alternatives to asphalt or concrete paving in situations where other surfaces with low fugitive emissions are technically feasible. The rule

changes also clarify that temporary roads at mining sites may not need to be paved and that material carry out at mining sites must be controlled to reduce fugitive emissions.

Rule 8.101(5) adds a definition for block pavers.
Rule 8.101(6) adds a definition for bound recycled glass.
Rule 8.101(21) adds a definition for reinforced grids. This replaces the "geoblock" definition that was in Rule 8.101(9).
Rule 8.102(2) clarifies opacity rules for sources.
Rule 8.102(3) replaces the term "geoblocks" with reinforced grids and block pavers.
Rule 8.104 clarifies that roads at mining sites are temporary.
Rule 8.104(1) clarifies that temporary roads at mining sites are required to control material carry out.
Rule 8.104(2) clarifies that temporary roads at mining sites may not be required to pave.
Rule 8.202(4) clarifies that roads used for solely for utilities, agricultural or silvicultural purposes are exempt from the paving requirements of Subchapter 8.2
Rule 8.202(5) clarifies that only landfill roads may be considered temporary if they exist in the same location for less than three years.
Rule 8.203(1) acknowledges the addition of 8.203(4).
Rule 8.203(3)(a)(ii) clarifies that long term parking area exemptions do not apply to sales lots for automobiles or RVs.
Rule 8.203(b)(ii) and Rule 8.203(d) replaces the term geoblock with reinforced grids since geoblock is a trade name and needs to be replaced.
Rule 8.203(4) adds a provision to allow self-draining solid surfaces (i.e. permeable paving) in parking areas as long as certain conditions are met.
Rule 8.204(1) allows a self-draining solid surface as an option for new private driveways.
Rule 8.204(4) adds a provision to allow self-draining solid surface in lieu of paving for new driveways in the air stagnation zone as long as certain conditions are met.

Chapter 9- Solid Fuel Burning Devices

There are no comparable state or federal requirements. Therefore, **MCA 75-2-301(4) does not apply.**

Chapter 14- Enforcement and Administrative Procedures

The proposed changes in administrative process are not more stringent than existing requirements. **MCA 75-2-301(4) does not apply.**

MISSOULA COUNTY

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ENVIRONMENTAL HEALTH DIVISION
301 WEST ALDER
MISSOULA, MONTANA 59802-4123
(406) 258-4755 FAX # (406) 258-4781

75-2-301 Written Findings

For Rule Changes Proposed to the Missoula City-County
Air Pollution Control Program
November 15, 2012

MCA 75-2-301(3)(b) requires the Air Pollution Control Board to fulfill the provisions of MCA 75-2-301(4) when adopting an ordinance or local law that is more stringent than the comparable state law.

MCA 75-2-301(4) allows the Board to adopt a rule more stringent than comparable state law if they make a written finding after a public hearing and public comment and based on evidence that the proposed local standard or requirement:

(A) protects public health or the environment of the area;
(B) can mitigate harm to public health or the environment; and
(C) is achievable with current technology.

The written finding must reference information and peer-reviewed scientific studies contained in the record that form the basis for the board's or the local air pollution control program's conclusion. The written finding must also include information from the hearing record regarding costs to the regulated community that are directly attributable to the proposed local standard or requirement.

If Missoula's Program includes a rule that is currently more stringent than state rules, and the amendments do not make the rule even more strict, MCA 75-2-301(4) does not apply. In addition, if an amendment is purely clarifying an existing rule, it is not subject to MCA 75-2-301(4).

Chapter 6- Standards for Stationary Sources

Rule 6.102(4) – Air Quality Permits Required

This rule allows the Air Pollution Control Board to require a source to get a Missoula City-County Air Quality Permit if the Air Board determines that a permit is needed to ensure compliance with the National Ambient Air Quality Standards (NAAQS). (This rule is therefore more stringent than the comparable state regulation.)

Missoula County came within three-tenths of a microgram of $PM_{2.5}$ non-attainment status. Solid fuel burning devices (e.g. woodstoves) were the number one source of $PM_{2.5}$ in a winter 2006-2007 chemical mass balance study. Given Missoula County's history of

particulate pollution and brush with non-attainment designation, Missoula County citizens will be best protected if new sources that may cause Missoula to exceed the NAAQS are reviewed and regulated via a permitting system. The NAAQS are well-known to be protective of public health (see bibliography below), and therefore, by working to keep Missoula County in compliance with the NAAQS, this proposed rule change protects public health.

Permits are a common tool used to ensure substantive requirements are complied with. Without them, the department has limited means of regulating these entities to ensure pollution was minimized. The permitting process allows for pre-construction review, the application of Best Available Control Technology (BACT), and the establishment of emission limits. Through the BACT process, air quality permits make air pollution control requirements that are technologically possible. It is during the permitting process that cost to comply with emission standards is determined. Ultimately, permits help Missoula County meet federal health based air quality standards, including the new $PM_{2.5}$ standards.

By allowing the Air Pollution Control Board to require a source to get a Missoula City-County Air Quality Permit to ensure compliance with the National Ambient Air Quality Standards, this proposed change to the Missoula City-County Air Pollution Control Program protects public health, can mitigate harm to public health, and is achievable with current technology.

Peer reviewed scientific studies: See bibliography.

Bibliography

National Ambient Air Quality Standards Articles:

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http://hero.epa.gov/ is the portal that lists the peer reviewed articles used by the EPA to set National Ambient Air Quality Standards.

Health Related Studies:

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BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM
EXECUTIVE SUMMARY FOR RULEMAKING PROPOSAL

AGENDA # III.B.1.

AGENDA ITEM SUMMARY: The Department requests that the Board join with the Department to initiate rulemaking to adopt revisions to the sewage system requirements, subdivision rules, and on-site subsurface wastewater rules. A draft joint Board/Department rule notice is attached.

LIST OF AFFECTED RULES: ARM 17.36.320 through 323, 17.36.325, 17.36.912, 17.36.918, 17.38.101 and 17.38.106.

AFFECTED PARTIES SUMMARY: The proposed rule amendments will affect designers and owners of systems that discharge sewage to subsurface treatment systems, and local boards of health and health departments that have regulations for such systems.

SCOPE OF PROPOSED PROCEEDING: The Department requests that the Board and Department jointly initiate rulemaking and jointly schedule a public hearing to take comment on the proposed revisions to the rules shown above.

BACKGROUND: The above referenced rules set out requirements for the review and approval of subsurface sewage treatment systems. Title 17, Chapter 36, Subchapter 3 Subdivisions, are Department rules for review of subdivisions. Title 17, Chapter 36, Sub-Chapter 9, On-Site Subsurface Wastewater Treatment Systems, are Board rules for the state minimum standards used by local health departments to permit onsite septic systems under Title 50, Chapter 2. Title 17 Chapter 38, Sub-chapter 1 Public Water and Sewage System Requirements, are Board rules outlining the requirements for public subsurface sewage treatment systems.

The Public Water and Sewage System Requirements adopt several Subdivision rules by reference. The proposed Subdivision rule revisions outline allowable new and replacement system types, discuss site evaluation requirements and provide minimum setback requirements applicable in both proposed subdivisions and for public wastewater treatment systems not part of a subdivision. The proposed revisions to the On-site Subsurface Wastewater Treatment Systems rules update definitions and setback requirements to provide consistency between the proposed subdivision rules and the state minimum standards.

The proposed amendments to ARM 17.38.106(2)(a), (e), and (f) are necessary to make the fee structure correspond to proposed updates to Department Circular DEQ-1 (DEQ-1) and proposed new Department Circulars DEQ-10 and DEQ-16. The proposed amendments will incorporate those changes into the engineering review fee schedules. The department is required to collect fees commensurate with the department's cost of conducting plan and specification review. The proposed amendments do not modify the review fee for review of any type of application.

The proposed amendments to ARM 17.38.106(2)(d) are necessary to make the fee structure correspond to updates made to Department Circular DEQ-4 (DEQ-4) in 2013. The 2013 edition of DEQ-4 was renumbered and re-titled. The proposed amendments will incorporate those changes into the engineering review fee table. The department is

required to collect fees commensurate with the department's cost of conducting plan and specification review. The proposed amendments do not modify the review fee for any type of application. The changes are strictly housekeeping in nature.

HEARING INFORMATION: The Department recommends that the Board appoint a hearing examiner and conduct a public hearing to take comment on the proposed amendments.

BOARD OPTIONS:

The Board may:

1. Initiate rulemaking and issue the attached Notice of Public Hearing on Proposed Amendment;
2. Modify the Notice and initiate rulemaking; or
3. Determine that amendment of the rules is not appropriate and deny the Department's request to initiate rulemaking.

DEQ RECOMMENDATION:

The Department recommends that the Board and Department jointly initiate rulemaking and appoint a hearing examiner.

ENCLOSURES:

1. Draft Notice of Public Hearing on Proposed Amendment

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.36.320, 17.36.321, 17.36.322, 17.36.323, 17.36.325, 17.36.912, 17.36.918, 17.38.101, and 17.38.106 pertaining to sewage systems, definitions, horizontal setbacks, floodplains, plans for public sewage system, and fees	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (SUBDIVISIONS/ON-SITE SUBSURFACE WASTEWATER TREATMENT) (PUBLIC WATER AND SEWAGE SYSTEM REQUIREMENTS)

TO: All Concerned Persons

1. On _____, 2014, at __:__ __.m, the Board of Environmental Review and the Department of Environmental Quality will hold a public hearing [in/at address], Montana, to consider the proposed amendment of the above-stated rules.

2. The board and department 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., _____, 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:

17.36.320 SEWAGE SYSTEMS: DESIGN AND CONSTRUCTION (1) All components of ~~subsurface~~ sewage treatment systems must be designed and installed in accordance with ~~d~~Department Circular DEQ-4, Department Circular DEQ-2, or other applicable department circular and are subject to the following restrictions~~.~~:

(a) systems designed in accordance with Department Circular DEQ-2 may not be used for individual, shared, or multiple-user systems, except as provided in Department Circular DEQ-4; and

(b) experimental systems are allowed only pursuant to a waiver granted in accordance with ARM 17.36.601.

(2) ~~As indicated on Table 2 of this rule, public systems and multi-~~ Multiple-user systems with design flows greater than or equal to 2,500 gallons per day must be designed by a ~~registered~~ professional engineer and are subject to the requirements in [New Rule II, proposed in MAR Notice No. 17-### published in this register].

~~(2)~~ (3) ~~A~~ For subsurface systems, a minimum separation of at least four feet

of natural soil must exist between the infiltrative surface or the liner of a lined system and a limiting layer, except that at least six feet of natural soil must exist on a ~~steep~~ slope ~~(~~of greater than 15~~%~~ percent ~~to 25%)~~.

~~(3)~~ (4) The proposed subsurface sewage treatment area must include an area for 100~~%~~ percent replacement of the system, except that the replacement area for elevated sand mounds may be allowed as provided in Department Circular DEQ-4. If a size reduction is approved for a system, the replacement area must have area sufficient for the system without the size reduction. Unless a waiver is approved by the department pursuant to ARM 17.36.601, the replacement area must meet the same requirements as the primary area. If the replacement area is not immediately adjacent to the primary area, or if ~~the department indicates to the applicant that it has reason to believe~~ there is evidence that site conditions for the replacement area may vary from those for the primary area, the applicant shall submit adequate evidence of the suitability of the replacement area.

~~TABLE 2~~
~~ALLOWABLE SYSTEMS, REQUIREMENTS~~

	~~YES - Systems that are allowed~~ ~~NO - Systems that are not allowed~~			
~~DEQ-4 System~~	~~Public: > 5000 gpd~~ ~~(1) (7)~~	~~Public or Multiple-user: ≥ 2500 gpd and ≤ 5000 gpd (2) (7)~~	~~Public or Multiple-user: < 2500 gpd (3)~~	~~Individual/ Shared:~~ ~~(6)~~
~~Standard Absorption Trench~~	~~NO~~	~~NO~~	~~YES~~	~~YES~~
~~At-Grade Systems~~	~~NO~~	~~NO~~	~~YES~~	~~YES~~
~~Gravelless~~	~~YES~~	~~YES~~	~~YES~~	~~YES~~
~~Deep Trench~~	~~NO~~	~~NO~~	~~NO~~	~~YES~~
~~Elevated Sand Mound~~	~~YES~~	~~YES~~	~~YES~~	~~YES~~
~~Evapotranspiration (ET) Systems~~	~~NO~~	~~NO~~	~~NO~~	~~NO (5)~~
~~ET-Absorption~~	~~NO~~	~~YES~~	~~YES~~	~~YES~~

~~Intermittent Sand Filters~~	~~YES~~	~~YES~~	~~YES~~	~~YES~~
~~Recirculating Sand Filters~~	~~YES~~	~~YES~~	~~YES~~	~~YES~~
~~Recirculating Trickling Filters~~	~~YES~~	~~YES~~	~~YES~~	~~YES~~

	~~YES - Systems that are allowed~~ ~~NO - Systems that are not allowed~~			
~~DEQ-4 System~~	~~Public: > 5000 gpd (1)~~	~~Public or Multiple-user: ≥ 2500 gpd and ≤ 5000 gpd (2)~~	~~Public or Multiple-user: < 2500 gpd (3)~~	~~Individual/ Shared: (6)~~
~~Chemical Nutrient Reduction; Aerobic Sewage Treatment Systems~~	~~NO (5)~~	~~NO (5)~~	~~NO (5)~~	~~NO (4)(5)~~
~~Pressure Distribution~~	~~YES~~	~~YES~~	~~YES~~	~~YES~~
~~Sand-lined Absorption Trenches~~	~~NO~~	~~YES~~	~~YES~~	~~YES~~
~~Experimental Systems~~	~~NO (5)~~	~~NO (5)~~	~~NO (5)~~	~~NO (5)~~

~~(1) Public systems with design flow greater than 5000 gallons per day (gpd).~~

~~(2) Public or multiple-user systems with design flow greater than or equal to 2500 gpd and less than or equal to 5000 gpd.~~

~~(3) Public or multiple-user systems with design flow less than 2500 gpd.~~

~~(4) Means of securing continuous operation and maintenance of these systems must be approved by the reviewing authority prior to DEQ approval.~~

~~(5) May be allowed by waiver, pursuant to ARM 17.36.601.~~

~~(6) Individual or shared commercial sewage systems that have a design flow greater than 700 gpd shall be considered multi-user.~~

~~(7) Must be designed by a professional engineer.~~

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

MAR Notice No. 17-___

REASON: The department is proposing to eliminate Table 2 and replace it with a narrative format. Table 2 shows sewage systems that are allowed by DEQ-4, but the systems currently listed in Table 2 do not include all of the systems addressed in the most recent edition (2013) of the Circular. Table 2 also adds some restrictions and requirements for Department Circular DEQ-4 (DEQ-4) systems. The department is proposing to eliminate some of these additional restrictions. With the proposed elimination of some of the restrictions in Table 2, and because Table 2 otherwise simply lists systems allowed by DEQ-4, it has limited use. The restrictions and requirements that are retained are proposed to be set out in a narrative format that is easier to understand.

The department is proposing to eliminate the restrictions imposed by Table 2 on standard absorption trenches, at-grade systems, deep trenches, evapotranspiration (ET) systems, ET-absorption systems, and chemical nutrient reduction and aerobic sewage treatment systems. The restrictions are not necessary because, if the systems are designed in accordance with DEQ-4, they will provide adequate treatment of wastewater. The proposed amendments would retain the restriction in Table 2 that experimental systems may be allowed only through a waiver. The amendments also would retain the requirement that multiple-user systems with a design flow greater than or equal to 2,500 gallons per day be designed by a professional engineer. The amendments require that multiple-user systems designed by a professional engineer comply with the requirements of New Rule II, proposed in MAR Notice No. 17-___ and published in this register.

ARM 17.36.320(1) requires that components of sewage systems be designed in accordance with DEQ-4. The proposed amendments would delete the term "subsurface." This is necessary because DEQ-4 is not limited to subsurface systems. DEQ-4 also addresses systems such as waste segregation and incinerator toilets. The proposed amendments also add a reference to Department Circular DEQ-2 (DEQ-2). This is necessary because DEQ-2 requirements may be applicable to some public sewage systems.

Proposed ARM 17.36.320(1)(a) prohibits use of DEQ-2 for individual, shared, and multiple-user systems, except as provided in DEQ-4. A similar restriction currently exists in ARM 17.36.321(2), and it is proposed to be restated here for clarity. Because DEQ-4 requires some components to be designed in accordance with DEQ-2, the amendments will allow use of DEQ-2 when required by DEQ-4.

Proposed ARM 17.36.320(1)(b) sets out the requirement, currently in Table 2, that experimental systems are allowed only pursuant to a waiver.

The proposed amendments create a new ARM 17.36.320(2) to state the existing requirement that a professional engineer design multiple-user systems with a design capacity equal to or greater than 2,500 gallons per day. The amendments delete the reference in this sentence to public systems. The provisions requiring design by professional engineers of public sewage systems will now be consolidated in the rules for public water and sewer systems. See proposed amendments to ARM 17.38.101. The amendments delete the reference to a "registered" professional engineer. The term "registered" is not necessary because "professional engineer" is proposed to be defined, in proposed amendments to the department's Sanitation in Subdivisions Act rules, as a person licensed pursuant to Title 37, chapter 67, MCA. This definition already appears in the public water supply rules

(see ARM 17.38.101(3)(m). The proposed amendments provide a cross-reference to the requirements in New Rule II, proposed in MAR Notice No. 17-### and published in this register, for engineer-designed multiple-user systems. New Rule II, proposed in MAR Notice No. 17-___ and published in this register, requires the applicant to commit to retaining a professional engineer to certify that construction was completed in accordance with the approved design and requires that an engineer certify, before the system is operated, that it was completed in accordance with approved plans. It also requires an engineer to submit to the department, within 90 days after completion, certified "as-built" plans, and requires that plans and specifications be re-submitted if construction is not completed within three years after approval.

The proposed amendments to renumbered ARM 17.36.320(3) clarify that this section is applicable only to subsurface systems. It is not necessary to apply the requirements of this section to systems not addressed in DEQ-4. The proposed amendment eliminates the 25 percent maximum. Under proposed ARM 17.36.322(2), slopes of up to 35 percent are allowed with a variance and there is no need to state a maximum in this rule. This amendment follows proposed amendments to ARM 17.36.322 that would allow pressure-dosed systems on slopes up to 35 percent through a waiver process. This amendment is necessary to clarify that, if a waiver is granted under ARM 17.36.322 to allow a pressure-dosed system on a slope greater than 25 percent, the six-foot soil requirement applies.

The proposed amendments to renumbered ARM 17.36.320(4) clarify that the reviewing authority has discretion whether to require replacement areas for elevated sand mounds, pursuant to DEQ-4. See DEQ-4 Section 6.7.2.5. The amendments also provide that a replacement area must provide space for a full-size system, even when the original approved system qualified for a size reduction. This is necessary to ensure adequate space in the event that the replacement system does not qualify for a size reduction. The amendments also make minor changes for clarification.

17.36.321 SEWAGE SYSTEMS: ALLOWABLE NEW AND REPLACEMENT SYSTEMS (1) ~~The allowable new sewage treatment systems, together with certain other requirements for such systems, are indicated in Table 2 of ARM 17.36.320.~~ All systems must be designed and installed in accordance with ~~d~~Department Circular DEQ-4, Department Circular DEQ-2, or other applicable department circular. ~~The use of sewage systems for replacement systems shall be in accordance with department Circular DEQ-4.~~ Requirements applicable to review of existing sewage treatment systems are set out in ARM 17.36.327.

(2) Systems designed in accordance with ~~d~~Department Circular DEQ-2, may not be used for individual, shared, or multiple~~-~~user systems, except as provided in Department Circular DEQ-4.

(3) The following sewage systems may not be used for new systems:

(a) through (f) remain the same.

(g) holding tanks, except that~~.~~:

(i) ~~T~~the department may grant a waiver, pursuant to ARM 17.36.601, to allow holding tanks ~~for recreational vehicle dump stations~~ in facilities owned and operated by a local, state, or federal unit of government, or in facilities licensed by the Department of Public Health and Human Services and inspected by the local health

department. Holding tanks must be designed and maintained in accordance with the requirements in ~~d~~Department Circular DEQ-4 and all other requirements imposed by the department and local health department~~.~~; and

(ii) the department may grant a waiver, pursuant to ARM 17.36.601 and with concurrence by the local health department, to allow holding tanks to replace a failed system when no other alternative that meets these rules is reasonably available.

(4) through (5) will remain the same.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendments to ARM 17.36.321(1) delete the reference to Table 2 in ARM 17.36.320. This is necessary because the proposed amendments to ARM 17.36.320 would delete Table 2. The proposed amendments would also add a reference to DEQ-2. This is necessary because DEQ-2 requirements may be applicable to some sewage systems. The amendments would delete the sentence identifying requirements for replacement systems. The sentence is unnecessary because the preceding sentence identifies requirements for "all systems," which include replacement systems.

ARM 17.36.321(2) prohibits use of DEQ-2 for individual, shared, and multiple user systems. The proposed amendment clarifies that DEQ-2 requirements may apply in some cases, as specified in DEQ-4.

ARM 17.36.321(3)(g)(i) allows the department to allow, through waiver, holding tanks for recreational vehicle dump stations in facilities owned and operated by a local, state, or federal unit of government, or in facilities licensed by the Department of Public Health and Human Services (DPHHS). The proposed amendment would also allow waivers for holding tanks in other types of government-owned or licensed facilities. It is not necessary to limit waivers under this section to recreational vehicle dump stations.

The proposed amendments add a new ARM 17.36.321(3)(g)(ii), which allows the department to allow, through waiver, holding tanks in any situation where a system has failed and no other alternative that meets the rules is reasonably available. The new provision is necessary to allow for continued use of a parcel when the existing sewage system has failed and cannot be replaced with any system other than a holding tank.

17.36.322 SEWAGE SYSTEMS: SITING (1) ~~Subsurface~~ Gravity-fed subsurface sewage treatment systems may not be used if natural slopes are greater than 15~~%~~ percent~~;~~. ~~however, the department may, by waiver granted pursuant to ARM 17.36.601, allow a~~ A pressure-dosed sewage treatment system with a design flow of 5,000 gallons per day or less may be used on slopes ~~between~~ greater than 15~~%~~ percent and up to 25~~%~~ percent, if a ~~registered~~ professional engineer or a person qualified to evaluate and identify soil in accordance with ~~ASTM standard D5921-96el (Standard Practice for Subsurface Site Characterization of Test Pits for On-Site Septic Systems)~~ Department Circular DEQ-4 submits adequate evidence that there will be no visible outflow of liquid downslope from the subsurface sewage treatment system.

(2) The department may grant a waiver, pursuant to ARM 17.36.601 and after consultation with the local health department, to allow pressure-dosed subsurface sewage treatment systems on slopes greater than 25 percent and up to 35 percent if a professional engineer or a person qualified to evaluate and identify soil in accordance with Department Circular DEQ-4 submits adequate evidence that there will be no visible outflow of liquid downslope from the subsurface sewage treatment system.

~~(2)~~ (3) Subsurface sewage treatment systems may not be installed on unstable landforms, as defined in ARM ~~17.36.320~~ 17.36.101.

(3) and (4) remain the same, but are renumbered (4) and (5).

~~(5)~~ (6) For lots ~~one~~ two acres in size or less, the applicant shall physically identify the drainfield location by staking or other acceptable means of identification. For lots greater than ~~one~~ two acres in size, the department may require the applicant to physically identify the drainfield location.

(6) remains the same, but is renumbered (7).

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendments delete the reference to a "registered" professional engineer. See Reason for ARM 17.36.320. The proposed amendments to ARM 17.36.322(1) retain the 15 percent slope limitation for gravity-fed subsurface systems, and allow, without a waiver, pressure-dosed systems on slopes greater than 15 percent and up to 25 percent if a qualified person performs a soil evaluation. Gravity-fed systems are not suitable on slopes greater than 15 percent due to the tendency of these systems to load effluent over small areas, which creates the potential for soil sloughing or effluent outfall. However, pressure-dosed systems can be used on those slopes, and the waiver process is not needed to ensure that the pressure-dosed systems are properly designed. For slopes greater than 15 percent and up to 25 percent, the amendments require that soil evaluations be conducted in accordance with DEQ-4 instead of ASTM standard D5921-96el. The reference to the ASTM standard is not necessary because the procedures in the standard are substantially addressed in DEQ-4.

The proposed new ARM 17.36.322(2) allows, through a department waiver, use of pressure-dosed systems on slopes greater than 25 percent and up to 35 percent, if a qualified person performs a soil evaluation. The department has found that in some situations pressure-dosed systems can be installed on these slopes without adverse consequences. The use of the waiver process will allow for consideration of the special circumstances in each case.

The proposed amendment to renumbered ARM 17.36.322(3) is necessary to correct an erroneous cross reference.

The proposed amendment to renumbered ARM 17.36.322(6) expands, from one to two acres, the size of lots in which approved drainfield locations must be staked or otherwise identified. This amendment is necessary to conform to revisions to DEQ-4, 2013 edition (Section 2.1.4.) Physical identification of approved drainfield sites is necessary to prevent other construction improvements from interfering with the drainfield site. Identification may be by physical staking, or by a method such as

electronic identification using GPS coordinates. The increase in lot size from one to two acres is necessary because the potential for interference is not limited to one-acre lots. The amendments also give the department discretion to require drainfield site identification on lots larger than two acres. This is necessary to allow the reviewing authority to prevent interference with an approved drainfield site where a significant amount of ground disturbance is proposed.

17.36.323 ~~SEWAGE SYSTEMS: HORIZONTAL~~ SETBACKS~~; WAIVERS~~

(1) Minimum ~~horizontal~~ setback distances~~,~~ ~~(~~in feet~~),~~ shown in Table ~~3~~ 2 of this rule must be maintained, except as provided in the table footnotes or as allowed through a deviation granted under ARM Title 17, chapter 38, subchapter 1. The setbacks in this rule are not applicable to gray water irrigation systems that meet the setbacks and other requirements of ARM 17.36.319.

~~(2) A waiver of the setback distance for a cistern may be granted by the department, pursuant to ARM 17.36.601, if the applicant demonstrates that the elevation of the cistern is higher than the elevation of the septic tank, other components, or drainfield/sand mound.~~

~~(3) A waiver of the setback distance between drainfields/sand mounds and surface waters, springs, and floodplains may be granted by the department, pursuant to ARM 17.36.601, only if:~~

~~(a) the applicant demonstrates that ground water flow at the drainfield site cannot flow into the surface water or spring; or~~

~~(b) the surface water or spring seasonally high water level is a minimum of 100 feet horizontal distance from the drainfield and the bottom of the drainfield will be at least two feet above floodplain elevation.~~

~~(4) The department may require more than 100 feet of separation from the floodplain or from surface water or springs if it determines that site conditions or water quality nondegradation requirements indicate a need for the greater distance.~~

TABLE ~~3~~ 2
SETBACK DISTANCES
(in feet)

From	To Drinking Water ~~Supply~~ Wells	To Sealed Components (1) and Other Components (2)	To Drainfields/~~Sand Mounds~~ Soil Absorption Systems
Public or multiple-user drinking water wells/springs	-	100 (3)	100
Individual and shared drinking water wells	-	50(3)	100
Other wells (4)	-	50 (3)	100 (3)

Suction lines	-	50	100
Cisterns	-	25	50
Roadcuts, escarpment	-	10 ~~(3)~~ (5)	25
Slopes > ~~25%~~ 35 percent ~~(4)~~ (6)	-	10 ~~(3)~~ (5)	25
Property boundaries	10 (7)	10 (7)	10 (7)
Subsurface drains	-	10	10
Water ~~Lines~~ mains	-	10 (8)	10
Drainfields/~~Sand Mounds~~ soil absoprtion systems	100	10	-
Foundation walls	-	10	10
Surface water, (9) springs	100 ~~(5)~~ (3) (10) (11)	50 (3) (10)	100 (3) (10) (12)
Floodplains	10 (10)	- Sealed components - no setbacks (1) Other components - 100 (2) (3) (10)	100 (10) (13)
Mixing zones	100 (3)	-	-
Storm water ponds and ditches	25 (14)	10	25

(1) Sealed components include ~~sewer lines, sewer mains, septic tanks, grease traps, dosing tanks, and pumping chambers~~ holding tanks, sealed pit privies, and the components addressed in Department Circular DEQ-4, Chapters 4 and 5. Sealed components must meet the requirements of ARM 17.36.322(4).

(2) Other components include ~~intermittent and recirculating sand filters, package plants, and evapotranspiration systems~~ the components addressed in Department Circular DEQ-4, chapter 7.

(3) A waiver of this requirement may be granted by the department pursuant to ARM 17.36.601.

(4) Other wells include, but are not limited to, irrigation and stock watering, but do not include observation wells as addressed in Department Circular DEQ-4.

(3) remains the same, but is renumbered (5).

~~(4)~~ (6) Down-gradient of the sealed component, other component, or drainfield/~~sand mound~~ soil absorption system.

~~(5) A waiver of this requirement may be granted by the department pursuant to ARM 17.36.601.~~

(7) Easements may be used to satisfy the setback to property boundaries.

(8) Unless a waiver is granted by the department pursuant to ARM 17.36.601, sewer mains that cross water mains must be laid with a minimum vertical separation distance of 18 inches between the mains.

(9) For purposes of this rule, "surface water" does not include intermittent storm water.

(10) The department may require more separation from the floodplain or from surface water or springs if it determines that site conditions or water quality requirements indicate a need for the greater distance.

(11) Pursuant to ARM 17.36.331, the reviewing authority may require greater than a 100-foot horizontal separation between a well and surface water if there is a potential that the well may be influenced by contaminants in the surface water.

(12) A waiver may be granted by the department, pursuant to ARM 17.36.601, if the applicant demonstrates that ground water flow at the drainfield site cannot flow into the surface water or spring. The setback between drainfields or soil absorption systems to irrigation ditches does not apply if the ditch is lined with a full culvert.

(13) A waiver may be granted by the department, pursuant to ARM 17.36.601, if the applicant demonstrates that the surface water or spring seasonally high water level is at least a 100-foot horizontal distance from the drainfield and the bottom of the drainfield will be at least two feet above the maximum 100-year flood elevation.

(14) The setback is 100 feet for public wells, unless a deviation is granted under ARM Title 17, chapter 38, subchapter 1.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendment to the title of the rule deletes "Sewage Systems." This is necessary because the setbacks in Table 2 apply to other features besides sewage systems. The proposed amendment to the title also deletes the term "horizontal." This is necessary because proposed new footnote (8) to Table 2 establishes vertical setbacks between water and sewer mains.

The proposed amendments move ARM 17.36.323(2) through (4) into the Table 2 footnotes. The current format is confusing in that some allowable waivers are shown on Table 2 and others are not. These amendments will ensure that all allowable waivers are indicated on the table and described in the table footnotes. The proposed amendment to ARM 17.36.323(1) indicates that all waivers to the setbacks in Table 2 are shown in the footnotes. The proposed amendments to ARM 17.36.323(1) also allow a waiver to a setback in the table if the department has allowed a lesser distance through the deviation process under the public water and sewer (PWS) rules in ARM Title 17, chapter 38, subchapter 1 and related department circulars. This "reciprocal" waiver process is necessary to prevent a conflict between these rules and a deviation for a proposed subdivision facility that is granted under the PWS rules.

At the top of Table 2, column 4, the proposed amendments replace the term "sand mounds" with "soil absorption systems". This is necessary to clarify that the setback table applies to other systems besides sand mounds. The proposed amendments also replace "water supply wells" with "drinking water wells." This is necessary to clarify that the referenced setbacks apply only to water wells proposed to be used for human drinking water supply.

Existing footnotes (1) and (2) of Table 2 identify sealed and "other" components that are subject to the table. The proposed amendments to footnotes (1) and (2) delete the lists of components in the footnotes and replace them with a reference to DEQ-4, Chapters 4, 5, and 7. The components currently listed in the footnotes are addressed in DEQ-4, but DEQ-4 includes other components as well. It is not practical to list all of the components in the footnote. To provide a more complete identification of components that are subject to Table 2, it is necessary to identify them by reference.

In the first row of Table 2, the proposed amendments allow a waiver of the setback between public or multiple-user wells or springs and sealed or other components of sewage systems. A 100-foot setback is not always necessary when the sewage system component is designed to prevent contamination of the water supply. The current table allows waivers under footnote (5). The proposed amendments renumber the waiver footnote as footnote (3) throughout Table 2.

The proposed amendments insert a new second row in Table 2 for individual and shared water supply wells. The current table addresses these wells under "other wells." The new category is proposed in order to distinguish between drinking water wells and non-drinking water wells. Under the proposed amendment, setbacks to non-drinking water wells will be addressed under "other wells." The setbacks are the same for drinking water wells and other wells, except that a waiver is allowed for the setback between other wells and drainfields/soil absorption systems. Because other wells no longer include wells for drinking water, it is appropriate to adjust this setback in some cases through waiver. The proposed amendments would also allow a waiver of the setback between individual, shared, and other wells and sealed and "other" components of sewage systems. A 100-foot setback is not always necessary when the sewage system component is designed to prevent contamination of the water supply or other well. Proposed footnote (4) provides that the setbacks for other wells do not apply to monitoring wells. This is necessary to allow the use of monitoring wells in subdivisions. Compared with wells for irrigation or stockwater, monitoring wells do not present a significant risk of surfacing sewage, and in some cases monitoring wells must be installed close to a sewage source to determine potential impacts to water quality.

The proposed amendments to the setbacks for roadcuts, escarpments, and slopes greater than 25 percent renumber the existing footnote from (3) to (5). The amendments increase, from 25 percent to 35 percent, the slope to which the slope setback applies. This is necessary to the consistent with the proposed amendments to ARM 17.36.322, which allow, through waiver, pressure-dosed sewage treatment systems on slopes between 25 percent and 35 percent. The amendment also renumbers, from (4) to (6), the footnote that clarifies that the slope setback applies down-gradient of the sealed component, other component, or drainfield/soil absorption system.

The proposed amendments add a new footnote (7) to the 10-foot setback for property boundaries to provide that easements may be obtained to satisfy the setback. The purpose of the setback is to allow owners adequate access to their facilities for purposes of repairs and maintenance. In some cases, usually involving a change to a previously approved facility, the 10-foot buffer from the property boundary may be unavailable. In those cases, an easement from the adjoining

landowner will provide adequate assurance that access is available.

The proposed amendments modify the current 10-foot setback for "water lines" so that it would apply only to "water mains." Ten feet of horizontal separation is not needed between sewage system components and water service lines. This amendment will also provide consistency with a comparable setback in the Uniform Plumbing Code. The proposed amendments add a new footnote (8) to the setback that requires an 18-inch vertical separation between water and sewer mains, unless the department grants a waiver. The 18-inch vertical separation requirement is currently found in Department Circulars DEQ-1 (DEQ-1) and DEQ-2 (DEQ-2), and is included in footnote (8) to ensure that subdivision applicants are aware of it. The waiver process will provide a method for considering special circumstances that may affect the need for the 18-inch vertical setback.

The proposed amendments add several new footnotes to the setbacks for surface water and springs. Footnote (9) provides that this setback is not applicable to intermittent storm water. Footnote (9) is added because the amendments add, in the last row of Table 2, a new setback for storm water ponds and ditches. The proposed amendments add Footnote (3), which will allow waivers from the setbacks from surface water and springs. Special circumstances can affect whether these setbacks are necessary. The waiver process will provide a method for considering these circumstances on a case-by-case basis. Footnote (10) allows the department to require more separation from surface water or springs, based on site conditions or water quality needs. This footnote incorporates the provisions that are currently in (4) of the rule. Footnote (11) provides a cross-reference to ARM 17.36.331, which allows the reviewing authority to require a greater than 100-foot separation between a well and surface water if there is a potential that the well may be influenced by contaminants. Footnote (11) is necessary to indicate that the setback shown in Table 2 can be modified in those circumstances. Footnote (12) provides that the department may waive the drainfield setback if the applicant demonstrates that ground water flow at the drainfield site cannot flow into the surface water or springs. This footnote incorporates the provisions that are currently in (3)(b). Footnote (12) also states that the setback between drainfields or soil absorption systems and irrigation ditches does not apply if the ditch is lined with a full culvert. This provision reflects an existing department interpretation of former (3)(a). Including it in footnote (12) will provide guidance to applicants about this setback requirement.

The proposed amendments add several footnotes to the floodplain setbacks. The proposed amendments add Footnote (3), which allows waivers, to the setback between the floodplain and wells. This is necessary to allow, through the waiver process, consideration of special construction or siting circumstances that minimize the potential for commingling between flood waters and a water supply. Footnote (10) provides that the reviewing authority may require more separation from the floodplain, based on site conditions or water quality needs. This footnote incorporates the provisions that are currently in (4) of the rule. Proposed footnote (13) provides that the department may waive the setback between floodplains and drainfields/soil absorption systems if the applicant demonstrates that the surface water or spring seasonally high water level is at least 100 feet horizontal distance from the drainfield and that the bottom of the drainfield will be at least two feet above the maximum flood elevation. This footnote incorporates the provisions that are

currently in (3)(b) of the rule. The proposed amendments also add footnote (3), which allows waivers, to the setback between the flood plain and "other" sewage components. Under the proposed amendments to footnote (2), "other" sewage components are the advanced treatment systems addressed in chapter 7 of DEQ-4. Some of these systems are sealed units that would not create a contamination risk during a flood event. The waiver process will provide a method for considering these circumstances on a case-by-case basis.

The proposed amendments insert a new row in Table 2 establishing a 100-foot setback between mixing zones and water supply wells. This is necessary to ensure that drinking water wells are isolated from potential sources of contamination. A waiver provision is provided to allow for department consideration of unique circumstances.

The proposed amendments insert a new row in Table 3 establishing setbacks from storm water ponds and ditches. The proposed setbacks are less than those for non-storm surface water and springs. Because storm water facilities have intermittent flows, they are less likely to impact wells or be impacted by sewage disposal facilities. Consequently, it is not necessary to apply the larger setbacks that apply to more permanent surface water sources. Proposed footnote (14) clarifies that the setback remains 100 feet between storm water facilities and public wells. This is necessary to be consistent with the requirements for public wells set out in DEQ-1 and Department Circular DEQ-3 (DEQ-3). Section 3.2.3.1 of DEQ-1 and DEQ-3 requires that public wells be located at least 100 feet from sewer lines, septic tanks, holding tanks, and any structure used to convey or retain industrial, storm, or sanitary waste.

17.36.325 SEWAGE SYSTEMS: SITE EVALUATION (1) remains the same.

(2) If the applicant or the department has reason to believe that ground water will be within seven feet of the surface at any time of the year within the boundaries of the treatment system, ~~the applicant shall install ground water level observation pipes to a depth of at least eight feet to determine the seasonally high ground water level. The applicant shall monitor the observation pipes through the seasonally high ground water period~~ ground water monitoring must be conducted in accordance with Department Circular DEQ-4.

(3) The applicant shall provide descriptions of the soils within 25 feet of the boundaries of each proposed drainfield. ~~Soil descriptions must address the characteristics used in the U.S. Department of Agriculture's National Soil Survey Handbook (USDA, NRCS, September 1999), and the Soil Survey Manual (USDA, October 1993). These characteristics include, but are not limited to, soil texture, soil structure, soil consistence, and indicators of redoximorphic features.~~ Soil descriptions for the proposed subdivision must meet the following requirements:

(a) soil descriptions must be done in accordance with Department Circular DEQ-4. The characteristics that must be addressed include, but are not limited to, soil texture, soil structure, soil consistence, and indicators of redoximorphic features;

~~(a)~~ (b) ~~S~~soil descriptions ~~for the proposed subdivision~~ must be based on data obtained from test holes. Test holes must be ~~at least eight feet in depth~~ dug in accordance with Department Circular DEQ-4~~;~~. The number of test holes must be as provided in (i), unless a waiver is granted by the department pursuant to ARM

17.36.601. Before a waiver is granted, the applicant shall complete test holes for 25 percent of the proposed drainfield locations in the proposed subdivision, shall demonstrate that the soils are consistent throughout the area requested for a waiver, and shall obtain the approval of the local reviewing authority. The department may require additional test holes than are required in (c) if the department determines that there is significant variability of the soils in the proposed drainfield areas. Each test hole must be keyed by a number on a copy of the lot layout or map with the information provided in the application.

~~(b)~~ (c) At least one test hole must be dug for each individual drainfield and for each shared (two-user) drainfield~~, unless a waiver is approved by the department pursuant to ARM 17.36.601. Before a waiver is requested and granted, the applicant must complete test holes for 25% of the proposed drainfield locations in the subdivision, demonstrate that the soils are consistent throughout the area requested for a waiver, and must obtain the approval of the local reviewing authority for reduction in number of test holes~~. At least three test holes must be dug for each multiple-user and public drainfield~~, unless a waiver is approved by the department pursuant to ARM 17.36.601~~. At least one test hole must be dug ~~in~~ for each zone of a pressure-dosed drainfield~~, unless a waiver is approved by the department pursuant to ARM 17.36.601. The department shall require additional test holes if it determines that there is significant variability of the soils in the proposed drainfield area;~~.

~~(c) Test holes must be located within 25 feet of the boundaries of the proposed drainfield. The locations must be established by a person qualified to evaluate and identify soil in accordance with ASTM standard D5921-96el (Standard Practice for Subsurface Site Characterization of Test Pits for On-Site Septic Systems);~~

(d) If the applicant or the department has reason to believe that a limiting layer is within seven feet of the ground surface at the site of a proposed subsurface sewage treatment system~~s~~, the department may require additional test ~~pits~~ holes and soil descriptions sufficient to describe the suitability of the soil ~~must be provided; and~~.

~~(e) Each test hole must be keyed by a number on a copy of the lot layout or map with the information provided in the report.~~

(4) Sewage systems that are subject to the design requirements of Department Circular DEQ-2 must meet the siting requirements of that circular.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendment to ARM 17.36.325(2) deletes the existing description of required ground water monitoring procedures and replaces it with a reference to DEQ-4. DEQ-4 contains a more complete statement of procedures and the amendment is necessary to inform subdivision applicants of all applicable ground water monitoring procedures.

The proposed amendments to ARM 17.36.325(3) reorganize the section to consolidate the waiver provisions into a single subsection. This is necessary to eliminate repetition and to clearly indicate which requirements are subject to waiver. The proposed amendments add a reference to DEQ-4 to renumbered ARM

17.36.325(3)(b). DEQ-4 contains a more complete statement of test hole requirements, and the amendment is necessary to inform subdivision applicants of all applicable procedures. The amendment in new (c) is necessary to allow test holes to be dug near, but not in, the zone if disruption by the test hole could interfere with the function of the system. The amendment is also necessary to be consistent with procedures in DEQ-4, 2013 edition. The proposed amendments delete existing ARM 17.36.325(3)(c) because it unnecessarily duplicates other provisions in the rule. The amendment to (d) is proposed because additional holes and descriptions may not always be necessary in this situation. Subsection (e) is eliminated because this requirement will now be found in the new language in subsection (b).

The proposed amendments add a reference to the siting requirements of DEQ-2. This is necessary to identify applicable siting requirements for sewage systems that are subject to DEQ-2.

17.36.912 DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) through (4) remain the same.

(5) "Commercial unit" means the area under one roof that is occupied by a business or other nonresidential use. A building housing two businesses is considered two commercial units.

(5) and (6) remain the same, but are renumbered (6) and (7).

~~(7) "Dwelling" or "residence" means any structure, building or portion thereof, which is intended or designed for human occupancy and supplied with water by a piped water system.~~

(8) and (9) remain the same.

(10) "Floodplain" means the area adjoining the watercourse or drainway that would be covered by ~~the floodwater of a flood of 100-year frequency except for sheet flood areas that receive less than one foot of water per occurrence and are considered zone b areas by the federal Emergency Management Agency~~ a flood that is expected to recur on the average of once every 100 years or by a flood that has a one percent chance of occurring in any given year. The floodplain consists of the floodway and the flood fringe, as defined in ARM Title 36, chapter 15.

(11) through (13) remain the same.

(14) "Impervious layer" means any layer of material in the soil profile that has a percolation rate slower than ~~120~~ 240 minutes per inch.

(15) "Individual wastewater system" means a wastewater system that serves one living unit or commercial ~~structure~~ unit. The ~~total number of people served may not exceed 24~~ term does not include a public sewage system as defined in 75-6-102, MCA.

(16) remains the same.

(17) "Living unit" means the area under one roof ~~occupied by a family~~ that can be used for one residential unit and which has facilities for sleeping, cooking, and sanitation. For example, a duplex is considered two living units.

(18) "Multiple user wastewater system" means a ~~non-public~~ wastewater system that serves or is intended to serve ~~three through 14 living units or three through 14 commercial structures~~ more than two living units or commercial units or a combination, but which is not a public sewage system as defined in 75-6-102, MCA.

~~The total number of people served may not exceed 24.~~ In estimating the population that will be served by a proposed residential system, the reviewing authority shall multiply the number of living units ~~times the county average of persons per living unit based on the most recent census data~~ by 2.5.

(19) remains the same.

~~(20) "Package plants" means wastewater treatment systems that are sealed within a watertight container and contain components for the secondary and tertiary treatment of wastewater.~~

~~(21)~~ (20) "Percolation test" means a standardized test used to assess the infiltration rate of soils, performed in accordance with Appendix A in Department Circular DEQ-4.

~~(22)~~ (21) "Piped water ~~system~~ supply" means a plumbing system that conveys water into a structure from any source including, but not limited to, wells, cisterns, springs, or surface water.

(23) through (28) remain the same, but are renumbered (22) through (27).

~~(29)~~ (28) "Septic tank" means a ~~storage~~ wastewater settling tank in which settled sludge is in immediate contact with the wastewater flowing through the tank while the organic solids are decomposed by anaerobic action.

~~(30)~~ (29) "Shared wastewater system" means a wastewater system that serves or is intended to serve two living units or commercial ~~structures~~ units or a combination of both. The ~~total people served may not exceed 24~~ term does not include a public sewage system as defined in 75-6-102, MCA. ~~In estimating the population served, the reviewing authority shall multiply the number of living units times the county average of persons per living unit based on the most recent census data.~~

(31) and (32) remain the same, but are renumbered (30) and (31).

~~(33)~~ (32) "Soil profile" means a description of the soil strata to a depth of eight feet using the United States Department of Agriculture (USDA) soil classification system method in Appendix B, Department Circular DEQ-4.

(34) and (35) remain the same, but are renumbered (33) and (34).

~~(36)~~ (35) "Wastewater" means water-carried ~~waste that is discharged from a dwelling, building, or other facility, including~~ wastes including, but not limited to:

(a) through (d) remain the same.

~~(37)~~ (36) "Wastewater treatment system" or "wastewater disposal system" means a system that receives wastewater for purposes of treatment, storage, or disposal. The term includes, but is not limited to, ~~pit privies and experimental systems~~ all disposal methods described in Department Circular DEQ-4.

AUTH: 75-5-201, MCA
IMP: 75-5-305, MCA

REASON: The term "commercial unit" is defined in new ARM 17.36.912(5). The term is used in the definitions of individual, shared, and multiple-user wastewater systems. The proposed definition of "commercial unit" is the same as the definition in these rules and DEQ-4, 2013 edition. The definition is necessary to clarify how shared and multiple-user systems are defined.

The proposed amendments delete the definition of "dwelling." The term

"dwelling" is currently used only in the definition of "wastewater" to refer to wastewater discharged from a dwelling. The proposed amendments would modify the definition of "wastewater" to delete the reference to discharge from a dwelling. Consequently, the definition of "dwelling" is no longer necessary.

The proposed amendments to the definition of "floodplain" in ARM 17.36.912(10) eliminate the exception for areas that receive less than one foot of water per occurrence that are considered "zone b" areas by the Federal Emergency Management Agency (FEMA). The defined term "floodplain" is used in rules that restrict the construction of drainfields in and near floodplains. The exception for FEMA "zone b" in the current definition could allow construction of drainfields in areas that are inundated by floodwaters less than one foot deep during the 100-year flood. Because any inundation of drainfields by flood waters during a 100-year flood could interfere with proper drainfield operation, it is necessary to eliminate the exception, in the definition of "floodplain," for FEMA "zone b" areas.

The proposed amendments to the definition of "impervious layer" in ARM 17.36.912(14) change, from 120 to 240 minutes per inch, the percolation rate at which material is considered impervious. The amendment conforms this definition to that in DEQ-4, 2013 edition, and is necessary because adequate wastewater treatment can be achieved in soils with slower percolation rates.

The proposed amendments to the definition of "individual wastewater system" in ARM 17.36.912(15) replace the term "commercial structure" with "commercial unit". This is necessary in order to use the term "commercial unit" as defined in these rules and in DEQ-4, 2013 edition. The amendments also delete the limitation to 24 people served, and replace it with a reference to the statutory definition of public water supply and public sewage systems. This amendment is necessary because the 24-person limit does not accurately identify the threshold between a non-public and a public system contained in 75-6-102, MCA.

The proposed amendment to the definition of "living unit" in ARM 17.36.912(17) deletes the reference to "family" and replaces it with "residential." This is necessary because not all residential uses involve use by a family. The amendments also identify the basic features of a living unit, which are that it has facilities for sleeping, cooking, and sanitation. The amendments conform this definition to that in the Sanitation in Subdivisions Act rules and DEQ-4 and are necessary to identify which structures constitute living units for the purposes of these rules.

The proposed amendments to the definition of "multiple user wastewater system" in ARM 17.36.912(18) replace the term "commercial structure" with "commercial unit." This is necessary in order to use the term "commercial unit" as defined in these rules and in DEQ-4, 2013 edition. The proposed amendments provide that multiple-user systems can consist of two or more living units, commercial units, or a combination of residential and commercial units. This is necessary to provide guidance about the meaning of the rules. The amendments also delete the limitation to 24 people served and replace it with a reference to the statutory definition of public water supply and public sewage systems. This amendment is necessary because the 24-person limit does not accurately identify the threshold between a non-public and a public system. The amendments also modify the formula for determining when proposed residential water and sewer

systems will be subject to the requirements for public systems. The current rule multiplies the number of proposed living units times the county average of persons per living unit, based on the most recent census data. The amendments standardize the persons per living unit to 2.5. This is necessary to ensure that the requirements for public systems are applied consistently across the state to developments of a certain size.

The proposed amendments delete the definition of "package plants" in ARM 17.36.912(20). The term is used in a list of sewage system components in footnote (2) of the setback table in ARM 17.36.918. Because the proposed amendments delete the term from the footnote to the setback table, this definition is no longer necessary.

The proposed amendment to the definition of "percolation test" in ARM 17.36.912(21) references the procedures for performing percolation tests set out in DEQ-4 Appendix A. This amendment conforms to the definition in DEQ-4 and is necessary to clarify that tests must be done in accordance with Appendix A to meet the requirements of these rules.

The proposed amendments modify the definition of "piped water system" in ARM 17.36.912(22). This is necessary because the term "piped water system" is used only in the definition of "dwelling," which the proposed amendments would replace with the term "living unit." The modification replaces the term with "piped water supply," which is used in ARM 17.36.916(6).

The proposed amendments to the definition of "septic tank" in ARM 17.36.912(29) make minor changes for clarification and are necessary to conform to the definition in DEQ-4, 2013 edition.

The proposed amendments to the definition of "shared wastewater system" in ARM 17.36.912(30) replace the term "commercial structure" with "commercial unit." This is necessary in order to use the term "commercial unit" defined in these rules and in DEQ-4, 2013 edition. The amendments also clarify that shared user systems can consist of two or more living units, commercial units, or a combination of residential and commercial units. This is necessary to provide guidance about the meaning of the rules. The amendments also delete the limitation to 24 people served, and replace it with a reference to the statutory definition of public water supply and public sewage systems. This amendment is necessary because the 24-person limit does not accurately identify the threshold between a non-public and a public system. The amendment conforms to the definition of "shared wastewater system" in DEQ-4, 2013 edition. The amendments also delete the reference to the formula for determining when a shared system is subject to the design standards for public systems. The reference is not necessary because shared systems can be public based on the definitions in 75-6-102, MCA, but will not reach the public threshold based on the county average of persons per living unit.

The proposed amendment to the definition of "soil profile" in ARM 17.36.912(33) adds a reference to the soil classification method set out in Appendix B of DEQ-4. The amendment is necessary to provide guidance to permit applicants about where the required procedures can be found.

The proposed amendments to the definition of "wastewater" in ARM 17.36.912(36) delete the reference to wastewater that is discharged from a dwelling, building, or other facility. The amendment is necessary to include systems that do

not discharge from a building, such as waste segregation systems and incinerator toilets. The proposed amendments also conform this definition to that in DEQ-4, 2013 edition.

The proposed amendments to the definition of "wastewater treatment system" in ARM 17.36.912(37) replace the reference to pit privies and experimental systems with a reference to all disposal methods described in DEQ-4. Pit privies and experimental systems are addressed in DEQ-4, together with a number of other types of systems. The amendment is necessary to provide a more complete reference to the types of wastewater treatment systems.

17.36.918 HORIZONTAL SETBACKS, FLOODPLAINS (1) Minimum horizontal setback distances (in feet) are as follows:

TABLE 1
SETBACK DISTANCES
(in feet)

From	To Sealed components (1) and other components (2)	To Absorption systems (3)
Public or multiple-user drinking water wells/springs	100	100
Individual and shared drinking water supply	50	100
Other wells (4)	50	100
Suction lines	50	100
Cisterns	25	50
Roadcuts, escarpments	10 (4) (5)	25
Slopes > 25% 35 percent (5) (6)	10 (4) (5)	25
Property boundaries (7)	10	10
Subsurface drains	10	10
Water lines mains (8)	10	10
Drainfields/sand mounds (3)	10	-
Foundation walls	10	10
Surface water, Springs	50	100
Floodplains	--Sealed components - no setbacks (1) Other components - 100 (2)	100

(1) Sealed components include sewer lines, sewer mains, septic tanks, grease traps, dosing tanks, pumping chambers, holding tanks, and sealed pit privies, and

the components addressed in Department Circular DEQ-4, Chapters 4 and 5. Holding tanks and sealed pit privies must be located at least ~~10~~ ten feet outside the floodplain or any openings must be at least two feet above the floodplain elevation.
(2) Other components include ~~intermittent and recirculating sand filters, package plants, and evapotranspiration systems~~ the components addressed in Department Circular DEQ-4, Chapter 7.
(3) Absorption systems include ~~absorption trenches, absorption beds, sand mounds, and other drainfield type systems that are not lined or sealed. This term also includes seepage pits and unsealed pit privies~~ the systems addressed in Department Circular DEQ-4, Chapter 6.
(4) Other wells include, but are not limited to, irrigation and stock watering, but do not include observation wells as addressed in Department Circular DEQ-4.
Footnotes (4) and (5) remain the same, but are renumbered (5) and (6).
(7) Easements may be used to satisfy the setback to property boundaries.
(8) Sewer mains that cross water mains must be laid with a minimum vertical separation distance of 18 inches between the mains.

(2) The reviewing authority may require greater horizontal separation distances than those specified in Table 1, if it determines that site conditions or water quality ~~nondegradation~~ requirements indicate a need for the greater distance.

(3) through (5) remain the same.

AUTH: 75-5-201, MCA
IMP: 75-5-305, MCA

REASON: Existing footnotes (1), (2), and (3) of Table 1 identify sealed components, "other" components, and absorption systems that are subject to Table 1. The proposed amendments to footnotes (1), (2), and (3) delete the lists of components and systems in the footnotes and replace them with a reference to DEQ-4, Chapters 4, 5, 6, and 7. The components and systems currently listed in the footnotes are addressed in DEQ-4, but DEQ-4 includes other components and systems as well. It is not practical to list all of the components and systems in the footnote. To provide a more complete identification of components and systems that are subject to Table 1, it is necessary identify them by reference.

The proposed amendments clarify that the setback row referring to "Public or multiple user wells/springs" applies to "drinking water" supplies. This is necessary to clarify that the referenced setbacks apply only to water wells proposed to be used for a human drinking water supply.

Proposed new footnote (4) clarifies that the setbacks for other wells do not apply to monitoring wells. Compared with wells for irrigation or stockwater, monitoring wells do not present a significant risk of surfacing sewage, and in some cases monitoring wells must be installed close to a sewage source to determine potential impacts to water quality.

A new setback row is proposed for "Individual and shared water supply wells." Because new footnote (4) designates "other wells" as non-drinking water wells, the new row is necessary to provide a setback for individual and shared drinking water wells.

The proposed amendments to the setbacks for roadcuts, escarpments, and slopes renumber the existing footnotes from (4) to (5). The amendments increase, from 25 percent to 35 percent, the slope to which the slope setback applies. This is necessary to be consistent with the proposed amendments to ARM 17.36.322, which allow, through a Department of Environmental Quality waiver, pressure-dosed sewage treatment systems on slopes between 25 percent and 35 percent. The amendments also renumber, from (5) to (6), the existing footnote that states that the slope setback applies down-gradient of the sealed component, other component, or drainfield/soil absorption system.

The proposed amendments add a new footnote (7) to the ten-foot setback for property boundaries, to clarify that easements may be obtained to satisfy the setback. The purpose of the setback is to allow owners adequate access to their facilities for purposes of repairs and maintenance. In some cases the ten-foot buffer from the property boundary may be unavailable. In those cases, an easement from the adjoining landowner will provide adequate assurance that access is available.

The proposed amendments modify the current ten-foot setback for "water lines" so that it would apply only to "water mains." Ten feet of horizontal separation is not needed between sewage system components and water service lines. This amendment will also provide consistency with a comparable setback in the Sanitation in Subdivisions Act rules and the Uniform Plumbing Code.

The proposed amendments add a new footnote (8) to the setback, for water mains, that requires an 18-inch vertical separation between water and sewer mains. The 18-inch vertical separation requirement is currently found in DEQ-1 and the requirement is included in footnote (8) to ensure that permit applicants are aware of it.

17.38.101 PLANS FOR PUBLIC WATER SUPPLY OR PUBLIC SEWAGE SYSTEM (1) through (3)(n)(ii) remain the same.

(4) A person may not commence or continue the construction, alteration, extension, or operation of a public water supply system or public sewage system until the applicant has submitted a design report along with the necessary plans and specifications for the system to the department or a delegated division of local government for its review and has received written approval. Three sets of plans and specifications are needed for final approval. Approval by the department or a delegated division of local government is contingent upon construction and operation of the public water supply or public sewage system consistent with the approved design report, plans, and specifications. Failure to construct or operate the system according to the approved plans and specifications or the department's conditions of approval is an alteration for purposes of this rule. Design reports, plans, and specifications must meet the following criteria:

(a) through (c) remain the same.

(d) the board adopts and incorporates by reference ARM 17.36.320 through 17.36.325 ~~and 17.36.327~~. The design report, plans, and specifications for public subsurface sewage treatment systems must be prepared in accordance with ARM 17.36.320 through 17.36.325 ~~and 17.36.327,~~ and ~~in accordance~~ with the format and criteria set forth in department Circular DEQ-4, "Montana Standards for Subsurface Wastewater Treatment Systems~~;~~." For public subsurface sewage treatment systems

with a design flow greater than or equal to 2,500 gallons per day, the design report, plans, and specifications must be prepared by a professional engineer.

(e) through (20) remain the same.

AUTH: 75-6-103, MCA
IMP: 75-6-103, 75-6-112, 75-6-121, MCA

REASON: ARM 17.38.101 sets out requirements for plans for public water supply and public sewage systems. The rule is promulgated under the board's authority under the public water and sewer (PWS) statutes in Title 75, chapter 6, part 1, MCA. ARM 17.38.101(4)(d) incorporates by reference sewage system rules that are promulgated by the Department of Environmental Quality (department) under the Sanitation in Subdivisions Act, Title 76, chapter 4, MCA. In this joint department/board rule notice, the department is proposing amendments to some of the Sanitation in Subdivisions Act rules incorporated by reference in ARM 17.38.101(4)(d). See department's proposed amendments to ARM 17.36.320 through 323 and ARM 17.36.325 above. If, after public comment, the department amends those Sanitation in Subdivisions Act rules, the board is proposing to incorporate the department's amendments in ARM 17.38.101. The incorporation of the Sanitation in Subdivisions Act rules within the PWS rules is necessary to maintain consistency between board PWS requirements for subsurface sewage systems and department requirements for subsurface sewage systems in proposed subdivisions.

The board is proposing to amend ARM 17.38.101(4)(d) to delete the incorporation by reference of ARM 17.36.327, which sets out provisions applicable to existing sewage systems in proposed subdivisions. The requirements in ARM 17.36.327 are less stringent than the requirements in the rues pertaining to public sewage systems. Because of the volume of sewage with which to deal, it is not appropriate for ARM 17.36.327 to apply to public sewage systems.

The proposed amendments to ARM 17.38.101(4)(d) also add a requirement that professional engineers design public subsurface sewage treatment systems with design flows greater than, or equal to, 2,500 gallons per day. This requirement is currently codified in Sanitation in Subdivisions Act rules at ARM 17.36.320, but the proposed amendments will delete the requirement from ARM 17.36.320 and add it to ARM 17.38.101(4)(d). These amendments are necessary to consolidate, in the PWS rules, the requirements for design of public sewage systems by professional engineers.

17.38.106 FEES (1) remains the same.

(2) Department review will not be initiated until fees calculated under (2)(a) through ~~(e)~~ (f) and (5) have been received by the department. If applicable, the final approval will not be issued until the calculated fees under (3) and (4) have been paid in full. The total fee for the review of a set of plans and specifications is the sum of the fees for the applicable parts or subparts listed in these ~~citations.~~ subsections:

(a) The fee schedule for designs requiring review for compliance with Department Circular DEQ-1 is set forth in Schedule I, as follows:

SCHEDULE I

Policies	
ultra violet disinfection	$ 700
point-of-use/point-of-entry treatment	$ 700
Section 1.0 Engineering Report	$ 280
Section 3.1 Surface water	
quality and quantity	$ 700
structures	$ 700
Section 3.2 Ground water	$ 840
Section 4.1 Microscreening	$ 280
Section 4.~~1~~ 2 Clarification	
standard clarification	$ 700
solid contact units	$ 1,400
Section 4.~~2~~ 3 Filtration	
rapid rate	$ 1,750
pressure filtration	$ 1,400
diatomaceous earth	$ 1,400
slow sand	$ 1,400
direct filtration	$ 1,400
biologically active filtration	$ 1,400
membrane filtration	$ 1,400
micro and ultra filtration	$ 1,400
bag and cartridge filtration	$ 420
Section 4.~~3~~ 4 Disinfection	$ 700
Section 4.~~4~~ 5 Softening	$ 700
Section 4.6 Ion Exchange	$ 700
Section 4.~~5~~ 7 Aeration	
natural draft	$ 280
forced draft	$ 280
spray/pressure	$ 280
packed tower	$ 700
Section 4.~~6~~ 8 Iron and manganese	$ 700
Section 4.~~7~~ 9 Fluoridation	$ 700
Section 4.~~8~~ 10 Stabilization	$ 420
Section 4.~~9~~ 11 Taste and odor control	$ 560
~~Section 4.10 Microscreening~~	~~$ 280~~
~~Section 4.11 Ion exchange~~	~~$ 700~~
Section 4.12 Adsorptive media	$ 700
Chapter 5 Chemical application	$ 980
Chapter 6 Pumping facilities	$ 980
Section 7.1 Plant storage	$ 980
Section 7.2 Hydropneumatic tanks	$ 420
Section 7.3 Distribution storage	$ 980
~~Section 7.4 Cisterns~~	~~$ 420~~
Chapter 8 Distribution system	
per lot fee	$ 70
non-standard specifications	$ 420

transmission distribution (per lineal foot).....$ 0.25
rural distribution system (per lineal foot).....$ 0.03
sliplining existing mains (per lineal foot).....$ 0.15
Chapter 9 Waste disposal.....$ 700
Appendix A
new systems.....$ 280
modifications.....$ 140

(b) through (c) and Schedule III remain the same.

(d) The fee schedule for designs requiring review for compliance with Department Circular DEQ-4 is set forth in Schedule IV, as follows:

SCHEDULE IV

Chapter 4 Pressure Dosing	$ 280
Chapter ~~7~~ 5 Septic Tanks	$ 280
Chapters ~~8, 10, 11, 12, 13~~ 6 Soil Absorption ~~Trenches~~ Systems	$ 280
~~Chapter 9 Dosing System~~	~~$ 280~~
~~Chapter 14 Elevated Sand Mounds~~	~~$ 280~~
Chapter 6, Subchapter 6.8 ETA and ET Systems	$ 700
Chapters ~~15, 16, 17~~ Subchapters 7.1, 7.2, and 7.3 Filters	$ 280
~~Chapters 17, 18 ETA and ET Systems~~	~~$ 700~~
Chapter ~~20~~ 7, Subchapter 7.4 Aerobic Treatment	$ 700
Chapter ~~21~~ 7, Subchapter 7.5 Chemical Nutrient-Reduction Systems	$ 700
Chapter 7, Subchapter 7.6 Alternate Advanced Treatment Systems	$ 700
Chapter ~~24, 25, 26, 27~~ 8 Holding Tanks, Pit Privy, Seepage Pits, Waste Segregation, Experimental Systems	$ 280
Appendix D	$ 280
Non-degradation Review	$ 420

(e) ~~The fee schedule for the review of plans and specifications not covered by a specific department design standard, but within one of the following categories,~~ The fee schedule for designs requiring review for compliance with Department Circular DEQ-10 is set forth in Schedule V as follows:

SCHEDULE V

Spring box and collection lateral	$ 350

(f) The fee schedule for designs requiring review for compliance with Department Circular DEQ-16 is set forth in Schedule VI, as follows:

SCHEDULE VI

Cisterns	$ 420

(3) through (7) remain the same.

AUTH: 75-6-108, MCA
IMP: 75-6-108, MCA

REASON: The proposed amendment to ARM 17.38.106(2) clarifies rule language. The proposed amendment is necessary to use correct language in the rule description. The proposed amendment is house-keeping in nature and has no direct effect on the regulation.

The proposed amendments to ARM 17.38.106(2)(a) modify the review fee categories under that schedule. The proposed amendments are necessary to correspond to the proposed 2014 edition of Department Circular DEQ-1(DEQ-1). The proposed amendments do not modify any review fee. They merely correct the line item titles to reflect the new chapter numbering and naming. The cumulative amount for impacted persons is zero because there is no proposed increase, decrease, or new amount. No persons are affected fiscally by this rule amendment because the fees remain the same for every type of application.

The proposed amendments to ARM 17.38.106(2)(d) modify the review fee categories under that table. The proposed amendments are necessary to correspond to the 2013 edition of Department Circular DEQ-4(DEQ-4). The Schedule IV table was not updated when DEQ-4 was updated in 2013; therefore, fee item headings described in the Schedule IV table are no longer accurate. The proposed amendments do not increase any fee. They correct the line item titles to reflect the new chapter numbering and naming. The cumulative amount for impacted persons is zero because there is no proposed increase, decrease, or new amount. No persons are affected fiscally by this rule amendment because the fees remain the same for every type of application.

The proposed amendment to ARM 17.38.106(2)(e) would modify review fee Schedule V. The proposed amendment is necessary to incorporate new Department Circular DEQ-10(DEQ-10) into the line item description. The review fee is not changed. Prior to adoption of DEQ-10, the department charged a review fee for review of plans and specifications not covered by a specific design standard, which covered spring boxes and collection laterals, of $350. The review fee for spring boxes and collection laterals under new DEQ-10 will remain at $350.

The proposed addition of ARM 17.38.106(2)(f) would create a new review fee Schedule VI. The proposed amendment is necessary to incorporate new Department Circular DEQ-16(DEQ-16) into the fee schedule. The review fee is not changed. Prior to adoption of DEQ-16, the department charged a review fee $420 for the review of cistern plans and specifications under Department Circular DEQ-1. The review fee for cisterns under new DEQ-10 will remain at $420.

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

5. Katherine Orr, 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 and department maintain 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 supplies; 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 or department.

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 and department have determined that the amendment of the above-referenced rules will significantly and directly impact small businesses.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

_____ BY: _____

JOHN F. NORTH
Rule Reviewer

ROBIN SHROPSHIRE
Chairman

DEPARTMENT OF ENVIRONMENTAL QUALITY

BY: _____

TRACY STONE-MANNING, Director

Certified to the Secretary of State, _____, 2014.

BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM
EXECUTIVE SUMMARY FOR RULEMAKING

AGENDA # III.C.1.

AGENDA ITEM SUMMARY - The Department requests approval of an amendment to the Montana Strip and Underground Mining Reclamation Act. The Department is requesting this amendment in order to maintain compliance with federal regulations governing insitu coal gasification under the Office of Surface Mining.

LIST OF AFFECTED RULES - ARM 17.24.905

AFFECTED PARTIES SUMMARY - Affected and interested parties include, but are not limited to, the Department's Industrial and Energy Minerals Bureau, coal mine and prospecting companies.

SCOPE OF PROPOSED PROCEEDING - The Board is considering final action on adoption of the amendment to the above-referenced rule.

BACKGROUND - SB 292, of the 2011Legislative session required the board to adopt rules necessary to regulate underground mining using insitu coal gasification by October 1, 2011. The bill also states that the rule regulating insitu coal gasification may not be more stringent than the comparable federal regulations or guidelines. Prior to the passage of 82-4-207, MCA, the board adopted the following two rules specifically regulating insitu coal gasification: ARM 17.24.902 provides permit application requirements and ARM 17.24.903 provides performance standards for insitu coal gasification. Both of these rules include appropriate provisions of subchapters 3 through 8 and 10 through 13 that are applicable to insitu coal permit applications and operations. ARM 17.24.902 and 17.24.903 are substantially similar to the comparable federal regulations, which are contained in 30 CFR 785.22 and 30 CFR Part 828. Following passage of 82-4-207, MCA, the Department reviewed subchapter 3 through 8 and 10 through 13 to identify which rules within those subchapters apply. The Department determined that most rules would apply to those operations. Rather than adopting rules that duplicate existing rules, the Department recommended and the Board adopted ARM 17.24.905 that lists rules not applicable to Insitu Coal Operations.

During the Office of Surface Mining review of Subchapter 9, it was determined that ARM 17.24.905(1)(b) [ARM 17.24.320, Plans for Disposal of Excess Spoil] be removed. Although the reviewer agreed that this rule would probably not be part of an Insitu process, Federal Law did not omit disposal of excess spoil and made State regulations less stringent that it's Federal counterpart.

HEARING INFORMATION - The Department recommended that the Board not schedule a hearing; therefore, no hearing was conducted.

BOARD OPTIONS - The Board may:

1. Adopt the proposed amendment as set forth in the attached Notice of Proposed Amendment (No Public Hearing Contemplated);
2. Adopt the proposed amendment with revisions that the Board finds are appropriate and that are consistent with Notice of Proposed Amendment (No Public Hearing Contemplated) and the record in this proceeding; or
3. Decide not to adopt the amendments.

DEQ RECOMMENDATION - The Department recommends amendment of ARM 17.24.905 as set forth in the attached draft Notice of Amendment.

Enclosures -

1. Notice of Proposed Amendment (No Public Hearing Contemplated)
2. Memo from Dana David, Staff Attorney, and HB 311 checklist
3. Draft Notice of Adoption

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.24.905 pertaining to rules not applicable to in situ coal operations	NOTICE OF PROPOSED AMENDMENT (RECLAMATION) NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On February 3, 2014, the Board of Environmental Review proposes to amend the above-stated rule.

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., January 15, 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 rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

17.24.905 RULES NOT APPLICABLE TO IN SITU COAL OPERATIONS
(1) The following rules are not applicable to in situ coal gasification:
(a) remains the same.
~~(b) ARM 17.24.320 (Plans for Disposal of Excess Spoil);~~
(c) and (d) remain the same, but are renumbered (b) and (c).
(2) remains the same.

AUTH: 82-4-207, MCA
IMP: 82-4-221, 82-4-222, 82-4-223, 82-4-225, 82-4-227, 82-4-228, 82-4-231, 82-4-232, 82-4-233, 82-4-237, 82-4-238, 82-4-240, 82-4-243, MCA

REASON: It is necessary to amend this rule because the Office of Surface Mining has determined that, by eliminating the plans for disposal of excess spoil, our rule would be less stringent than the federal counterpart. In order for the department to continue to regulate coal mining, its rules must be as stringent as the Surface Mining Control and Reclamation Act and implement federal statute 30 U.S.C. 1253.

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 January 23, 2014. 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 January 23, 2014.

6. If the department 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 the fewer than 20 regulated mines in Montana.

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 board.

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 amendment of the above-referenced rule will not significantly and directly impact small businesses.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North BY: */s/ Robin Shropshire*
JOHN F. NORTH ROBIN SHROPSHIRE
Rule Reviewer Chairman

Certified to the Secretary of State, December 16, 2013.

Montana Department of
ENVIRONMENTAL QUALITY

Steve Bullock, Governor
Tracy Stone-Manning, Director

P. O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • Website: www.deq.mt.gov

MEMO

To: The Board of Environmental Review

From: Dana David, DEQ Staff Attorney

Re: In the matter of the amendment of ARM 17.24.905 pertaining to rules not applicable to in situ coal operations

Date: February 25, 2014

On behalf of the Montana Department of Environmental Quality, Industrial Energy Materials Bureau, Coal Section, I submit the following in support of the above referenced rulemaking.

The HB521 requirement that the rule is no more stringent than federal regulations does not apply to Montana Strip and Underground Mine Reclamation Act.

The Private Property Assessment checklist required by HB 311 is attached to this Memo as Attachment A and indicates that the proposed rule results in no takings or damaging implications.

ATTACHMENT A

PRIVATE PROPERTY ASSESSMENT ACT CHECKLIST
In Situ Coal Rule

DOES THE PROPOSED AGENCY ACTION HAVE TAKINGS IMPLICATIONS UNDER THE PRIVATE PROPERTY ASSESSMENT ACT?

Yes	No	
√		1. Does the action pertain to land or water management or environmental regulation affecting private real property or water rights?
	√	2. Does the action result in either a permanent or indefinite physical occupation of private property?
	√	3. Does the action deprive the owner of all economically viable uses of the property?
	√	4. Does the action deny a fundamental attribute of ownership?
	√	5. Does the action require a property owner to dedicate a portion of property or to grant an easement? [If the answer is NO, skip questions 5a and 5b and continue with question 6.]
		5a. Is there a reasonable, specific connection between the government requirement and legitimate state interests?
		5b. Is the government requirement roughly proportional to the impact of the proposed use of the property?
	√	6. Does the action have a severe impact on the value of the property?
	√	7. Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public generally? [If the answer is NO, do not answer questions 7a through 7c.]
		7a. Is the impact of government action direct, peculiar, and significant?
		7b. Has government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?
		7c. Has government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question?

Taking or damaging implication exist if YES is checked in response to question 1 and also to any one or more of the following questions: 2, 3, 4, 6, 7a, 7b, 7c; or if NO is checked in response to questions 5a or 5b.

If taking or damaging implication exists, the agency must comply with §5 of the Private Property Assessment Act, to include the preparation of a taking or damaging impact assessment. Normally, the preparation of an impact assessment will require consultation with agency legal staff.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.24.905 pertaining to rules not applicable to in situ coal operations	)))	NOTICE OF AMENDMENT (RECLAMATION)

TO: All Concerned Persons

1. On December 26, 2013, the Board of Environmental Review published MAR Notice No. 17-350 regarding a notice of proposed amendment, no public hearing contemplated, of the above-stated rule at page 2364, 2013 Montana Administrative Register, issue number 24.

2. The board has amended ARM 17.24.905 exactly as proposed.

3. No public comments or testimony were received.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

_____ By: _____

JOHN F. NORTH
Rule Reviewer

ROBIN SHROPSHIRE
Chairman

Certified to the Secretary of State, _____, 2014.

BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM
EXECUTIVE SUMMARY FOR RULEMAKING PROPOSAL

AGENDA ITEM # III.C.2.

AGENDA ITEM SUMMARY - The Department requests adoption of a new rule pertaining to the administrative requirements for limited opencut operations. The new rule would implement the provisions for limited opencut operations in section 5 of Senate Bill 332 (2013).

LIST OF AFFECTED RULES - New Rule I

AFFECTED PARTIES SUMMARY – Owners or operators of permitted opencut operations wanting to conduct limited opencut operations that meet the criteria in Section 5 of Senate Bill 332 (13) codified as 82-4-431(2), Montana Code Annotated (MCA).

SCOPE OF PROPOSED PROCEEDING - The Board is considering final action on the adoption of New Rule 1 as proposed in the Montana Administrative Register as Notice 17-351, with one noncontroversial wording change.

BACKGROUND - Proposed New Rule 1 provides administrative requirements and procedures that are necessary to implement the provisions in Section 5 of Senate Bill 332 (2013) (now codified as 82-4-431(2), MCA) for limited opencut operations. An operator who holds an opencut permit under 82-4-431, MCA may conduct a limited opencut operation without obtaining an additional permit or an amendment to an existing permit if the limited opencut operation meets the criteria in 82-4-431(2), MCA. Section 82-4-431(2), MCA requires the operator to submit appropriate site and operation information on a form provided by the department. Proposed New Rule I will clarify the time limits for limited opencut site reclamation, and for submittal of an application to continue or expand a limited opencut operation pursuant to Section 5 of Senate Bill 332 (the provisions for continuing and expanding limited opencut operations are codified as 82-4-431(4), MCA). Finally, New Rule 1 provides that the 10,000 cubic yard limitation for a limited opencut operation does not include the volume of soil and overburden that is stripped and stockpiled on the limited opencut operation site for reclamation purposes. This clarification is necessary to uphold the intent of Senate Bill 332, which is to allow operators to get on the ground to complete smaller, short-term projects without having to undertake the full opencut permitting process

HEARING INFORMATION – No hearing was held and no public comments were received. The department submitted one noncontroversial revision to the rule text and emailed it to the Opencut Stakeholder Group. Receiving no objection, the department proposes to strike the words "required by" and replace them with "acceptable to" in paragraph (2)(b) of the rule. This change would make uniform the language used in paragraphs (2)(b) and (2)(d), and would not alter the meaning of the rule.

BOARD OPTIONS - The Board may:

1. Adopt New Rule I as set forth in the attached Notice of Proposed Adoption;
2. Adopt New Rule I with revisions the Board finds appropriate and consistent with the scope of the Notice of Proposed Adoption and the record in this proceeding; or
3. Decide not to adopt New Rule I.

DEQ RECOMMENDATION - The Department recommends adoption of New Rule 1 as set forth in the attached Notice of Adoption.

Enclosures -

1. Notice of Proposed Adoption (No Public Hearing Contemplated)
2. Memo from Dana David, Staff Attorney and HB 311 checklist
3. Comment from Edward Coleman
4. Draft Notice of Adoption

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to administrative requirements for limited opencut operations	)	NOTICE OF PROPOSED ADOPTION (RECLAMATION) NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On February 3, 2014, the Board of Environmental Review proposes to adopt the above-stated rule.

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., January 15, 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 proposed new rule provides as follows:

NEW RULE I ADMINISTRATIVE REQUIREMENTS FOR LIMITED OPENCUT OPERATIONS (1) An operator holding an opencut permit may conduct a limited opencut operation that meets the criteria in 82-4-431(2), MCA, without first obtaining an additional permit or an amendment to an existing permit when, prior to commencing the limited opencut operation, the operator completes and submits to the department appropriate site and opencut operation information on a limited opencut operation form provided by the department.

(2) The operator must submit a completed limited opencut operation form and the following information to the department prior to commencing the opencut operation:

(a) the operator's complete name and address;

(b) the location, in the format required by the department, of the limited opencut operation site;

(c) the locational coordinates of the approximate center of the limited opencut operation site;

(d) the location, in a format acceptable to the department, of the operator's nearest limited opencut operation to the proposed limited opencut operation site;

(e) plans to expand or continue the limited opencut operation in accordance with 82-4-431(4), MCA;

(f) the landowner's name and address;

(g) driving directions to access the site from the nearest public road;

(h) a description of the pre-mine condition of the limited opencut operation site and the pre-mine condition of any private access roads to the limited opencut operation site;

(i) an aerial or topographic map of the limited opencut operation site; and

(j) certification by the operator that the information provided to the department in the limited opencut operation form is complete and accurate.

(3) The department's receipt of a limited opencut operation form initiates the timeframes set forth in 82-4-431, MCA, for either:

(a) salvaging soil, removing materials, and reclaiming the limited opencut operation site; or

(b) applying for a permit to continue or expand the opencut operation.

(4) A person conducting a limited opencut operation, authorized under 82-4-431(2), MCA, may not remove more than 10,000 cubic yards of materials and overburden. This limitation does not include the volume of soil and overburden that is stripped and stockpiled on the limited opencut operation site for site reclamation.

AUTH: 82-4-422, MCA
IMP: 82-4-431, MCA

REASON: Proposed New Rule I provides administrative requirements that are necessary to implement the provisions in Section 5 of Senate Bill 332 (Chapter 198, Laws of 2013, codified in 82-4-431(2), MCA) for limited opencut operations. An operator who holds a permit under 82-4-431, MCA, may conduct a limited opencut operation without obtaining an additional permit or an amendment to an existing permit if the limited opencut operation meets the criteria in 82-4-431(2), MCA. To meet the criteria in 82-4-431(2), MCA, for a limited opencut operation, the operator must submit appropriate site and operation information on a form provided by the department. Proposed New Rule I is necessary to set forth administrative procedures for submitting appropriate limited opencut operation site and operation information to the department in accordance with Section 5 of Senate Bill 332. Proposed New Rule I will provide necessary clarification of the time limits for site reclamation and for submittal of an application to continue or expand a limited opencut operation pursuant to 82-4-431(4), MCA, as adopted in Section 5 of Senate Bill 332. Finally, New Rule I provides that the 10,000-cubic-yard limitation for a limited opencut operation does not include the volume of soil and overburden that is stripped and stockpiled on the limited opencut operation site for reclamation purposes. This clarification is necessary to uphold the intent of Senate Bill 332, which is to allow operators a way to avoid the full permit process when necessary to complete smaller, short-term projects.

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 January 23, 2014. 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 January 23, 2014.

6. If the department 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 55 based on the 550 operators holding permits in Montana.

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 board.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by letter dated July 29, 2013.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rule 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, December 16, 2013.

Montana Department of
ENVIRONMENTAL QUALITY

Steve Bullock, Governor
Tracy Stone-Manning, Director

P. O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • Website: www.deq.mt.gov

MEMO

To: The Board of Environmental Review

From: Dana David, DEQ Staff Attorney

Re: In the matter of the adoption of New Rule I pertaining to administrative requirements for limited opencut operations

Date: February 25, 2014

On behalf of the Montana Department of Environmental Quality, Industrial Energy Materials Bureau, Opencut Mining Section, I submit the following in support of the above referenced rulemaking.

The HB521 requirement that the rule is no more stringent than federal regulations does not apply to The Opencut Mining Act.

The Private Property Assessment checklist required by HB 311 is attached to this Memo as Attachment A and indicates that the proposed rule results in no takings or damaging implications.

ATTACHMENT A

PRIVATE PROPERTY ASSESSMENT ACT CHECKLIST
Limited Opencut Rule

DOES THE PROPOSED AGENCY ACTION HAVE TAKINGS IMPLICATIONS UNDER THE PRIVATE PROPERTY ASSESSMENT ACT?

Yes	No	
√		1. Does the action pertain to land or water management or environmental regulation affecting private real property or water rights?
	√	2. Does the action result in either a permanent or indefinite physical occupation of private property?
	√	3. Does the action deprive the owner of all economically viable uses of the property?
	√	4. Does the action deny a fundamental attribute of ownership?
	√	5. Does the action require a property owner to dedicate a portion of property or to grant an easement? [If the answer is NO, skip questions 5a and 5b and continue with question 6.]
		5a. Is there a reasonable, specific connection between the government requirement and legitimate state interests?
		5b. Is the government requirement roughly proportional to the impact of the proposed use of the property?
	√	6. Does the action have a severe impact on the value of the property?
	√	7. Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public generally? [If the answer is NO, do not answer questions 7a through 7c.]
		7a. Is the impact of government action direct, peculiar, and significant?
		7b. Has government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?
		7c. Has government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question?

Taking or damaging implication exist if YES is checked in response to question 1 and also to any one or more of the following questions: 2, 3, 4, 6, 7a, 7b, 7c; or if NO is checked in response to questions 5a or 5b.

If taking or damaging implication exists, the agency must comply with §5 of the Private Property Assessment Act, to include the preparation of a taking or damaging impact assessment. Normally, the preparation of an impact assessment will require consultation with agency legal staff.

Montana Department of
ENVIRONMENTAL QUALITY

Steve Bullock, Governor
Tracy Stone-Manning, Director

P. O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • Website: www.deq.mt.gov

January 21, 2014

VIA EMAIL (ejohnson@mt.gov)

Elois Johnson
Department of Environmental Quality
Legal Unit
P.O. Box 200901
Helena, Montana 59620-0901

RE: IEMB Comments to Montana Administrative Register Notice 17-351; Notice of Proposed Adoption: In the matter of the adoption of New Rule I pertaining to administrative requirements for limited opencut operations

Elois:

In my capacity as Bureau Chief of the Industrial and Energy Minerals Bureau, I am submitting this comment to the above-referenced rulemaking for the purpose of notifying interested persons that the Opencut Program intends to make a noncontroversial amendment to the text of the rule.

The Opencut Program intends to strike the words "required by" and replace them with "acceptable to" in paragraph (2)(b) of the proposed rule. Doing so will eliminate the discrepancy in language between paragraphs (2)(b) and (2)(d) and any confusion that could arise from the use of different terms.

The program will email a copy of this comment to our Opencut Stakeholders Group.

Thank you for including this comment in the record.

Sincerely,

Edward Coleman
IEMB, Bureau Chief

Copies: Opencut Stakeholders Group via Email

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to administrative requirements for limited opencut operations	))))	NOTICE OF ADOPTION (RECLAMATION)

TO: All Concerned Persons

1. On December 26, 2013, the Board of Environmental Review published MAR Notice No. 17-351 regarding a notice of proposed adoption, no public hearing contemplated, of the above-stated rule at page 2367, 2013 Montana Administrative Register, issue number 24.

2. The board has adopted New Rule I (17.24.226) as proposed, but with the following changes, stricken matter interlined, new matter underlined:

17.24.226 ADMINISTRATIVE REQUIREMENTS FOR LIMITED OPENCUT OPERATIONS (1) remains as proposed.

(2) The operator must submit a completed limited opencut operation form and the following information to the department prior to commencing the opencut operation:

(a) remains as proposed.

(b) the location, in ~~the~~ a format ~~required by~~ acceptable to the department, of the limited opencut operation site;

(c) through (4) remain as proposed.

3. The following comments were received and appear with the board's responses:

COMMENT NO. 1: The proposed rule in (2)(b) provides that the operator shall describe "the location, in the format required by the department, of the limited opencut operation site," while (2)(d) requires the operator to provide "the location, in a format acceptable to the department, of the operator's nearest limited opencut operation to the proposed limited opencut operation site." The use of the words "required by" in (2)(b) and "acceptable to" in (2)(d) may be confusing.

RESPONSE: The Opencut Program intends to strike the words "required by" and replace them with "acceptable to" in (2)(b) of the proposed rule. Doing so will eliminate the discrepancy in language between (2)(b) and (2)(d) and any confusion that could arise from the use of different terms. The change does not alter the meaning of the rule.

4. No other comments or testimony were received.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

_____ By: _____

JOHN F. NORTH
Rule Reviewer

ROBIN SHROPSHIRE
Chairman

Certified to the Secretary of State, _____, 2014.

BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM
EXECUTIVE SUMMARY FOR RULE ADOPTION

Agenda Item # III.C.3.

Agenda Item Summary – The Department requests that the Board adopt the amendment to ARM 17.30.630 extending the expiration date of the temporary standards for Daisy Creek, the Stillwater River, and Fisher Creek.

List of Affected Board Rules – ARM 17.30.630

Affected Parties Summary – The U.S. Forest Service is cleaning up contamination resulting from historic mining activities in the vicinity of Daisy Creek, the Stillwater River, and Fisher Creek. The Forest Service is the primary party affected by the temporary standards.

Scope of Proposed Proceeding – The Board is considering final action on adoption of the amendment to ARM 17.30.630.

Background – The U.S. Forest Service has conducted remediation in the vicinity of Daisy Creek, the Stillwater River, and Fisher Creek over the past 15 years to clean up contamination from historic mining. The Board set temporary standards for the streams in 1999 to allow the Forest Service to conduct remediation without incurring penalties for the existing contamination in the streams. The temporary standards expire June 4, 2014.

An evaluation of data collected from 2003 to 2012 shows that water quality has improved significantly, but that several contaminants in the stream are still well above DEQ-7 water quality criteria. Under 75-5-312, MCA, temporary standards are allowed for a maximum of 20 years. If the temporary standards expire in 2014, the much more stringent DEQ-7 water quality criteria will apply, and several water quality criteria will be exceeded.

The Department recommends extending the expiration date to June 4, 2019, completing the 20 year maximum allowance for temporary standards. This will give the Forest Service additional time to allow natural processes to occur as the final step in the water quality remediation effort.

Hearing Information – Kathrine Orr conducted a public hearing on February 20, 2014 on the proposed amendments to ARM 17.30.630. The Presiding Officer's Report and the draft Notice of Amendment and Adoption, with public comments and proposed responses, are attached to this executive summary. Only one comment was received. It favored extension of the expiration date as proposed.

Board Options – The Board may:

1. Adopt the proposed amendment as set forth in the attached Notice of Public Hearing on Proposed Amendment and Adoption;
2. Adopt the proposed amendment to ARM 17.30.630 with revisions that the Board finds are appropriate and that are consistent with the scope of the Notice of Public Hearing on Proposed Amendment and Adoption and the record in this proceeding; or
3. Decide not to adopt the amendment to ARM 17.30.630.

DEQ Recommendation – The Department recommends the Board adopt the amendment to ARM 17.30.630.

Enclosures –

1. Notice of Public Hearing on Proposed Amendment and Adoption
2. Hearing Examiner's Report (to be provided)
3. HB 521 and HB 311 Analyses
4. Public Comment
5. Draft Notice of Amendment

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.630 pertaining to temporary water quality standards	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (WATER QUALITY)

TO: All Concerned Persons

1. On February 20, 2014, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 40, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

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., February 14, 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 rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

17.30.630 TEMPORARY WATER QUALITY STANDARDS (1) Following are the temporary water quality standards and related provisions for New World Mining District:

(a) and (b) remain the same.

(c) Temporary water quality standards for Daisy Creek, from its headwaters to its confluence with the Stillwater River in the Yellowstone River Drainage, are as follows. No increase from existing conditions (no decrease for pH) is allowed at any point in Daisy Creek for any of the following parameters. These standards are in effect until June 4, ~~2014~~ 2019. Metals standards are in terms of micrograms per liter (µg/liter) total recoverable concentrations and pH standards are in standard units (su).

Parameter	In Daisy Creek at its confluence with the Stillwater River, the following standards shall not be exceeded more than 3% of the time. µg/liter
Aluminum	9,510.
Cadmium	4.
Copper	3,530.
Iron	6,830.
Manganese	1,710.
Zinc	540.

pH	must be maintained above 4.6 su.

(d) Temporary water quality standards for a headwater portion of the Stillwater River, a tributary of the Yellowstone River, from Daisy Creek to the Absaroka-Beartooth wilderness boundary, are as follows. No increase from existing conditions (no decrease for pH) is allowed at any point in this reach of the Stillwater River for any of the following parameters. These standards are in effect until June 4, ~~2014~~ 2019. Metals standards are in terms of micrograms per liter (µg/liter) total recoverable concentrations and pH standards are in standard units (su).

Parameter	In the Stillwater River at the Absaroka-Beartooth wilderness boundary, the following standards shall not be exceeded more than 3% of the time. µg/liter
Aluminum	670.
Copper	200.
Iron	1,320.
Lead	13.
Manganese	86.
Zinc	49.
pH	must be maintained above 5.5 su.

(e) Temporary water quality standards for Fisher Creek, from its headwaters to its confluence with Lady of the Lake Creek, the headwaters of the Clark's Fork of the Yellowstone River, are as follows. No increase from existing conditions (no decrease for pH) is allowed at any point in Fisher Creek for any of the following parameters. These standards are in effect until June 4, ~~2014~~ 2019. Metals standards are in terms of micrograms per liter (µg/liter) total recoverable concentrations and pH standards are in standard units (su).

Parameter	In Fisher Creek at its confluence with the Lady of the Lake Creek, the following standards shall not be exceeded more than 3% of the time. µg/liter
Aluminum	470.
Copper	110.
Iron	750.
Lead	2.
Manganese	82.
Zinc	44.
pH	must be maintained above 5.7 su.

AUTH: 75-5-201, 75-5-312, MCA
IMP: 75-5-312, MCA

REASON: The U.S. Forest Service has conducted remediation in the vicinity of Daisy Creek, the Stillwater River, and Fisher Creek over the past 15 years to

mitigate contamination from historic mining. The board set temporary standards for these streams effective June 4, 1999, to allow the Forest Service to conduct remediation for the existing contamination in the streams. The temporary standards expire June 4, 2014.

An evaluation of data collected from 2003 to 2012 shows that water quality has improved significantly, but that several contaminants in the streams are still well above Department Circular DEQ-7 water quality criteria. If the temporary standards expire in 2014, the much more stringent DEQ-7 water quality criteria will apply and several water quality criteria will be exceeded.

According to 75-5-312, MCA, temporary standards are allowed for a maximum of 20 years. The board proposes to extend the expiration date to June 4, 2019, completing the 20-year maximum allowance for temporary standards. This will provide additional time to allow natural processes to occur and water quality to improve.

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., February 27, 2014. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Katherine Orr, 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 department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North BY: */s/ Robin Shropshire*
JOHN F. NORTH ROBIN SHROPSHIRE
Rule Reviewer Chairman

Certified to the Secretary of State, January 21, 2014.

Montana Department of
ENVIRONMENTAL QUALITY

MEMO

TO: Board of Environmental Review

FROM: John F. North, Chief Legal Counsel
Department of Environmental Quality

DATE: February 20, 2014

SUBJECT: HB 521 Stringency and SB 311Takings Analyses for MAR Notice No. 17-352

HB 521, which is codified at 75-5-203, MCA, requires that the Department make certain findings before it may adopt water quality rules that are more stringent than comparable federal regulations that address the same circumstances. Section 75-5-308, MC, contaqins similar requirement.

In MAR Notice No. 17-352, the Board is proposing to extend the temporary water quality standards for the drainages in the New World Mining District. The B-1 standards contained in ARM 17.30.623 which would apply to these drainages but for the temporary standards. The B-1 standards are federally approved permanent standards for these drainages. The temporary standards are less stringent than the B-1 standards. Therefore, extension of the temporary standards is not more stringent than comparable federal rules.

SB 311 is codified as Title 2, Chapter 10, MCA. That chapter requires an agency to conduct a takings impact assessment for actions, including adoption of rules, with taking or damaging implications. It directs that the Attorney General privide a checklist for agencies to use in determining whether actions have taking or damaging implications. Attached is a checklist for these rule amendments. It indicates that adoption of these rule amendments does not have taking or damaging implications.

Attachment

PRIVATE PROPERTY ASSESSMENT ACT CHECKLIST: MAR Notice No. 17-352

DOES THE PROPOSED AGENCY ACTION HAVE TAKINGS IMPLICATIONS UNDER THE PRIVATE PROPERTY ASSESSMENT ACT?

Yes	No	
✓		1. Does the action pertain to land or water management or environmental regulation affecting private real property or water rights?
	✓	2. Does the action result in either a permanent or indefinite physical occupation of private property?
	✓	3. Does the action deprive the owner of all economically viable uses of the property?
	✓	4. Does the action deny a fundamental attribute of ownership?
	✓	5. Does the action require a property owner to dedicate a portion of property or to grant an easement? [If the answer is NO, skip questions 5a and 5b and continue with question 6.]
		5a. Is there a reasonable, specific connection between the government requirement and legitimate state interests?
		5b. Is the government requirement roughly proportional to the impact of the proposed use of the property?
	✓	6. Does the action have a severe impact on the value of the property?
	✓	7. Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public generally? [If the answer is NO, do not answer questions 7a

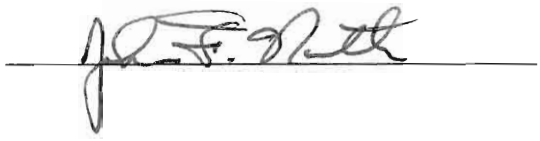
through 7c.]

_____ _____ 7a. Is the impact of government action direct, peculiar, and significant?

_____ _____ 7b. Has government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?

_____ _____ 7c. Has government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question?

Taking or damaging implication exist if YES is checked in response to question 1 and also to any one or more of the following questions: 2, 3, 4, 6, 7a, 7b, 7c; or if NO is checked in response to questions 5a or 5b.



February 20, 2014

USDA United States Department of Agriculture | Forest Service | Custer National Forest and Supervisor's Office 1310 Main Street Billings, MT 59105 | Gallatin National Forest Supervisor's Office 10 East Babcock P.O. Box 130 Bozeman, MT 59771

File Code: 2160
Date: February 25, 2014

Elois Johnson
Montana Department of Environmental Quality
PO Box 200901
Helena, MT 59620-090

Dear Ms. Johnson:

The following statement is provided to you for the Board of Environmental Review.

Ms. Chairman, members of the Board, and members of the public in attendance at this public hearing, as you are aware the USDA Forest Service presented a summary of the New World Mining District Response and Restoration Project to the Board on January 21, 2014. The summary discussed reclamation work completed in the District including elimination of acidic and metal rich mine discharges, installation of impermeable caps over mine wastes, placement of mine wastes into an engineered waste repository, revegetation of disturbances, and other means to reduce acid and metals loading to District streams. A goal of this work was to improve surface water quality in the Daisy Creek/Stillwater River and Fisher Creek drainages.

Under ARM 17.30.630, Temporary Standards implemented in the Daisy Creek/Stillwater River and Fisher Creek drainages allowed reclamation work to occur while remaining compliant with state of Montana water quality regulations. Water quality improvements have been recorded however available data indicate that these streams had metals concentrations and pH values that did not meet B1 numeric water quality standards listed in Circular DEQ-7 prior to mining in the District. Monitoring data collected after completion of all major reclamation activities in 2008 also suggest that B1 standards will not be met due to natural mineralization in the District which acts as a source of metal loading.

For these reasons, the USDA Forest Service recommends that the Temporary Standards be extended for a final five-year period. This would allow the Project to remain compliant with water quality regulations while the USDA Forest Service and the Montana Department of Environmental Quality work together to develop a final administrative closure that would be both protective of District water quality and compliant with state and federal regulations after the Temporary Standards expire in June 2019.

If you have any questions or require additional information, please call me at (406) 587- 6709.

Sincerely,

MARY BETH MARKS

MARY BETH MARKS
On-Scene Coordinator

cc: Bob Kirkpatrick
Ronald E Hecker
Robert Grosvenor

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.630 pertaining to temporary water quality standards	NOTICE OF AMENDMENT (WATER QUALITY)

TO: All Concerned Persons

1. On January 30, 2014, the Board of Environmental Review published MAR Notice No. 17-352 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 183, 2014 Montana Administrative Register, Issue Number 2.

2. The board has amended the rule exactly as proposed.

3. The following comment was received and appears with the board's response:

COMMENT NO. 1: One comment was received in support of the proposed amendment.

RESPONSE: The board acknowledges the comment.

4. No other comments or testimony were received.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

_____ By: _____

JOHN F. NORTH
Rule Reviewer

ROBIN SHROPSHIRE
Chairman

Certified to the Secretary of State, _____, 2014.

Filed with the
MONTANA BOARD OF
ENVIRONMENTAL REVIEW
This 7 day of March, 2014
at 11:41 o'clock A .m.
By:

Jenny K. Harbine
Earthjustice
313 E. Main St.
Bozeman, MT 59715
Telephone: (406) 586-9699

Attorneys for Appellants MEIC and Sierra Club

Norman J. Mullen
Special Assistant Attorney General
Department of Environmental Quality
Legal Unit, Metcalf Building
P.O. Box 200901
Helena, Montana 59620-0901
Telephone: (406) 444-4961

Attorney for Department

William W. Mercer
Michael P. Manning
Holland & Hart LLP
401 N. 31st Street, Suite 1500
P.O. Box 639
Billings, MT 59103-0639
Telephone: (406) 252-2166

Attorneys for Intervenor PPL Montana, LLC

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: THE REQUEST FOR HEARING BY MONTANA ENVIRONMENTAL INFORMATION CENTER AND SIERRA CLUB REGARDING DEQ'S ISSUANCE OF MONTANA AIR QUALITY OPERATING PERMIT NO. OP0513-08 FOR THE COLSTRIP STEAM ELECTRIC STATION IN COLSTRIP, MT	Case No. BER 2013-01-AQ **STIPULATION FOR DISMISSAL WITH PREJUDICE**

//

//

The parties, through their attorneys, stipulate under Mont. R. Civ. P. 41(a)(1)(A)(ii) for dismissal of this contested case with prejudice. The parties have executed a release and settlement agreement, which is attached to this stipulation as Exhibit 1.

The parties authorize the Department to file this stipulation.

The parties may execute this stipulation in counterparts, each of which is deemed an original and all of which constitute only one agreement.

The parties have enclosed a proposed order of dismissal.

So Stipulated:

Dated

Jenny K. Harbine
Attorneys for Appellants MEIC and Sierra Club

Dated

Norman J. Mullen
Attorney for Department

February 28, 2014
Dated

William W. Mercer
Michael P. Manning
Attorneys for Intervenor PPL Montana, LLC

The parties, through their attorneys, stipulate under Mont. R. Civ. P. 41(a)(1)(A)(ii) for dismissal of this contested case with prejudice. The parties have executed a release and settlement agreement, which is attached to this stipulation as Exhibit 1.

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The parties have enclosed a proposed order of dismissal.

So Stipulated:

3-3-14
Dated

Jenny K. Harbine
Attorneys for Appellants MEIC and Sierra Club

3-7-14
Dated

Norman J. Mullen
Attorney for Department

Dated

William W. Mercer
Michael P. Manning
Attorneys for Intervenor PPL Montana, LLC

GENERAL RELEASE AND SETTLEMENT AGREEMENT

RELEASORS: Sierra Club, Montana Environmental Information Center

RELEASEES: PPL Montana, LLC, Montana Department of Environmental Quality

DESCRIPTION OF EVENTS: Challenge to PPLM's Air Quality Operating Permit (OP0513-08), Case No. BER 2013-01 AQ for the Colstrip Steam Electric Station, filed on January 3, 2013, and petition to EPA, AFS No. 030-087-0008A, filed on January 31, 2013

1. RELEASE

The undersigned Releasors acknowledge receipt of the settlement terms below and forever release and discharge Releasees, Releasees' successors, assigns, agents, partners, employees and attorneys from any and all actions, claims, causes of action, demands, or expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of the described events.

2. PM CEMS AS A PARTICULATE CAM PLAN PERFORMANCE INDICATOR

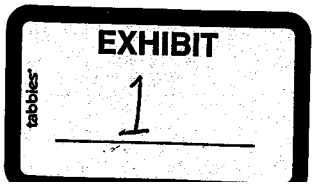
a. PPLM will add Particulate Matter Continuous Emission Monitoring ("PM CEMS") as another performance indicator to the Colstrip Particulate CAM Plan for Colstrip Units 1 and 3 within six months after the date of this executed settlement agreement and for Colstrip Units 2 and 4 within 12 months after the date of this executed settlement agreement.

b. PPLM will identify a Particulate CAM Plan performance indicator range for the PM CEMS at a level less than the corresponding PM emission limit identified by the operating permit for each unit. PPLM will report a CAM Plan excursion for any 30-day rolling average above the performance indicator range for the PM CEMS in quarterly reports to MDEQ.

c. PPLM will operate and maintain the PM CEMS as a Particulate CAM Plan performance indicator on Colstrip Units 1-4 as addressed below:

i. Install PM CEMS according to the manufacturer's standards.

ii. Establish initial calibration/correlation at three levels (zero, normal operations, and at scrubber operations that increase PM concentration, but do not put Title V requirements at risk) using three Reference Method 5 runs at the normal operations level and two Reference Method 5 runs at the higher PM concentration. Correlation means the primary mathematical relationship for correlating the output from your PM CEMS to a PM concentration, as determined by the PM reference method. The



correlation is expressed in the measurement units that are consistent with the measurement conditions (e.g., mg/dscm, mg/acm) of the PM CEMS.

iii. Establish CAM Plan excursion limit in terms of mg/m^3.

iv. Perform daily zero and span checks using manufacturer's standards.

v. On a quarterly basis, conduct one Reference Method 5 (one run) test to update the initial calibration/correlation until MATS compliance is required at which time three runs will be used for Reference Method 5 tests. If a result from one run (or the average of three runs after MATS compliance is required) differs from the initial correlation/calibration by 25% or more of the CAM Plan excursion limit, then the initial calibration/correlation will be repeated.

vi. If a Particulate CAM Plan excursion is shown by the PM CEMS, a mandatory Reference Method 5 test (three runs) shall be conducted under conditions representative of the CAM Plan excursions.

vii. MDEQ believes the correlation procedures in this agreement are adequate for the intended use of the monitors as a CAM Plan performance indicator.

d. PPLM will maintain records of its PM CEMS monitoring data and maintenance in accordance with the Title V operating permit requirements. Once PM CEMS has been added as another performance indicator to Colstrip's Particulate CAM Plan, PPLM agrees to provide to MDEQ, upon MDEQ's request, PM CEMS data for Colstrip. At a minimum, MDEQ will request and PPLM will submit PM CEMS data for each unit on a quarterly basis, with PM CEMS measurements in mg/m^3, averaged daily.

e. This use of PM CEMS as a Particulate CAM Plan performance indicator shall not be subject to EPA Performance Specification 11 for PM CEMS.

f. MDEQ will amend the operating permit to include the terms of this agreement. Installation and use of PM CEMS as a Particulate CAM Plan performance indicator at Colstrip will be done for purposes of settlement of this matter, and such use is not required under Title 40 CFR or "pursuant to other authority under the Clean Air Act or state or local law," as addressed in 40 CFR § 64.3(d), and the permit will be amended to state that. This includes, but is not limited to, Montana Administrative Code Title 17, Chapter 8, subchapter 15. This shall not be construed as an admission by Releasors that PM CEMS are not required.

g. If MDEQ determines in connection with a future operating permit modification or renewal that the data generated from PM CEMS are no longer a useful component of the Colstrip CAM Plan, PPLM may propose a CAM Plan revision.

3. NO ADMISSION OF LIABILITY

It is understood that the above-mentioned remedy is accepted as the sole consideration for full satisfaction and accord to compromise a disputed claim, and that neither the terms

addressed above, nor the negotiations for settlement shall be considered as an admission of against interest by any party.

4. NO ADDITIONAL CLAIMS

Releasors represent that no additional claims are contemplated against any other party potentially liable for the losses, damages, and injuries for which this Release is given.

5. STIPULATION FOR DISMISSAL WITH PREJUDICE

Releasors agree to move to dismiss their pending Colstrip Title V Permit Appeal, Case No. BER 2013-01 AQ and their pending petition to EPA, AFS No. 030-087-0008A, both with prejudice, as fully settled upon the merits. Each party shall pay their respective costs and attorneys' fees.

6. DISCLAIMER

The parties have carefully read the foregoing, discussed its legal effect with the parties' attorneys, understand the contents thereof, and sign the same of the parties' own free will and accord. This Release shall be binding upon the parties and their successors, and assigns.

7. SEVERABILITY

Should any provision of this Agreement be determined to be unenforceable, all remaining terms and clauses shall remain in force and shall be fully severable.

8. CHOICE OF LAW

The laws of the State of Montana shall apply to the interpretation of this Agreement.

9. FINAL AGREEMENT

This written Agreement constitutes the final agreement between the parties and shall supersede any oral agreements to the contrary.

DATED this 12 day of February, 2014.

CAUTION: READ BEFORE SIGNING!

Montana Environmental Information Center

Sierra Club

APPROVED BY:

Attorney for Releasors

By _____

_____
Montana Department of Environmental Quality

APPROVED BY:

Attorney for Montana Department of Environmental Quality

By _____

_____
PPL Montana, LLC

APPROVED BY:

Attorney for PPL Montana, LLC

By _____

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: THE REQUEST FOR HEARING BY MONTANA ENVIRONMENTAL INFORMATION CENTER AND SIERRA CLUB REGARDING DEQ'S ISSUANCE OF MONTANA AIR QUALITY OPERATING PERMIT NO. OP0513-08 FOR THE COLSTRIP STEAM ELECTRIC STATION IN COLSTRIP, MT	Case No. BER 2013-01-AQ **ORDER DISMISSING CASE**

The parties have filed a Stipulation dismissing this contested case with prejudice, with each party to bear its own costs. The parties have signed the attached release and settlement agreement, which requires dismissal of this matter. As provided for in Mont. R. Civ. P. 41(a)(1)(A)(ii),

IT IS HEREBY ORDERED THAT this contested case is dismissed with prejudice. Each party shall bear its own costs.

DATED this _____ day of _____, 2014

BOARD OF ENVIRONMENTAL REVIEW

By: _____
Robin Shropshire, Chairman

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Bozeman MT 59715

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Attorneys for Intervenor PPL Montana, LLC

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: THE REQUEST FOR HEARING BY MONTANA ENVIRONMENTAL INFORMATION CENTER AND SIERRA CLUB REGARDING DEQ'S ISSUANCE OF MONTANA AIR QUALITY OPERATING PERMIT NUMBER OP2953-07 FOR THE JE CORETTE STEAM ELECTRIC STATION, BILLINGS, MONTANA

Case No. BER 2013-02-AQ

STIPULATION FOR DISMISSAL WITH PREJUDICE

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The parties, through their attorneys, stipulate under Mont. R. Civ. P. 41(a)(1)(A)(ii) for dismissal of this contested case with prejudice. The parties have executed a release and settlement agreement, which is attached to this stipulation as Exhibit 1.

The parties authorize the Department to file this stipulation.

The parties may execute this stipulation in counterparts, each of which is deemed an original and all of which constitute only one agreement.

The parties have enclosed a proposed order of dismissal.

So Stipulated:

3-3-14
Dated

Jenny K. Harbine
Attorneys for Appellants MEIC and Sierra Club

Dated

Norman J. Mullen
Attorney for Department

Dated

William W. Mercer
Michael P. Manning
Attorneys for Intervenor PPL Montana, LLC

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So Stipulated:

Dated

Jenny K. Harbine
Attorneys for Appellants MEIC and Sierra Club

3-7-14
Dated

Norman J. Mullen
Attorney for Department

February 28, 2014
Dated

William W. Mercer
Michael P. Manning
Attorneys for Intervenor PPL Montana, LLC

GENERAL RELEASE AND SETTLEMENT AGREEMENT

RELEASORS: Sierra Club, Montana Environmental Information Center

RELEASEES: PPL Montana, LLC, Montana Department of Environmental Quality

DESCRIPTION OF EVENTS: Challenge to PPLM's Air Quality Operating Permit (OP2953-07), Case No. BER 2013-02 AQ for the J.E. Corette Steam Electric Station, filed on January 3, 2013, and petition to EPA, AFS No. 030-111-0015A, filed on January 31, 2013

1. RELEASE

The undersigned Releasors acknowledge receipt of the settlement terms below and forever release and discharge Releasees, Releasees' successors, assigns, agents, partners, employees and attorneys from any and all actions, claims, causes of action, demands, or expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of the described events.

2. PM CEMS AS A PARTICULATE CAM PLAN PERFORMANCE INDICATOR

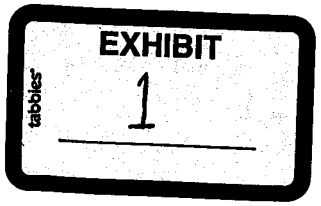
a. PPLM will add Particulate Matter Continuous Emission Monitoring ("PM CEMS") as another performance indicator to the Corette Particulate CAM Plan within six months from the date that Corette first generates electricity as a coal-fired electric generating unit after April 15, 2015.

b. PPLM will identify a Particulate CAM Plan performance indicator range for the PM CEMS at a level less than the corresponding PM emission limit identified by the operating permit. PPLM will report a CAM Plan excursion for any 30-day rolling average above the performance indicator range for the PM CEMS in quarterly reports to MDEQ.

c. PPLM will operate and maintain the PM CEMS as a Particulate CAM Plan performance indicator on Corette as addressed below:

i. Install PM CEMS according to the manufacturer's standards.

ii. Establish initial calibration/correlation at three levels (zero, normal operations, and at operations that increase PM concentration, but do not put Title V requirements at risk) using three Reference Method 5 runs at the normal operations level and two Reference Method 5 runs at the higher PM concentration. Correlation means the primary mathematical relationship for correlating the output from the PM CEMS to a PM concentration, as determined by the PM reference method. The



correlation is expressed in the measurement units that are consistent with the measurement conditions (e.g., mg/dscm, mg/acm) of the PM CEMS.

iii. Establish CAM Plan excursion limit in terms of mg/m^3.

iv. Perform daily zero and span checks using manufacturer's standards.

v. On a quarterly basis, conduct three Reference Method 5 runs to update the initial calibration/correlation. If the result from the average of three runs differs from the initial correlation/calibration by 25% or more of the CAM Plan excursion limit, then the initial calibration/correlation will be repeated.

vi. If a Particulate CAM Plan excursion is shown by the PM CEMS, a mandatory Reference Method 5 test (three runs) shall be conducted under conditions representative of the CAM Plan excursions.

vii. MDEQ believes the correlation procedures in this agreement are adequate for the intended use of the monitors as a CAM Plan performance indicator.

d. PPLM will maintain records of its PM CEMS monitoring data and maintenance in accordance with the Title V operating permit requirements. Once PM CEMS has been added as another performance indicator to Corette's Particulate CAM Plan, PPLM agrees to provide to MDEQ, upon MDEQ's request, PM CEMS data for Corette. At a minimum, MDEQ will request and PPLM will submit PM CEMS data on a quarterly basis, with PM CEMS measurements in mg/m^3, averaged daily.

e. This use of PM CEMS as a Particulate CAM Plan performance indicator shall not be subject to EPA Performance Specification 11 for PM CEMS.

f. MDEQ will amend the operating permit to include the terms of this agreement. Installation and use of PM CEMS as a Particulate CAM Plan performance indicator at Corette will be done for purposes of settlement of this matter, and such use is not required under Title 40 CFR or "pursuant to other authority under the Clean Air Act or state or local law," as addressed in 40 CFR § 64.3(d), and the permit will be amended to state that. This includes, but is not limited to, Montana Administrative Code Title 17, Chapter 8, subchapter 15. This shall not be construed as an admission by Releasors that PM CEMS are not required.

g. If MDEQ determines in connection with a future operating permit modification or renewal that the data generated from PM CEMS are no longer a useful component of the Corette CAM Plan, PPLM may propose a CAM Plan revision.

3. NO ADMISSION OF LIABILITY

It is understood that the above-mentioned remedy is accepted as the sole consideration for full satisfaction and accord to compromise a disputed claim, and that neither the terms addressed above, nor the negotiations for settlement shall be considered as an admission against interest by any party.

4. NO ADDITIONAL CLAIMS

Releasors represent that no additional claims are contemplated against any other party potentially liable for the losses, damages, and injuries for which this Release is given.

5. STIPULATION FOR DISMISSAL WITH PREJUDICE

Releasors agree to move to dismiss their pending Corette Title V Permit Appeal, Case No. BER 2013-02 AQ and their pending petition to EPA, AFS No. 030-087-0008A, both with prejudice, as fully settled upon the merits. Each party shall pay their respective costs and attorneys' fees.

6. DISCLAIMER

The parties have carefully read the foregoing, discussed its legal effect with the parties' attorneys, understand the contents thereof, and sign the same of the parties' own free will and accord. This Release shall be binding upon the parties and their successors, and assigns.

7. SEVERABILITY

Should any provision of this Agreement be determined to be unenforceable, all remaining terms and clauses shall remain in force and shall be fully severable.

8. CHOICE OF LAW

The laws of the State of Montana shall apply to the interpretation of this Agreement.

9. FINAL AGREEMENT

This written Agreement constitutes the final agreement between the parties and shall supersede any oral agreements to the contrary.

DATED this 12th day of February, 2014.

CAUTION: READ BEFORE SIGNING!

Montana Environmental Information Center

Sierra Club

APPROVED BY:

Attorney for Releasors

By _____

Montana Department of Environmental Quality

APPROVED BY:

Attorney for Montana Department of Environmental Quality

By _____

PPL Montana, LLC

APPROVED BY:

Attorney for PPL Montana, LLC

By _____

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: THE REQUEST FOR HEARING BY MONTANA ENVIRONMENTAL INFORMATION CENTER AND SIERRA CLUB REGARDING DEQ'S ISSUANCE OF MONTANA AIR QUALITY OPERATING PERMIT NUMBER OP2953-07 FOR THE JE CORETTE STEAM ELECTRIC STATION, BILLINGS, MONTANA

Case No. BER 2013-02-AQ

ORDER DISMISSING CASE

The parties have filed a Stipulation dismissing this contested case with prejudice, with each party to bear its own costs. The parties have signed the attached release and settlement agreement, which requires dismissal of this matter. As provided for in Mont. R. Civ. P. 41(a)(1)(A)(ii),

IT IS HEREBY ORDERED THAT this contested case is dismissed with prejudice. Each party shall bear its own costs.

DATED this _____ day of _____, 2014

BOARD OF ENVIRONMENTAL REVIEW

By: _____
Robin Shropshire, Chairman

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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment
of ARM 17.30.630 pertaining to
temporary water quality standards

Presiding Officer Report

1. On February 20, 2014, the undersigned presided over and conducted the public hearing held in Room 40 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to take public comment on the above-captioned proposed amendment. The amendment pertains to the continuation until June 4, 2019 of the application of temporary water quality standards for Daisy Creek Fisher Creek and a portion of the Stillwater River from Daisy Creek to the Absoroka-Beartooth wilderness boundary in order to allow the United States Forest Service to conduct remediation of the existing contamination in the streams.

The Notice of Public Hearing on Proposed Amendment and Adoption was contained in the 2014 Montana Administrative Register (MAR) No. 2, MAR Notice No. 17-352, published on January 30, 2014. A copy of the notice is attached to this report. (Attachments are provided in the same order as they are referenced in this report.)

2. The hearing began at 1:30 p.m. The hearing was recorded by tape recorder and the recording is held by Mr. Dave Feldman referenced below.

3. The undersigned announced that persons at the hearing would be given an opportunity to submit their data, views, or arguments concerning the proposed action, either orally or in writing. At the hearing, the undersigned also identified and summarized the MAR notice and read the Notice of Function of Administrative Rule Review Committee as required by Mont. Code Ann. § 2-4-302(7)(a).

SUMMARY OF HEARING

4. Mr. Dave Feldman in the Planning Prevention and Assistance Division of the Department of Environmental Quality (Department) gave a brief statement that the Department was recommending that the amendment be adopted as proposed in the MAR notice.

5. No one appeared at the hearing to testify.

SUMMARY OF WRITTEN MATERIALS

6. After the hearing, written comments were received from the United States Department of Agriculture, specifically Ms. Mary Beth Marks, the On-Scene Coordinator. The Department of Agriculture recommends that the temporary water quality standards be extended for the final five-year period because this would enable the New World Mining District Response and Restoration Project to remain compliant with water quality regulations while the Department of Agriculture and the Montana Department of Environmental Quality work to develop a final administrative closure under applicable state and federal regulations.

The Department also submitted a memorandum from the Department Chief Legal Counsel, John North, with HB 521 and HB 311 reviews of the proposed amendment and a Private Property Assessment Act Checklist. Mr. North's memorandum is attached to this report.

7. HB 521 does not apply to the proposed amendment because the proposed amendment is not more stringent than any comparable federal regulations. Therefore, no further HB 521 analysis is required.

8. With respect to HB 311 (the Private Property Assessment Act, Mont. Code Ann. §§ 2-10-101 through 105), the State is required to assess the taking or damaging implications of a proposed rule affecting the use of private real property. This rulemaking affects the use of private real property. A Private Property Assessment Act

Checklist was prepared, which shows that the proposed amendments and new rules do not have taking or damaging implications. Therefore, no further assessment is required.

9. The period to submit comments ended at 5 p.m. on February 27, 2014.

PRESIDING OFFICER COMMENTS

10. The Board has jurisdiction to adopt the amendment referenced in this rulemaking pursuant to Mont. Code Ann §§ 75-5-201 and 75-5-312.

11. House Bill 521 (1995), codified in the Water Quality Act at Mont. Code Ann. § 75-5-203, generally provides that the Board may not adopt a rule that is more stringent than comparable federal regulations or guidelines, unless the Board makes written findings after public hearing and comment. The proposed amendment is not more stringent than a comparable federal regulation or guideline. Therefore written findings are not necessary.

12. House Bill 311 (1995), the Private Property Assessment Act, codified as Mont. Code Ann. § 2-10-101 through -105, provides that a state agency must complete a review and impact assessment prior to taking an action with taking or damaging implications. The proposed amendment affects real property. A Private Property Assessment Act Checklist was prepared in this matter. The proposed amendment does not have taking or damaging implications. Therefore, no further HB 311 assessment is necessary.

13. The procedures required by the Montana Administrative Procedure Act, including public notice, hearing, and comment, have been followed.

14. The Board may adopt the proposed rule amendment, or reject it, or adopt the amendment with revisions not exceeding the scope of the public notice.

15. Under Mont. Code Ann. § 2-4-305(7), for the rulemaking process to be valid, the Board must publish a notice of adoption within six months of the date the Board published the notice of proposed rulemaking in the Montana Administrative Register, or by July 30, 2014.

Dated this 26th day of March 2014.

KATHERINE J. ORR
Presiding Officer