17.8.101 DEFINITIONS

As used in this chapter, unless indicated otherwise in a specific subchapter, the following definitions apply:

(1) "Administrator" means the administrator of the U.S. Environmental Protection Agency or the administrator's designee.
(2) "Air pollutants" has the meaning provided in 75-2-103 (3) , MCA.
(3) "Air quality operating permit" means any permit or group of permits issued, renewed, revised, amended, or modified pursuant to subchapter 12 of this chapter.
(4) "Montana air quality permit" means a permit issued, altered or modified pursuant to subchapters 7, 8, 9, or 10 of this chapter.
(5) "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate or hours of operation, or both) and the most stringent of the following:
(a) the applicable standards as set forth in ARM 17.8.340 or 17.8.341;
(b) the applicable emissions limitation contained in the Montana state implementation plan, including those with a future compliance date; or
(c) the emissions rate specified as a federally enforceable permit condition.
(6) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.
(7) "Ambient air monitoring" means measurement of any air pollutant, odor, meteorological or atmospheric characteristic, or any physical or biological condition resulting from the effects of air pollutants or meteorological atmospheric conditions provided the measurement is performed in an area constituting ambient air.
(8) "Boiler or industrial furnace" means any source or emitting unit that is subject to the provisions of 75-10-405 (2) (f) and 75-10-406 , MCA, and rules promulgated thereunder defining the class of activities subject to regulation under those sections, found at ARM Title 17, chapter 53, subchapter 10.
(9) "Commercial hazardous waste incinerator" has the meaning provided in 75-2-103 (6) , MCA.
(10) "Commercial medical waste incinerator" means any incinerator that incinerates medical waste, except that "commercial medical waste incinerator" does not include hospital or medical facility incinerators that primarily incinerate medical waste generated onsite.
(11) "Control equipment" means any device or contrivance which prevents, removes, controls or abates emissions.
(12) "Emission" has the meaning provided in 75-2-103 (8) , MCA.
(13) "Emission standard" means an allowable rate of emissions or level of opacity, or a requirement that certain equipment, work practices or operating conditions be employed to assure continuous emission control. An emission standard may be contained in a rule or regulation, consent decree, judicial or administrative order, or permit condition.
(14) "EPA" means the U.S. Environmental Protection Agency.
(15) "FCAA" means the Federal Clean Air Act, 42 USC 7401, et seq.
(16) "Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the Montana State Implementation Plan, and any permit requirement established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the Montana State Implementation Plan and expressly requires adherence to any permit issued under such program.
(17) "Fuel burning equipment" means any furnace, boiler, apparatus, stack, or appurtenances thereto used in the process of burning fuel or other combustible material for the primary purpose of producing heat or power by indirect heat transfer.
(18) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
(19) "Hazardous air pollutant (HAP) " means any air pollutant listed as a hazardous air pollutant pursuant to section 112(b) (1) of the FCAA.
(20) "Hazardous waste" has the meaning provided in 75-2-103 (10) , MCA.
(21) "Hazardous waste incinerator" means any incinerator that incinerates hazardous waste.
(22) "Incinerator" has the meaning provided in 75-2-103 (11) , MCA.
(23) "Medical waste" has the meaning provided in 75-2-103 (12) , MCA.
(24) "Montana state implementation plan" means the state implementation plan adopted by EPA for the state of Montana pursuant to the FCAA, found at 40 CFR Part 52, subpart BB.
(25) "Multiple chamber incinerator" means any incinerator consisting of three or more refractory lined combustion furnaces in series physically separated by refractory walls, interconnected by gas passage ports or ducts and employing adequate parameters necessary for maximum combustion of the material to be burned.
(26) "Odor" means that property of an emission which stimulates the sense of smell.
(27) "Opacity" means the degree, expressed in percent, to which emissions reduce the transmission of light and obscure the view of an object in the background. Where the presence of uncombined water is the only reason for

failure of an emission to meet an applicable opacity limitation contained in this chapter, that limitation shall not apply. For the purpose of this chapter, opacity determination shall follow all requirements, procedures, specifications, and guidelines contained in 40 CFR Part 60, Appendix A, method 9, or by an in-stack transmissometer which complies with all requirements, procedures, specifications and guidelines contained in 40 CFR Part 60, Appendix B, performance specification 1.
(28) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a source or alteration, or the authorized agent of the owner, or the person who is legally responsible for the overall operation of the source or alteration.
(29) "Particulate matter" means any material, except water in uncombined form, that is or has been airborne, and exists as a liquid or a solid at standard conditions. For the purposes of this definition, standard conditions are defined in the applicable test method.
(30) "Person" has the meaning provided in 75-2-103 (13) , MCA.
(31) "PM" means all applicable definitions of particulate matter that specify an aerodynamic size class.
(32) "PM-2.5" means particulate matter with an aerodynamic diameter of less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR Part 50, Appendix L, and designated in accordance with 40 CFR Part 53, or by an equivalent method designated in accordance with 40 CFR Part 53.
(33) "PM-10" means particulate matter with an aerodynamic diameter of less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50, Appendix J, and designated in accordance with 40 CFR Part 53, or by an equivalent method designated in accordance with 40 CFR Part 53.
(34) "PM-10 emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method as specified in 40 CFR Part 51, Appendix M and condensable emissions measured by an impinger method, or by an alternative equivalent test method approved by the department. If the use of an alternative test method requires approval by the administrator, that approval must also be obtained.
(35) "Premises" means any property, piece of land or real estate or building.
(36) "Solid waste" has the meaning provided in 75-2-103 (16) , MCA.
(37) "Solid waste incinerator" means any incinerator that incinerates solid waste.
(38) "Source" means any person, real property or personal property located on one or more contiguous or adjacent properties under the control of the same owner or operator which contributes or would contribute to air pollution, including associated control equipment that affects or would affect the nature, character, composition, amount or environmental impacts of air pollution.
(39) "Stack, vent, or roof monitor" means any flue, conduit, chimney, vent, or duct arranged to conduct emissions.
(40) "Total suspended particulate" means particulate matter as measured by the method described in 40 CFR Part 50, Appendix B.
(41) "Volatile organic compounds (VOC) " means the same as defined in 40 CFR 51.100(s) .
(42) "Wood waste burner" means a device commonly called a tepee burner, silo, truncated cone, wigwam burner, or other similar burner commonly used by the wood products industry for the disposal of wood.
History: 75-2-111, MCA; IMP, Title 75, chapter 2, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1727, Eff. 12/29/78; AMD, 1982 MAR p. 697, Eff. 4/16/82; AMD, 1985 MAR p. 1326, Eff. 9/13/85; AMD, 1986 MAR p. 2007, Eff. 12/12/86; AMD, 1988 MAR p. 826, Eff. 4/29/88; AMD, 1993 MAR p. 2919, Eff. 12/10/93; AMD, 1995 MAR p. 2410, Eff. 11/10/95; AMD, 1996 MAR p. 1843, Eff. 7/4/96; TRANS, from DHES, 1996 MAR p. 2285; AMD, 1998 MAR p. 1725, Eff. 6/26/98; AMD, 2000 MAR p. 836, Eff. 3/31/00; AMD, 2001 MAR p. 976, Eff. 6/8/01; AMD, 2002 MAR p. 1747, Eff. 6/28/02; AMD, 2002 MAR p. 3567, Eff. 12/27/02; AMD, 2003 MAR p. 645, Eff. 4/11/03; AMD, 2006 MAR p. 1956, Eff. 8/11/06.

17.8.102 INCORPORATION BY REFERENCE--PUBLICATION DATES AND AVAILABILITY OF REFERENCE DOCUMENTS

(1) Unless expressly provided otherwise in this chapter, where the board has:

(a) adopted a federal regulation by reference, the reference is to the July 1, 2016, edition of the Code of Federal Regulations (CFR), as it is published on the web site of the U.S. Government Printing Office at https://www.gpo.gov/fdsys/browse/collectionCfr.action?selectedYearFrom=2016&go=Go;

(b) adopted a section of the United States Code (USC) by reference, the reference is to the 2015 edition of the USC as it is published on the web site of the U.S. Government Printing Office at https://www.gpo.gov/fdsys/browse/collectionUScode.action?selectedYearFrom=2015&go=Go;

(c) adopted a rule of the state of Montana from another chapter of the Administrative Rules of Montana (ARM), the reference is to the rule in effect on September 30, 2015.

(3) Copies of material incorporated by reference in this chapter are available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901.

(4) A copy of federal materials also may be obtained from:

(a) National Technical Information Service (NTIS), 5301 Shawnee Road, Alexandria, VA 22312; phone: (800) 553-6847 or (703) 605-6000; fax: (703) 605-6900; e-mail: orders@ntis.gov; web: http://www.ntis.gov;

(b) National Service Center for Environmental Publications (NCSEP), P.O. Box 42419, Cincinnati, OH 45242-0419; phone (800) 490-9198; fax: (301) 604-3408; e-mail: nscep@lmsolas.com; web: https://www.epa.gov/nscep;

(c) U.S. Government Printing Office, 732 North Capital Street, NW, Washington, DC 20401-001; phone: (866) 512-1800 or (202) 512-1800; fax: (202) 512-2104; e-mail: orders@gpo.gov; web: https://www.gpo.gov; and

(d) the EPA regional office libraries listed at https://www.epa.gov/libraries/libraries.

17.8.103 INCORPORATION BY REFERENCE

(1) For the purposes of this subchapter, the board adopts and incorporates by reference the following:

(a) 40 CFR Part 50, Appendix B, pertaining to the reference method for the determination of suspended particulate matter in the atmosphere (high-volume method);

(b) 40 CFR Part 50, Appendix J, pertaining to reference methods for the determination of particulate matter as PM-10 in the atmosphere;

(c) 40 CFR Part 51, Appendix M, pertaining to recommended test methods for state implementation plans;

(d) 40 CFR Part 51, Appendix P, pertaining to EPA minimum emission monitoring requirements;

(e) 40 CFR Part 53, pertaining to ambient air monitoring reference methods and equivalent methods;

(j) ARM Title 17, chapter 53, subchapter 5, pertaining to the identification and listing of hazardous waste;

(k) ARM Title 17, chapter 53, subchapter 10, pertaining to standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities;

(l) section 75-10-403(8), MCA, pertaining to the statutory definition of "hazardous waste";

(m) section 112(b)(1) of the Federal Clean Air Act (FCAA), as codified in 42 USC 7412(b)(1), pertaining to substances designated as hazardous air pollutants; and

(n) the Montana Source Test Protocol and Procedures Manual (July 1994 ed.), a department manual pertaining to sampling and data collection, recording, analysis, and transmittal requirements.

(2) Copies of materials incorporated by reference in this subchapter may be obtained as referenced in ARM 17.8.102(3) and (4).

17.8.105 TESTING REQUIREMENTS

(1) Any person or persons responsible for the emission of any air contaminant into the outdoor atmosphere shall upon written request of the department provide the facilities and necessary equipment including instruments and sensing devices and shall conduct tests, emission or ambient, for such periods of time as may be necessary using methods approved by the department. Such emission or ambient tests shall include, but not be limited to, a determination of the nature, extent, and quantity of air contaminants which are emitted as a result of such operation at all sampling points designated by the department. These data shall be maintained for a period of not less than 1 year and shall be available for review by the department. Such testing and sampling facilities may be either permanent or temporary at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction or safe practice.

(2) All sources subject to the requirements of 40 CFR Part 51, Appendix P, incorporated by reference in ARM 17.8.103, must install, calibrate, maintain, and operate equipment for continuously monitoring and recording emissions. All subject sources must have installed all necessary equipment and shall have begun monitoring and recording emissions data in accordance with Appendix P by January 31, 1988. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; Eff. 12/31/72; AMD, 1987 MAR p. 159, Eff. 2/14/87; AMD, 1996 MAR p. 1844, Eff. 7/4/96; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.106 SOURCE TESTING PROTOCOL

(1)
(a) The requirements of this rule apply to any emission source testing conducted by the department, any source, or other entity as required by any rule in this chapter, or any permit or order issued pursuant to this chapter, or the provisions of the Montana Clean Air Act, 75-2-101, et seq., MCA.

(b) All emission source testing, sampling and data collection, recording, analysis, and transmittal must be performed as specified in the Montana Source Testing Protocol and Procedures Manual, unless alternate equivalent requirements are determined by the department and the source to be appropriate, and prior written approval has been obtained from the department. If the use of an alternative test method requires approval by the administrator, that approval must also be obtained.

(c) Unless otherwise specified in the Montana Source Testing Protocol and Procedures Manual or elsewhere in this chapter, all emission source testing must be performed as specified in any applicable sampling method contained in: 40 CFR Part 60, Appendix A; 40 CFR Part 60, Appendix B; 40 CFR Part 61, Appendix B; 40 CFR Part 51, Appendix M; 40 CFR Part 51, Appendix P; and 40 CFR Part 63. Such emission source testing must also be performed in compliance with the requirements of the EPA Handbook for Air Pollution Measurement Systems. Alternative equivalent requirements may be used if the department and the source have determined that such alternative equivalent requirements are appropriate, and prior written approval has been obtained from the department. If approval by the administrator of an alternative test method is required, that approval must also be obtained.

(d) Failure to comply with this rule shall constitute a violation of this rule, and may result in the partial or complete rejection by the department of the appropriate emission source testing data. The partial or complete rejection by the department of the appropriate emission source testing data may subsequently result in a determination by the department that a permit application is incomplete, that insufficient data is available to determine compliance with an emission limitation or standard and additional testing is necessary to demonstrate compliance, or that insufficient data is available to determine the correct fee required under subchapter 5 and additional testing is necessary.

(e) Any changes to the Montana Source Testing Protocol and Procedures Manual shall follow the appropriate rulemaking procedures. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285; AMD, 1999 MAR p. 2767, Eff. 10/8/99.)

17.8.110 MALFUNCTIONS

(1) "Malfunction" means any sudden and unavoidable failure to operate in a normal manner by air pollution control equipment, process equipment, or a process that affects emissions. A failure caused entirely or in part by poor

maintenance, careless operation, poor design, or any other preventable upset condition or preventable equipment breakdown is not a malfunction.

(2) The department must be notified promptly by telephone whenever a malfunction occurs that is expected to create emissions in excess of any applicable emission limitation, or to continue for a period greater than four hours. If telephone notification is not immediately possible, notification at the beginning of the next working day is acceptable. The notification must include the following information:

(a) identification of the emission points and equipment causing the excess emissions;

(b) magnitude, nature, and cause of the excess emissions;

(c) to the extent known, time and duration of the excess emissions;

(d) description of the corrective actions taken or expected to be taken to remedy the malfunction and to limit the excess emissions;

(e) information sufficient to assure the department that the failure to operate in a normal manner by the air pollution control equipment, process equipment, or processes was not caused entirely or in part by poor maintenance, careless operation, poor design, or any other preventable upset condition or preventable equipment breakdown; and

(f) readings from any continuous emission monitor on the emission point and readings from any ambient monitors near the emission point.

(3) Upon receipt of notification pursuant to (2) of this rule, the department shall promptly investigate and determine whether a malfunction has occurred.

(4) If a malfunction occurs and creates emissions in excess of any applicable emission limitation, the department may elect to take no enforcement action if:

(a) the owner or operator of the source provided the notification required by (2) of this rule;

(b) the malfunction did not interfere with the attainment and maintenance of any state or federal ambient air quality standard; and

(c) the owner or operator of the source immediately took appropriate corrective measures.

(5) Within 1 week after a malfunction has been corrected, the owner or operator must submit a written report to the department that includes:

(a) a statement that the malfunction has been corrected, the date of correction, and proof of compliance with all applicable air quality standards contained in this chapter or a statement that the source is planning to install or has installed temporary replacement equipment in accordance with the requirements of (7) of this rule;

(b) a statement of the specific cause of the malfunction;

(c) a description of any preventive measures taken and/or to be taken; and

(d) a statement affirming that the failure to operate in a normal manner by the air pollution control equipment, process equipment, or processes was not caused entirely or in part by poor maintenance, careless operation, poor design, or any other preventable upset condition or preventable equipment breakdown.

(6) The burden of proof is on the owner or operator of the source to provide sufficient information to demonstrate that a malfunction occurred.

(7)
(a) Malfunctioning process or emission control equipment may be temporarily replaced without obtaining an air quality preconstruction permit under the requirements of ARM Title 17, chapter 8, subchapter 7, if the department has been notified of the malfunction in compliance with the requirements of (2) of this rule and if continued operation or non-operation of the malfunctioning equipment would:

(i) create a health or safety hazard for the public;

(ii) cause a violation of any applicable air quality rule;

(iii) damage other process or control equipment; or

(iv) cause a source to lay-off or suspend a substantial portion of its work force for an extended period.

(b) If construction, installation, or use of temporary replacement equipment under (a) above constitutes a major modification and subjects a major stationary source to the requirements of ARM Title 17, chapter 8, subchapters 8, 9, or 10, the source must comply with the requirements of the applicable subchapter prior to construction, installation, or use of the temporary replacement equipment.

(c) Any source that constructs, installs, or uses temporary replacement equipment under (a) above shall comply with the following conditions:

(i) Prior to operation of the temporary replacement equipment, the source shall notify the department in writing of its intent to construct, install, or use temporary replacement equipment.

(ii) Prior to operation of the temporary replacement equipment, the source shall demonstrate to the department that the estimated actual emissions from the temporary replacement equipment, operating at its maximum expected operating rate, are no greater than the potential to emit of the malfunctioning process or control equipment prior to the malfunction.

(iii) The source shall record, and report to the department at its request, operating information sufficient to demonstrate that the temporary replacement equipment operated within the maximum expected operating rate.

(iv) The temporary replacement equipment and the malfunctioning process or emission control equipment may not be operated simultaneously, except during a brief shakedown period or as otherwise approved in writing by the department.

(v) The temporary replacement equipment must be removed or rendered inoperable within 180 days after initial startup of the temporary replacement equipment, or within 30 days after startup of the repaired malfunctioning process or emission control equipment, whichever is earlier, unless the source has submitted to the department an application for a preconstruction permit for the temporary replacement equipment or the department has approved a plan for removing the temporary replacement equipment or rendering the temporary replacement equipment inoperable by a specific date. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; NEW, 1982 MAR p. 1201, Eff. 6/18/82; AMD, 1995 MAR p. 2411, Eff. 11/10/95; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2002 MAR P. 3567, Eff. 12/27/02; AMD, 2003 MAR p. 645, Eff. 4/11/03.)

17.8.111 CIRCUMVENTION

(1) No person shall cause or permit the installation or use of any device or any means which, without resulting in reduction in the total amount of air contaminant emitted, conceals or dilutes an emission of air contaminant which would otherwise violate an air pollution control regulation.

(2) No equipment that may produce emissions shall be operated or maintained in such a manner that a public nuisance is created. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; Eff. 12/31/72; AMD, 1985 MAR p. 1326, Eff. 9/13/85; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.130 ENFORCEMENT PROCEDURES--NOTICE OF VIOLATION--ORDER TO TAKE CORRECTIVE ACTION

(1) A written notice of violation may contain, but is not limited to:

(a) the name of the alleged violator;

(b) the last known address of the alleged violator;

(c) the number of the permit, if any, issued under 75-2-204 and 75-2-211, MCA;

(d) a summary of the complaint made by the department including:

(i) the specific provisions of the statute, rule, or permit alleged to be violated; and

(ii) the specific facts alleged to constitute a violation; and

(e) and order to take corrective action, order to pay an administrative penalty, or both; and

(f) if the department has issued an order to take corrective action, a statement in conspicuous type stating that the alleged violator will be found in default and the order will become final and enforceable unless, not later than 30 days after the notice is received, the person named requests, in writing, a hearing before the board.

(2) Notice of violation shall be served personally upon the alleged violator, and acknowledgement of service obtained from the alleged violator or affidavit of service will be completed by the person making the service and made part of the file. (History: 75-2-111, MCA; IMP, 75-2-401, MCA; Eff. 12/31/72; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2004 MAR p. 724, Eff. 4/9/04.)

17.8.131 ENFORCEMENT PROCEDURES--APPEAL TO BOARD

(1) If the alleged violator desires to petition the board for hearings, the form of the petition shall be in substantially the following form:

(a) The name, address and telephone number of the petitioner, or other person authorized to receive service of notices.

(b) The type of business or activity involved, and the address of such business.

(c) A brief summary of the accusations made by the department in its notice of violation, and the date of such notice.

(d) A statement that petitioner denies the allegations in full or in part, and that he seeks a hearing to protest the issuance of any corrective order.

(e) The petitioner shall sign the petition, or it shall be signed by some person on his behalf, and the authority of such other person so signing must appear.

(2) If hearing is held, rules of practice as provided in contested cases shall apply. (History: 75-2-111, MCA; IMP, 75-2-401, MCA; Eff. 12/31/72; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.132 CREDIBLE EVIDENCE

1) For the purpose of submitting a compliance certification required pursuant to this chapter, or establishing whether or not a person has violated or is in violation of any standard or limitation adopted pursuant to this chapter or Title 75, chapter 2, MCA, nothing in these rules shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with such standard or limitation if the appropriate performance or compliance test procedures or methods had been performed. However, when compliance or non-compliance is demonstrated by a test or procedure provided by permit or other applicable requirement, the owner or operator shall then be presumed to be in compliance or non-compliance unless that presumption is overcome by other relevant credible evidence. (History: 75-2-111, 75-2-201, 75-2-203, 75-2-217, MCA; IMP, 75-2-203, 75-2-217, MCA; NEW, 2000 MAR p. 3363, Eff. 12/8/00.)

17.8.140 REHEARING PROCEDURES--FORM AND FILING OF PETITION

(1) The petition shall contain the following information:

(a) The name, address and telephone number of the aggrieved party or other party authorized to receive service of notices.

(b) The file or docket number assigned by the board to the original hearing from which rehearing is requested, and any additional identifying title assigned to the original hearing.

(c) A brief summary of the issues involved in the original hearing.

(d) A statement of which subsection under the statute the petitioner asserts is the jurisdictional basis for the grant of a rehearing.

(e) A summary argument stating why petitioner is entitled to a rehearing under the subsection cited as his jurisdictional basis. (History: 75-2-111, MCA; IMP, 75-2-411, MCA; Eff. 12/31/72; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.141 REHEARING PROCEDURES--FILING REQUIREMENTS

(1) The aggrieved party shall file his petition for a rehearing within 20 days following his receipt of the board's written decision adverse to his interest. (History: 75-2-111, MCA; IMP, 75-2-411, MCA; Eff. 12/31/72; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.301 DEFINITIONS

For purposes of this subchapter, the following definitions apply:

(1) "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) .

(2) "Airborne particulate matter" means any particulate matter discharged into the outdoor atmosphere which is not discharged from the normal exit of a stack or chimney for which a source test can be performed in accordance with 40 CFR Part 60, Appendix A, method 5 (determination of particulate emissions from stationary sources) .

(3) "Best available control technology (BACT) " means an emission limitation (including a visible emission standard) , based on the maximum degree of reduction for each air pollutant which would be emitted from any source or alteration which the department, on a case-by-case basis, taking into account energy, environment, and economic impacts and other costs, determines is achievable for such sources or alterations 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 air contaminant. In no event shall application of BACT result in emission of any air contaminant which would exceed the emissions allowed by any applicable standard under this chapter. If the department determines that technological or economic limitations on the application of measurement methodology to a particular class of sources or alterations 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 shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation and shall provide for compliance by means which achieve equivalent results.

(4) "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, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures.

(5) "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two-digit code) as described in the standard industrial classification manual, 1987.

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

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

(b) 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 ten tons per year of any HAP, or 25 tons per year of any combination of HAP, whenever:

(i) 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

(ii) it is technically and economically feasible for the reconstructed major source to meet the applicable maximum achievable control technology emission limitation for new sources established under 40 CFR 63 Subpart B.

(7) "Existing fuel burning equipment" means fuel burning equipment constructed or installed prior to November 23, 1968.

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

(9) "Hazardous air pollutant" ("HAP") means any air pollutant listed in or pursuant to 42 USC 7412(b) .

(10) "Lowest achievable emission rate" ("LAER") means, for any source, that rate of emissions which reflects:

(a) the most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or

(b) the most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent. In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance under 40 CFR Parts 60 and 61.

(11) "Major source of HAP" means:

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

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

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

(13) "New fuel burning equipment" means fuel burning equipment constructed, installed or altered after November 23, 1968.
(14) "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.
(15) "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.
(16) "Process weight" means the total weight of all materials introduced into any specific process which may cause emissions. Solid fuels charged will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not.
(17) "Process weight rate" means the rate established as follows:
(a) for continuous or long-run steady-state operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof;
(b) for cyclical or batch operations, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during such a period. Where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for allowable emissions shall apply.
(18) "Reasonable precautions" mean any reasonable measures to control emissions of airborne particulate matter. Determination of what is reasonable will be accomplished on a case-by-case basis taking into account energy, environmental, economic, and other costs.
(19) "Reasonably available control technology" means devices, systems, process modifications, or other apparatus or techniques that are determined on a case-by-case basis to be reasonably available, taking into account the necessity of imposing such controls in order to attain and maintain a national or Montana ambient air quality standard, the social, environmental, and economic impact of such controls, and alternative means of providing for attainment and maintenance of such standard.
History: 75-2-111, 75-2-203, 75-2-204, MCA; IMP, 75-2-203, MCA; NEW, 1993 MAR p. 2530, Eff. 10/29/93; TRANS, from DHES, 1996 MAR p. 2285; AMD, 1999 MAR p. 1658, Eff. 7/23/99; AMD, 2001 MAR p. 976, Eff. 6/8/01; AMD, 2008 MAR p. 2267, Eff. 10/24/08.

17.8.302 INCORPORATION BY REFERENCE

(1) For the purposes of this subchapter, the board adopts and incorporates by reference the following:

(d) 40 CFR 81.327, pertaining to the air quality attainment status designations for Montana;

(e) ARM Title 17, chapter 53, subchapter 5, pertaining to the identification and listing of hazardous waste; and

(f) the Standard Industrial Classification Manual (1987), Office of Management and Budget (PB 87-100012), pertaining to a system of industrial classification and definition based upon the composition and structure of the economy.

(2) Copies of materials incorporated by reference in this subchapter may be obtained as referenced in ARM 17.8.102(3) and (4).

17.8.304 VISIBLE AIR CONTAMINANTS

(1) No person may cause or authorize emissions to be discharged into the outdoor atmosphere from any source installed on or before November 23, 1968, that exhibit an opacity of 40% or greater averaged over 6 consecutive minutes. The provisions of this section do not apply to transfer of molten metals or emissions from transfer ladles.

(2) No person may cause or authorize emissions to be discharged into the outdoor atmosphere from any source installed after November 23, 1968, that exhibit an opacity of 20% or greater averaged over 6 consecutive minutes.

(3) During the building of new fires, cleaning of grates, or soot blowing, the provisions of (1) and (2) of this rule shall apply, except that a maximum average opacity of 60% is permissible for not more than 1 4-minute period in any 60 consecutive minutes. Such a 4-minute period means any 4 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;

(e) residential solid-fuel combustion devices such as fireplaces and wood or coal stoves. (History: 75-2-111,

~~(f) recovery furnaces at kraft pulp mills.~~

75-2-203, MCA; IMP, 75-2-203, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1727, Eff. 12/29/78; AMD, 1986 MAR p. 1021, Eff. 6/13/86; AMD, 1995 MAR p. 1572, Eff. 8/11/95; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.308 PARTICULATE MATTER, AIRBORNE

(1) No person shall cause or authorize the production, handling, transportation, or storage of any material unless reasonable precautions to control emissions of airborne particulate matter are taken. Such emissions of airborne particulate matter from any stationary source shall not exhibit an opacity of 20% or greater averaged over six consecutive minutes, except for emission of airborne particulate matter originating from any transfer ladle or operation engaged in the transfer of molten metal which was installed or operating prior to November 23, 1968.

(2) No person shall cause or authorize the use of any street, road, or parking lot without taking reasonable precautions to control emissions of airborne particulate matter.

(3) No person shall operate a construction site or demolition project unless reasonable precautions are taken to control emissions of airborne particulate matter. Such emissions of airborne particulate matter from any stationary source shall not exhibit an opacity of 20% or greater averaged over six consecutive minutes.

(4) Within any area designated nonattainment in 40 CFR 81.327 for PM, any person who owns or operates:

(a) any existing source of airborne particulate matter shall apply reasonably available control technology (RACT);

(b) any new source of airborne particulate matter that has a potential to emit less than 100 tons per year of particulate matter shall apply best available control technology (BACT);

(c) any new source of airborne particulate matter that has a potential to emit more than 100 tons per year of particulate matter shall apply lowest achievable emission rate (LAER).

(5) The provisions of this rule shall not apply to emissions of airborne particulate matter originating from:

(a) any agricultural activity or equipment that is associated with the use of agricultural land or the planting, production, processing, harvesting, or storage of agricultural crops by an agricultural producer and that is not subject to the requirements of 42 USC 7475, 7503, or 7661, as set forth in 75-2-111(1)(a), MCA; or

(b) a business relating to the activities or equipment referred to in (5)(a) that remains in a single location for less than 12 months and is not subject to the requirements of 42 USC 7475, 7503, or 7661, as set forth in 75-2-111(1)(b), MCA.

History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; Eff. 12/31/72; AMD, 1979 MAR p. 145, Eff. 2/16/79; AMD, 1993 MAR p. 2530, Eff. 10/29/93; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2000 MAR p. 836, Eff. 3/31/00; AMD, 2009 MAR p. 142, Eff. 2/13/09.

17.8.309 PARTICULATE MATTER, FUEL BURNING EQUIPMENT

(1) No person shall cause or authorize particulate matter caused by the combustion of fuel to be discharged from any stack or chimney into the outdoor atmosphere in excess of the rates in the following table:

	Maximum Allowable Emissions of Particulate Matter in lbs. Per Million British Thermal Units	
Heat Input in Million British Thermal Units per Hour	Existing Fuel Burning Equipment	New Fuel Burning Equipment
10 and below	0.60	0.60
100	0.40	0.35
1,000	0.28	0.20
10,000 and above	0.19	0.12

(2) When the heat input falls between any 2 consecutive heat input values in the preceding table, maximum allowable emissions of particulate matter for existing fuel burning equipment and new fuel burning equipment must be calculated using the following equations:

For existing fuel burning equipment: $E = 0.882 * H^{-0.1664}$
For new fuel burning equipment: $E = 1.026 * H^{-0.233}$

Where H is the heat input capacity in MMBtu per hour and E is the maximum allowable particulate emissions rate in lbs. per MMBtu.

For the purposes of this rule, heat input will be 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.

(3) When 2 or more fuel burning units are connected to a single stack, the combined heat input of all units connected to the stack shall not exceed that allowable for the same unit connected to a single stack.

(4) This rule does not apply to emissions from residential solid fuel combustion devices such as fireplaces and wood and coal stoves.

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

(a) those new stationary sources listed in ARM 17.8.340 for which a particulate emission standard has been promulgated. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; Eff. 12/31/72; AMD, 1988 MAR p. 500, Eff. 3/11/88; AMD, 1995 MAR p. 2413, Eff. 11/10/95; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.310 PARTICULATE MATTER, INDUSTRIAL PROCESSES

(1) No person shall cause or authorize particulate matter to be discharged, from any operation, process or activity, into the outdoor atmosphere in excess of the amount shown in the following table:

Process Weight Rate Tons/hr	Maximum Hourly Allowable Emissions of Particulate Matter lb/hr
0.05	0.551
0.10	0.877
0.20	1.40
0.30	1.83
0.40	2.22
0.50	2.58
0.75	3.38
1.00	4.10
1.25	4.76
1.50	5.38
1.75	5.96
2.00	6.52
2.50	7.58

3.00	8.56
3.50	9.49
4.00	10.40
4.50	11.20
5.00	12.00
6.00	13.60
8.00	16.50
9.00	17.90
10.00	19.20
15.00	25.20
20.00	30.50
25.00	35.40
30.00	40.00
35.00	41.30
40.00	42.50
45.00	43.60
50.00	44.60
60.00	46.30
70.00	47.80
80.00	49.00
100.00	51.20
500.00	69.00
1,000.00	77.60
3,000.00	92.70

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

(a) Maximum hourly allowable emissions of particulate matter, for process weight rates up to 30 tons per hour, must be calculated using the following equation:

$E = 4.10P^{0.67}$

b) Maximum hourly allowable emissions of particulate matter, for process weight rates in excess of 30 tons per hour, must be calculated using the following equation:

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

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 ARM 17.8.340 for which a particulate emission standard has been promulgated;

(c) fuel burning equipment;

(d) incinerators.(History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, Eff. 9/5/75; AMD, 1995 MAR p. 2413, Eff. 11/10/95; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.316 INCINERATORS

(1) 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.

(2) 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 12% carbon dioxide and calculated as if no auxiliary fuel had been used.

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

(4) To determine compliance with this rule, the department may direct that an incinerator not be operated at any time other than between the hours of 8:00 a.m. and 5:00 p.m. When operation of an incinerator is prohibited by the department, the owner or operator of the incinerator shall store any solid or hazardous waste in a manner that will not

create a fire hazard or arrange for removal and disposal of the solid or hazardous waste in a manner consistent with ARM Title 17, chapter 50, subchapter 5.

(5) This rule applies to performance tests for determining emissions of particulate matter from incinerators. All performance tests shall be conducted while the affected facility is burning solid or hazardous waste representative of normal operation. Testing shall be conducted in accordance with ARM 17.8.106 and the Montana Source Test Protocol and Procedures Manual.

(6) This rule does not apply to incinerators for which a Montana air quality permit has been issued under 75-2-215, MCA, and ARM 17.8.770. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; Eff. 12/31/72; AMD, Eff. 9/5/75; AMD, 1978 MAR p. 1731, Eff. 12/29/78; TRANS, from DHES, 1996 MAR p. 2285, 1997 MAR P. 1193, Eff. 7/8/97; AMD, 1999 MAR p. 2250, Eff. 10/8/99; AMD, 2002 MAR p. 3567, Eff. 12/27/02; AMD, 2004 MAR p. 724, Eff. 4/9/04.)

17.8.320 WOOD-WASTE BURNERS

(1) It is hereby declared to be the policy of the department to encourage the complete utilization of wood-waste residues and to restrict, wherever reasonably practical, the disposal of wood-waste residues by combustion in wood-waste burners. Recent technological and economic developments have enhanced the degree to which wood-waste residues currently being disposed of in wood-waste burners may be utilized or otherwise disposed of in ways not damaging the environment. While recognizing that complete utilization of wood-waste is not presently possible in all instances, this policy applies to the extent practical and consistent with economic and geographical conditions in Montana.

(2) Construction, reconstruction, or substantial alteration of wood-waste burners is prohibited unless the requirements of subchapter 7 of this chapter have been met.

(3) No person shall cause or authorize to be discharged into the outdoor atmosphere from any wood-waste burner any emissions which exhibit an opacity of 20% or greater averaged over 6 consecutive minutes. The provisions of this section may be exceeded for not more than 60 minutes in 8 consecutive hours for building of fires in wood-waste burners.

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

(5) Except as provided in (6) of this rule, a minimum temperature of 700ºF shall be maintained during normal operation of all wood-waste burners. A normal start-up period of 1 hour is allowed during which the 700ºF minimum temperature does not apply. The burner shall maintain 700ºF operating temperature until the fuel feed is stopped for the day.

(6) Wood-waste burners in existence on February 10, 1989, do not have to comply with the requirements of (5) of this rule if they are located outside of PM nonattainment areas.

(7) The owner or operator of a wood-waste burner must 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 shall 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 10 days after it is requested.

(8) No person shall use a wood-waste burner for the burning of other than production process wood-waste transported to the burner by continuous flow conveying methods.

(9) Rubber products, asphaltic materials, or other prohibited materials specified in ARM 17.8.604(1)(b) through (d), (f) through (r), (t), (u) and (y) may not be burned or disposed of in wood-waste burners. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1732, Eff. 12/29/79; AMD, 1989 MAR p. 270, Eff. 2/10/89; AMD, 1993 MAR p. 2530, Eff. 10/29/93; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2000 MAR P. 836, Eff. 3/31/00; AMD, 2004 MAR p. 724, Eff. 4/9/04.)

16.8.1413 KRAFT PULP MILLS

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

(a) "Continual monitoring" means sampling and analysis, in a continuous or times sequence, using techniques which will adequately reflect actual emission levels or concentrations on a continuous basis.

(b) "Kraft mill" or "mill" means any pulping process which uses, for cooking liquor, an alkaline sulfate solution containing sodium sulfide.

(c) "Non-condensibles" means gases and vapors from the digestion and evaporation processes of a mill that are not condensed with the equipment used in those processes.

(d) "Parts per million" means parts of a contaminant per million parts of gas by volume.

(e) "Recovery furnace stack" means the stack from which the products of combustion from the recovery furnace are emitted to the ambient air.

(f) "Total reduced sulfur (TRS)" means hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides present.

(2) No person or persons shall cause, suffer, allow or permit to be discharged into the outdoor atmosphere from any kraft pulping mill total reduced sulfur in excess of 0.087 pounds per 1,000 pounds of black liquor from each recovery furnace stack or 17.5 parts per million, expressed as hydrogen sulfide on a dry gas basis, whichever is more restrictive or such other limit of TRS that proves to be reasonably attainable utilizing the latest in design of recovery furnace equipment, controls and procedures but not more than 0.087 pounds of TRS per 1,000 pounds of black liquor.

(3) Non-condensibles from digesters and multiple-effect evaporators shall be treated to reduce the emission of TRS equal to the reduction achieved by thermal oxidation in a lime kiln.

(4) Every kraft mill in the state shall install equipment for the continual monitoring of TRS.

(a) The monitoring equipment shall be capable of determining compliance with these standards and shall be capable of continual sampling and recording of the concentrations of TRS contaminants during a time interval not greater than 30 minutes.

(b) The sources monitored shall include, but are not limited to, the recovery furnace stacks and the lime kiln stacks.

(c) Each mill shall sample the recovery furnace, lime kiln, and smelt tank for particulate emissions on a regularly scheduled basis in accordance with its approved sampling program.

(d) Equipment shall be ordered within 30 days after a monitoring program has been approved in writing by the director. The equipment shall be placed in effective operation in accordance with the approved program within 60 days after delivery.

(5) Unless otherwise authorized by the director, data shall be reported by each mill at the end of each calendar month as follows:

(a) Daily average emission of TRS gases expressed in pounds of sulfur per 1,000 pounds of black liquor fired for each source included in the approved monitoring program.

(b) The number of hours each day that the emission of TRS gases from each recovery furnace stack exceeds 17.5 parts per million dry and the maximum concentration of TRS measured each day.

(c) Emission of TRS gases in pounds of sulfur per 1,000 pounds of black liquor fired in the kraft recovery furnace on a monthly basis and pounds of sulfur per hour for the other sources included in the approved monitoring program. Emission of particulates in pounds per hour based upon a sampling conducted in accordance with the approved monitoring program.

(d) Average daily kraft pulp production in air-dried tons and average daily black liquor burning rate.

(e) Other emission data as specified in the approved monitoring program.

(6) Each kraft mill shall furnish, upon request of the director, such other pertinent data as may be required to evaluate the mill's emission control program. Each mill shall immediately report abnormal mill operations which result in increased emissions of air contaminants, following procedures set forth in the approved monitoring program.

(7) All emission standards in this rule shall be based on average daily emissions. The limitations herein shall not preclude a requirement to install the highest and best practicable treatment and control available. New mills or mills expanding existing facilities may be required to meet more restrictive emission limits. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; Eff. 12/31/72.)

17.8.322 SULFUR OXIDE EMISSIONS--SULFUR IN FUEL

(1) "Btu" means British thermal unit which is the heat required to raise the temperature of 1 pound of water through 1 Fahrenheit degree.

(2) Commencing July 1, 1970, no person shall burn liquid or solid fuels containing sulfur in excess of 2 pounds of sulfur per million Btu fired.

(3) Commencing July 1, 1971, no person shall burn liquid or solid fuels containing sulfur in excess of 1.5 pounds of sulfur per million Btu fired.

(4) Commencing July 1, 1972, no person shall burn liquid or solid fuels containing sulfur in excess of 1 pound of sulfur per million Btu fired.

(5) Commencing July 1, 1971, no person shall burn any gaseous fuel containing sulfur compounds in excess of 50 grains per 100 cubic feet of gaseous fuel, calculated as hydrogen sulfide at standard conditions. The provisions of (5) shall not apply to:

(a) The burning of sulfur, hydrogen sulfide, acid sludge or other sulfur compounds in the manufacturing of sulfur or sulfur compounds.

(b) The incinerating of waste gases provided that the gross heating value of such gases is less than 300 Btu's per cubic foot at standard conditions and the fuel used to incinerate such waste gases does not contain sulfur or sulfur compounds in excess of the amount specified in this rule.

(c) The use of fuels where the gaseous products of combustion are used as raw materials for other processes.

(d) Small refineries (under 10,000 barrels per day crude oil charge) provided that they meet other provisions of this rule.

(6) The following are exceptions to this rule:

(a) A permit may be granted by the director to burn fuels containing sulfur in excess of the sulfur contents indicated in (2) through (5) of this rule provided it can be shown that the facility burning the fuel is fired at a rate of 1 million Btu per hour or less.

(b) For purpose of this rule, a higher sulfur-containing fuel may, upon application to the director, be utilized in (2), (3) or (4) of this rule if such fuel is mixed with 1 or more lower sulfur-containing fuels which results in a mixture, the equivalent sulfur content of which is not in excess of the stated values when fired.

(c) The requirements of (2), (3), or (4) of this rule shall also be deemed to have been satisfied if, upon application to the director, a sulfur dioxide control process is applied to remove the sulfur dioxide from the gases emitted by burning of fuel of any sulfur content which results in an emission of sulfur in pounds per hour not in excess of the pounds per hour of sulfur that would have been emitted by burning fuel of the sulfur content indicated without such a cleaning device. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; Eff. 12/31/72; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.324 HYDROCARBON EMISSIONS--PETROLEUM PRODUCTS

(1) No person shall place, store or hold in any stationary tank, reservoir or other container of more than 65,000 gallons capacity any crude oil, gasoline or petroleum distillate having a vapor pressure of 2.5 pounds per square inch absolute or greater under actual storage conditions, unless such tank, reservoir or other container is a pressure tank maintaining working pressures sufficient at all times to prevent hydrocarbon vapor or gas loss to the atmosphere, or

is designed and equipped with one of the following vapor loss control devices, properly installed, in good working order and in operation:

(a) A floating roof, consisting of a pontoon type or double deck type roof, resting on the surface of the liquid contents and equipped with a closure seal, or seals to close space between the roof edge and tank wall. The control equipment provided for in this subsection shall not be used if the gasoline or petroleum distillate has a vapor pressure of 13.0 pounds per square inch absolute or greater under actual storage conditions. All tank gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place.

(b) A vapor recovery system, consisting of a vapor gathering system capable of collecting the hydrocarbon vapors and gases discharged and a vapor disposal system capable of processing such hydrocarbon vapors and gases so as to prevent their emission to the atmosphere and with all tank gauging and sampling devices gas-tight except when gauging or sampling is taking place.

(c) *

(2) No person shall use any compartment of any single or multiple compartment oil-effluent water separator which compartment receives effluent water containing 200 gallons a day or more of any petroleum product from any equipment processing, refining, treating, storing or handling kerosene or other petroleum product of equal or greater volatility than kerosene, unless such compartment is equipped with one of the following vapor loss control devices, constructed so as to prevent any emission of hydrocarbon vapors to the atmosphere, properly installed, in good working order and in operation.

(a) A solid cover with all openings sealed and totally enclosing the liquid contents. All gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place.

(b) A floating roof, consisting of a pontoon type or double deck type roof, resting on the surface of the liquid contents and equipped with a closure seal, or seals, to close the space between the roof edge and containment wall. All gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place.

(c) A vapor recovery system, consisting of a vapor gathering system capable of collecting the hydrocarbon vapors and gases discharged and a vapor disposal system capable of processing such hydrocarbon vapors and gases so as to prevent their emission to the atmosphere and with all tank gauging and sampling devices gas-tight except when gauging or sampling is taking place.

(d) *

(e) This rule shall not apply to any oil-effluent water separator used exclusively in conjunction with the production of crude oil.

(3) No person shall load or permit the loading of gasoline into any stationary tank with a capacity of 250 gallons or more from any tank truck or trailer, except through a permanent submerged fill pipe, unless such tank is equipped with a vapor loss control device as described in (1) of this rule, or is a pressure tank as described in (1) of this rule.

(a) The provisions of the first paragraph of (3) shall not apply to the loading of gasoline into any tank having a capacity of 2,000 gallons or less, which was installed prior to June 30, 1971 nor any underground tank installed prior to June 30, 1971 where the fill line between the fill connection and tank is offset.

(b) A person shall not install any gasoline tank with a capacity of 250 gallons or more unless such tank is equipped as described in the first paragraph of (3).

(4) The provisions of this rule do not apply to any stationary tank which is used primarily for the fueling of implements of husbandry.

(5) Existing refineries normally processing less than 7,000 barrels per day of crude oil charge shall be exempt from the provisions of this rule.

(6) Refineries normally processing 7,000 barrels per day or more of crude oil charge shall comply with (1) of this rule by January 1, 1977.

(7) Facilities used exclusively for the production of crude oil are exempt from this rule. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; Eff. 12/31/72; AMD, Eff. 9/5/75; AMD, 1993 MAR p. 2530, Eff. 10/29/93; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.325 MOTOR VEHICLES

(1) No person shall intentionally remove, alter or otherwise render inoperative, exhaust emission control, crank case ventilation or any other air pollution control device which has been installed as a requirement of federal law or regulation.

(2) No person shall operate a motor vehicle originally equipped with air pollution control devices as required by federal law or regulation unless such devices are in place and in operating condition. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; Eff. 12/31/72; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.326 PROHIBITED MATERIALS FOR WOOD OR COAL RESIDENTIAL STOVES

(1) No person may cause or authorize the use of the following materials to be combusted in any residential solid-fuel combustion device such as a wood, coal, or pellet stove or fireplace:

(a) food wastes;

(b) styrofoam and other plastics;

(c) wastes generating noxious odors;

(d) poultry litter;

(e) animal droppings;

(f) dead animals or dead animal parts;

(g) tires;

(h) asphalt shingles;

(i) tar paper;

(j) insulated wire;

(k) treated lumber and timbers including railroad ties;

(l) pathogenic wastes;

(m) colored newspaper or magazine print;

(n) hazardous wastes as defined by administrative rules found at ARM Title 17, chapter 54, subchapter 3; or

(o) chemicals. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; NEW, 1986 MAR p. 1021, Eff. 6/13/86; AMD, 1993 MAR p. 2530, Eff. 10/29/93; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.330 EMISSION STANDARDS FOR EXISTING ALUMINUM PLANTS--DEFINITIONS For the purposes of this rule, the following definitions apply:

(1) "Aluminum manufacturing" means the electrolytic reduction of alumina (aluminum oxide) to aluminum.

(2) "Emission" means a release into the outdoor atmosphere of total fluorides.

(3) "Existing primary aluminum reduction plant" means any facility manufacturing aluminum, by electrolytic reduction, which was in existence and operating on February 26, 1982.

(4) "Owner or operator" means any person who owns, leases, operates, controls, or supervises an existing primary aluminum reduction plant.

(5) "Pot" means a reduction cell.

(6) "Potroom" means a building unit which houses a group of electrolytic cells in which aluminum is produced.

(7) "Potroom group" means an uncontrolled potroom, a potroom which is controlled individually as a group of potrooms or potroom segments ducted to a common control system.

(8) "Total fluorides" means all fluoride compounds as measured by methods approved by the department. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; NEW, 1982 MAR p. 390, Eff. 2/26/82; AMD, 1989 MAR p. 270, Eff. 2/10/89; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.331 EMISSION STANDARDS FOR EXISTING ALUMINUM PLANTS--STANDARDS FOR FLUORIDE

(1) No owner or operator subject to the provisions of this rule may cause the emission into the atmosphere from any existing primary aluminum reduction plant of any gasses which contain total fluorides in excess of 1.3 kg/Mg (2.6 lb/ton) of aluminum produced at Soderberg plants averaged over any calendar month. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; NEW, 1982 MAR p. 390, Eff. 2/26/82; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.332 EMISSION STANDARDS FOR EXISTING ALUMINUM PLANTS--STANDARD FOR VISIBLE EMISSIONS

(1) No owner or operator subject to this rule may cause the emission into the atmosphere from any potroom group of any gasses or particles which exhibit 10% opacity or greater, as determined by EPA Reference Method 9 in Appendix A of 40 CFR Part 60, incorporated by reference in ARM 17.8.302. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; NEW, 1982 MAR p. 390, Eff. 2/26/82, AMD, 1989 MAR p. 270, Eff. 2/10/89; AMD, 1996 MAR p. 1844, Eff. 7/4/96; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.333 EMISSION STANDARDS FOR EXISTING ALUMINUM PLANTS--MONITORING AND REPORTING

(1) For the purpose of this rule the board hereby adopts and incorporates by reference 40 CFR 60.195 which sets forth test methods and procedures for primary aluminum reduction plants. A copy of this incorporated material may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

(2) An owner or operator shall submit by May 1, 1982 to the department a detailed monitoring program including, but not limited to, a description of monitoring equipment, monitoring procedures, monitoring frequency, and any other information requested by the department. The monitoring program must be approved by the department and may be revised from time to time by the department.

(3) In order to be approved by the department, the monitoring plan must meet the requirements of 40 CFR 60.195 or equivalent requirements established by the department.

(4) An owner or operator of an existing primary aluminum reduction plant shall submit a quarterly emission report to the department, no later than 45 days following the end of the calendar quarter reported, in a format and reporting parameters as requested by the department. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; NEW, 1982 MAR p. 390, Eff. 2/26/82; TRANS, from DHES, 1996 MAR p. 2285.)

16.8.1204 DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1)
(a) "Dispersion technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

(i) using that portion of a stack which exceeds good engineering practice stack height;

(ii) varying the emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

(iii) increasing final exhaust gas plume rise by manipulating source process parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

(b) The term "dispersion technique" does not include:

(i) the reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(ii) the merging of gas streams when:

(A) the source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams;

(B) after July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant (this exclusion from the definition of "dispersion technique" applies only to the emission limitation for the pollutant affected by such change in operation); or

(C) before July 8, 1985, such merging is part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. If there was an increase in the emission limitation or, if no emission limitation was in existence prior to the merging, an increase in the quantity of pollutant actually emitted prior to the merging, the department shall presume that merging was significantly motivated by the intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the department shall deny credit for the effects of such merging in calculating the allowable emissions for the source.

(iii) smoke management in agricultural or silvicultural prescribed burning programs;

(iv) episodic restrictions on residential solid-fuel burning and open burning; or

(v) techniques under (1)(a)(iii) above that increase final exhaust gas plume rise when the resulting allowable emissions for sulfur dioxide from the facility do not exceed 5,000 tons per year.

(2) "Good engineering practice" (GEP) stack height means the greater of:

(a) sixty-five meters, measured from the ground-level elevation at the base of the stack;

(b)
(i) for stacks in existence on January 12, 1979, and for which the owner or operator had obtained all applicable permits or approvals required by this chapter,

GEP = 2.5H

if the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation;

(ii) for all other stacks,

GEP = H + 1.5L

where:

GEP = good engineering practice stack height, measured from the ground-level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground-level elevation at the base of the stack, and

L = lesser dimension, height or projected width, of nearby structure(s);

however, the department may require the use of a field study or fluid model to verify GEP stack height for the source; or

(c) the height demonstrated by a fluid model or a field study approved by the department that ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, or nearby structures or nearby terrain features.

(3) "Nearby" as used in this subchapter for a specific structure or terrain feature means:

(a) for purposes of applying the formula provided in (2)(b) of this rule, that distance up to 5 times the lesser of the height or the width dimension of a structure, but not greater than 0.8 kilometers (1/2 mile); and

(b) for purposes of conducting demonstrations under (2)(c) of this rule, not greater than 0.8 kilometers, except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height (Ht) of the feature, not to exceed 2 miles if the feature achieves a height 0.8 kilometers from the stack that is at least 40% of the GEP stack height determined by the formula provided in (2)(b)(ii) of this rule or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

(4) "Excessive concentration" as used in (2)(c) of this rule means:

(a) For sources seeking credit for stack height exceeding that established under (2)(b) of this rule, a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes and eddy effects produced by nearby structures or nearby terrain features that individually is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and that contributes to a total concentration due to emissions from all sources greater than an ambient air quality standard as provided in subchapter 8. For sources subject to the prevention of significant deterioration program (subchapter 9), an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features that individually is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this part is prescribed by the new source performance standard that is applicable to the source category unless the owner or operator demonstrates to the satisfaction of the department that this emission rate is infeasible. Where such a demonstration has been made, the department shall establish an alternative emission rate after consultation with the source owner or operator.

(b) For sources seeking credit after October 1, 1983, for increases in existing stack heights up to the heights established under (2)(b) of this rule, either:

(i) a maximum ground-level concentration due in whole or in part to downwash, wakes or eddy effects as provided in (4)(a) of this rule, except that the emission rate specified by any applicable state implementation plan (or, in the absence of such a limit, the actual emission rate as defined in ARM 16.8.921(2)) shall be used, or

(ii) the actual presence of a public nuisance caused by the existing stack, as determined by the department.

(c) For sources seeking credit after January 12, 1979, for a stack height determined under (2)(b) of this rule if the department requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in (2)(b) of this rule, a maximum ground-level concentration due in whole or in part to downwash, wakes or eddy effects that is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; NEW, 1986 MAR p.1021, Eff. 6/13/86.)

16.8.1205 REQUIREMENTS

(1) The degree of emission limitation required of any source or stack for control of any air pollutant regulated under the Montana Clean Air Act must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique, except as provided in ARM 16.8.1206.

(2) Before a new or revised state implementation plan emission limitation that is based on good engineering practice stack height that exceeds the height allowed by ARM 16.8.1204(2)(b)(i) or (ii) is submitted to the environmental protection agency, the department must provide notice and opportunity for public hearing of the availability of any demonstration study as provided by ARM 16.8.1204(2)(c). Such notice and public hearing will be conducted in accordance with the Montana Administrative Procedure Act.

(3) This rule does not require a source owner or operator to restrict, in any manner, the actual stack height of any source. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; NEW, 1986 MAR p. 1021, Eff. 6/13/86.)

16.8.1206 EXEMPTIONS

(1) The requirements of ARM 16.8.1205 do not apply to stack heights in existence or dispersion techniques implemented on or before December 31, 1970, except when pollutants are being emitted from such stacks or using such dispersion techniques by stationary sources (as defined by ARM 16.8.921(28)) that were constructed or reconstructed or for which major modifications (as defined in ARM 16.8.921(21)) were carried out after December 31, 1970. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; NEW, 1986 MAR p. 1021, Eff. 6/13/86.)

17.8.601 DEFINITIONS

(1) "Best available control technology" (BACT) means those techniques and methods of controlling emission of pollutants from an existing or proposed open burning source which limit those emissions to the maximum degree which the department determines, on a case-by-case basis, is achievable for that source, taking into account impacts on energy use, the environment, and the economy, and any other costs, including cost to the source.

(a) Such techniques and methods may include the following:

(i) scheduling of burning during periods and seasons of good ventilation;

(ii) applying dispersion forecasts;

(iii) utilizing predictive modeling results performed by and available from the department to minimize smoke impacts;

(iv) limiting the amount of burning to be performed during any one time;

(v) using ignition and burning techniques which minimize smoke production;

(vi) selecting fuel preparation methods that will minimize dirt and moisture content;

(vii) promoting fuel configurations which create an adequate air to fuel ratio;

(viii) prioritizing burns as to air quality impact and assigning control techniques accordingly;

(ix) promoting alternative treatments and uses of materials to be burned; and

(x) selecting sites that will minimize smoke impacts.

(b) For essential agricultural open burning, prescribed wildland open burning, conditional air quality open burning,or any other minor open burning during September, October, or November, BACT includes burning only during the time periods specified by the department, which may be determined by calling the department at (800) 225-6779.

(c) For essential agricultural open burning, prescribed wildland open burning, conditional air quality open burning,or any other minor open burning during December, January, or February, BACT includes burning only during the time periods specified by the department, which may be determined by calling the department at (800) 225-6779.

(2) "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.

(3) "Eastern Montana open burning zone" means the following counties or portions of counties: Big Horn, Blaine, Carbon, Carter, Cascade, Chouteau, Custer, Daniels, Dawson, Fallon, Fergus, Garfield, Glacier, Golden Valley, Hill, Judith Basin, Liberty, McCone, Meagher, Musselshell, Park (that portion north of Interstate 90), Petroleum, Phillips, Pondera, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Stillwater, Sweet Grass, Teton, Toole, Treasure, Valley, Wheatland, Wibaux and Yellowstone.

(4) "Essential agricultural open burning" means any open 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 after harvest has been completed 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.

(5) "Major open burning source" means any person, agency, institution, business, or industry conducting any open burning that, on a statewide basis, 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 chapter, except hydrocarbons.

(6) "Minor open burning source" means any person, agency, institution, business, or industry conducting any open burning that is not a major open burning source.

(7) "Open burning" means combustion of any material directly in the open air without a receptacle, or in a receptacle other than a furnace, multiple chambered incinerator, or wood waste burner, with the exception of combustion of ordnance, small recreational fires, construction site heating devices used to warm workers, or safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants or elemental phosphorus plants.

(8)"Prescribed wildland open burning" means any planned open 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.

(9) "Salvage operation" means any operation conducted in whole or in part to salvage or reclaim any product or material, except the silvicultural practice commonly referred to as a salvage cut.

(10) "Trade wastes" means solid, liquid, or gaseous material resulting from construction or operation of any business, trade, industry, or demolition project. Wood product industry wastes such as sawdust, bark, peelings, chips, shavings, and cull wood are considered trade wastes. Trade wastes do not include wastes generally disposed of by essential agricultural open burning, prescribed wildland open burning or Christmas tree waste, as defined in this rule.

(11) "Wood waste burner" means a device commonly called a tepee burner, silo, truncated cone, wigwam burner, or other similar burner commonly used by the wood products industry to dispose of wood.

(History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; NEW, 1982 MAR p. 688, Eff. 4/16/82; AMD, 1994 MAR p. 2528, Eff. 9/9/94; AMD, 1995 MAR p. 2412, Eff. 11/10/95; TRANS, from DHES, 1996 MAR p. 2285; AMD, 1999 MAR p. 1660, Eff. 7/23/99; AMD, 2002 MAR p. 3586, Eff. 12/27/02.)

17.8.602 INCORPORATION BY REFERENCE

(1) For the purposes of this subchapter, the board adopts and incorporates by reference ARM Title 17, chapter 53, subchapter 5, identifying and defining hazardous wastes.

(2) A copy of ARM Title 17, chapter 53, subchapter 5, may be obtained as referenced in ARM 17.8.102(3).

History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; NEW, 1996 MAR p. 1844, Eff. 7/4/96; TRANS, from DHES, 1996 MAR p. 2285; AMD, 1997 MAR p. 1581, Eff. 9/9/97; AMD, 2001 MAR p. 1468, Eff. 8/10/01; AMD, 2005 MAR p. 959, Eff. 6/17/05; AMD, 2007 MAR p. 1663, Eff. 10/26/07; AMD, 2018 MAR p. 438, Eff. 2/24/18.

17.8.604 MATERIALS PROHIBITED FROM OPEN BURNING
(1) The following material may not be disposed of by open burning:

(a) any waste which is moved from the premises where it was generated, except as provided in ARM 17.8.604(2), 17.8.611, or 17.8.612(4)(a) or (4){b);

(b) food wastes;

(c) Styrofoam and other plastics;

(d) wastes generating noxious odors;

(e) wood and wood byproducts that have been coated, painted, stained, treated, or contaminated by a foreign material, unless open burning is allowed under ARM 17.8.614 or 17.8.615;

(f) poultry litter;

(g) animal droppings;

(h) dead animals or dead animal parts;

(i) tires, except as provided in ARM 17.8.615;

(j) rubber materials;

(k) asphalt shingles, except as provided in ARM 17.8.614 or 17.8.615;

(l) tar paper, except as provided in ARM 17.8.614or17.8.615;

(m) automobile or aircraft bodies and interiors, except as provided in ARM 17.8.614or17.8.615;

(n) insulated wire, except as provided in ARM 17.8.614 or 17.8.615;

(o) oil or petroleum products, except as provided in ARM 17.8.614 or 17.8.615;

(p) treated lumber and timbers;

(q) pathogenic wastes;

(r) hazardous wastes, as defined by 40 CFR Part 261, incorporated by reference in ARM 17.8.602;

(s) trade wastes, except as provided in ARM 17.8.611 or 17.8.612;

(t) any materials resulting from a salvage operation;

(u) chemicals, except as provided in ARM 17.8.614 or 17.8.615;

(v) Christmas tree waste as defined in ARM 17 .8.601, except as provided in ARM 17.8.613;

(w) [removed]

(x) standing or demolished structures containing prohibited material, except as provided in ARM 17.8.612, 17.8.614, or 17.8.615; and

(y) paint, except as provided in ARM 17.8.614 or 17.8.615.

(2) A person may not conduct open burning of any wood waste that is moved from the premises where it was generated, except as provided in ARM 17.8.611 or 17.8.612(4){a) or (4)(b), or unless the department determines:

(a) the material is wood or wood byproducts that have not been coated, painted, stained, treated, or contaminated by a foreign material; and

(b) alternative methods of disposal are unavailable or infeasible.

(3) A person conducting open burning of wood waste which is moved from the premises where it was generated shall comply with BACT.

(4) A person intending to conduct open burning of wood waste which is moved from the premises where it was generated shall contact the department by calling the number listed in ARM 17.8.601(1) prior to conducting open burning.

(5) Except as provided in ARM 17.8.606, a person may not open burn any nonprohibited material without first obtaining an air quality open burning permit from the department.

(History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, 75-2-211, MCA; NEW, 1982 MAR p. 689, Eff. 4/16/82; AMO, 1991 MAR p. 126, Eff. 211/91; AMO, 1994 MAR p. 2528, Eff. 9/9/94; AMO, 1995 MAR p. 535, Eff. 4/14/95; AMO, 1996 MAR p. 1844, Eff. 7/4/96; TRANS, from DHES, 1996 MAR p. 2285; AMO, 2002 MAR p. 3586, Eff. 12/27/02; AMO, 2011 MAR p. 569, Eff. 4/15/11.)

17.8.605 SPECIAL BURNING PERIODS

(1) The following categories of open burning may be conducted during the entire year:

(a) prescribed wildland open burning;

(b) open burning to train firefighters under ARM 17.8.615;

(c) open burning authorized under the emergency open burning permit provisions in ARM 17.8.611;

(d) essential agricultural open burning;

(e) conditional air quality open burning;

(f) commercial film production open burning;

(g) Christmas tree waste open burning; and

(h) any minor open burning that is not prohibited by ARM 17.8.604 or that is allowd by ARM 17.8.606.

(2) Open burning other than those categories listed in (1) of this rule may be conducted only during the months of March through November. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; NEW, 1982 MAR p. 691, Eff. 4/16/82; AMD, 1994 MAR p. 2528, Eff. 9/9/94; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2002 MAR p. 3586, Eff. 12/27/02.)

17.8.606 MINOR OPEN BURNING SOURCE REQUIREMENTS

(1) Unless required to obtain an open burning permit under another provision of this subchapter, a minor open burning source need not obtain an air quality open burning permit.

(2) A minor open burning source must:

(a) conform with BACT;

(b) comply with all rules in this subchapter, except ARM 17.8.610; and

(c) comply with any requirements or regulations relating to open burning established by any agency of local government, including local air pollution agencies established under 75-2-301, MCA, of the Montana Clean Air Act, or any other municipal or county agency responsible for protecting public health and welfare.

(3) During September, October, or November, to conduct any minor open burning not prohibited by ARM 17.8.604, a minor open burning source must adhere to the burning restrictions established by the department that are available by calling the department at (800) 225-6779.

(4) During December, January, or February, to conduct any minor open burning that is not prohibited by ARM 17.8.604, a minor open burning source must comply with the following conditions:

(a) Outside the eastern Montana open burning zone, a minor open burning source must:

(i) submit a written request to the department, demonstrating that the essential agricultural open burning or prescribed wildland open burning, or any minor open burning that is not prohibited by ARM 17.8.604 must be conducted prior to reopening of open burning in March;

(ii) receive permission for each specific burn from the department; and

(iii) adhere to the time periods set for burning by the department that are available by calling the department at (800) 225-6779.

(b) Inside the eastern Montana open burning zone, a minor open burning source need only notify the department by telephone of any essential agricultural open burning, prescribed wildland open burning, or any other minor open burning that is not prohibited by ARM 17.8.604 prior to ignition. Burning is allowed when ventilation conditions are good or excellent. Ventilation conditions are determined by the department using a ventilation index, which is defined as the product of the mixing depth in feet at the time of the daily maximum temperature, times the average transport wind in knots through the mixed layer divided by 100. Good or excellent ventilation conditions exist when the ventilation index is 400 or higher. Forecasts of ventilation conditions may be obtained by calling the department at (800) 225-6779.

(5) During March through August, subject to (2) of this rule, a minor open burning source may conduct open burning not prohibited under ARM 17.8.604.

(6) The requirements of this rule are in addition to any other applicable state, federal or local open burning requirements. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; NEW, 1982 MAR p. 690, Eff. 4/16/82; AMD, 1994 MAR p. 2528, Eff. 9/9/94; AMD, 1995 MAR p. 2412, Eff. 11/10/95; TRANS, from DHES, 1996 MAR p. 2285; AMD, 1999 MAR p. 1660, Eff. 7/23/99; AMD, 2002 MAR p. 3586, Eff. 12/27/02.)

17.8.610 MAJOR OPEN BURNING SOURCE RESTRICTIONS (1) Prior to open burning, a major open burning source must submit an application to the department for an air quality major open burning permit. The application must be accompanied by the appropriate air quality permit application fee required under ARM 17.8.514 and must contain the following information:

(a) a legal description of each planned site of open burning or a detailed map showing the location of each planned site of open burning;

(b) the elevation of each planned site of open burning;

(c) the method of burning to be used at each planned site of open burning; and

(d) the average fuel loading or total fuel loading at each site to be burned.

(2) Proof of publication of public notice, consistent with this rule, must be submitted to the department before an application will be considered complete. An applicant for an air quality major open burning permit shall notify the public of the application for permit by legal publication, at least once, in a newspaper of general circulation in each airshed (as defined by the department) affected by the application. The notice must be published no sooner than ten days prior to submittal of an application and no later than ten days after submittal of an application. The form of the notice must be provided 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 filing of the application, whichever is later. A single public notice may be published for multiple applicants.

(3) When the department approves or denies the application for a permit under this rule, a person who is directly and adversely affected by the department's decision may request a hearing before the board in the manner provided in 75-2-211, MCA.

(4) A major open burning source must:

(a) conform with BACT; and

(b) comply with the conditions in any air quality open burning permit issued to it by the department, which will be in effect for one year from its date of issuance or another time frame as specified in the permit by the department.

(5) To open burn in a manner other than that described in the application for an air quality open burning permit, the source must submit to the department, in writing or by telephone, a request for a change in the permit, including the information required by (1), and must receive approval from the department.

(History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, 75-2-211, MCA; NEW, 1982 MAR p. 690, Eff. 4/16/82; AMD, 1992 MAR p. 2061, Eff. 9/11/92; AMD, 1994 MAR p. 2528, Eff. 9/9/94; TRANS, from DHES, 1996 MAR p. 2285; AMD, 1999 MAR p. 1660, Eff. 7/23/99; AMD, 2002 MAR p. 3586, Eff. 12/27/02; AMD, 2011 MAR p. 569, Eff. 4/15/11; AMD, 2016 MAR p. 1164, Eff. 7/9/16.)

17.8.611 EMERGENCY OPEN BURNING PERMITS

(1) The department may issue an emergency air quality open burning permit to allow burning of a substance not otherwise approved for burning under this subchapter 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) Oral authorization to conduct emergency open burning may be granted by the department 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 air quality permit application fee required under ARM 17.8.515 within 10 working days of permit issuance.

(3) Within 10 days of receiving oral authorization to conduct emergency open burning under (2) of this rule, the applicant must submit to the department a written application for an emergency open burning permit containing the information required above under (2)(a) through (f) of this rule. The applicant shall also submit the appropriate air quality permit application fee required under ARM 17.8.515. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, 75-2-211, MCA; NEW, 1982 MAR p. 692, Eff. 4/16/82; AMD, 1992 MAR p. 2285, Eff. 10/16/92; AMD, 1994 MAR p. 2528, Eff. 9/9/94; TRANS, from DHES, 1996 MAR p. 2285; AMD, 1999 MAR p. 1660, Eff. 7/23/99.)

17.8.612 CONDITIONAL AIR QUALITY OPEN BURNING PERMITS

(1) The department may issue a conditional air quality open burning permit if the department determines that:

(a) alternative methods of disposal would result in extreme economic hardship to the applicant; and

(b) emissions from open 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) The department must be reasonable when determining whether alternative methods of disposal would result in extreme economic hardship to the applicant.

(3) Conditional open burning must conform with BACT.

(4) The department may issue a conditional air quality open burning permit to dispose of:

(a) solid wood and wood byproduct trade wastes by any business, trade, industry, or demolition project; or

(b) untreated wood waste at a licensed landfill site, if the department determines that:

(i) the proposed open burning will occur at an approved burn site, as designated in the solid waste management system license issued by the department pursuant to ARM Title 17, chapter 50, subchapter 5;

(ii) the material to be burned complies with ARM Title 17, chapter 50, subchapter 5; and

(iii) prior to each burn, the burn pile was inspected by the department or its designated representative and no prohibited materials listed in ARM 17.8.604 were present.

(5) A permit issued under this rule is valid for the following periods:

(a) solid wood and wood byproduct trade wastes--one year; and

(b) untreated wood waste at licensed landfill sites--one year.

(6) The department may place any reasonable requirements in a conditional air quality open burning permit that the department determines will reduce emissions of air pollutants or minimize the impact of emissions, and the recipient of a permit must adhere to those conditions. For a permit granted under (4)(a), BACT for the year covered by the permit will be specified in the permit; however, the source may be required, prior to each burn, to receive approval from the department of the date of the proposed burn to ensure that good ventilation exists and to assign burn priorities if other sources in the area request permission to burn on the same day. Approval may be requested by calling the department at (800) 225-6779.

(7) An application for a conditional air quality open burning permit must be made on a form provided by the department, and must be accompanied by the appropriate air quality permit application fee required under ARM 17.8.515. The applicant shall provide adequate information to enable the department to determine whether the application satisfies the requirements for a conditional air quality open burning permit contained in this rule. Proof of publication of public notice, as required in (8), must be submitted to the department before an application will be considered complete.

(8) An applicant for a conditional air quality open burning permit shall notify the public of the application by legal publication, at least once, in a newspaper of general circulation in the area affected by the application. The notice must be published no sooner than ten days prior to submittal of an application and no later than ten days after submittal of an application. Form of the notice must be provided by the department and must include a statement that public comments may be submitted to the department concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

(9) A conditional air quality open burning permit granted under (4)(a) of this rule is a temporary measure to allow time for the entity generating the trade wastes to develop alternative means of disposal.

(10) When the department approves or denies the application for a permit under this rule, a person who is directly and adversely affected by the department's decision may request a hearing before the board in the manner provided in 75-2-211, MCA. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, 75-2-211, MCA; NEW, 1982 MAR p. 691, Eff. 4/16/82; AMD, 1991 MAR p. 126, Eff. 2/1/91; AMD, 1992 MAR p. 2285, Eff. 10/16/92; AMD, 1994 MAR p. 2528, Eff. 9/9/94; AMD, 1995 MAR p. 535, Eff. 4/14/95; TRANS, from DHES, 1996 MAR p. 2285; AMD, 1999 MAR p. 1660, Eff. 7/23/99; AMD, 2002 MAR p. 3586, Eff. 12/27/02; AMD, 2011 MAR p. 569, Eff. 4/15/11; AMD, 2016 MAR p. 1164, Eff. 7/9/16.)

17.8.613 CHRISTMAS TREE WASTE OPEN BURNING PERMITS

(1) The department may issue an air quality open burning permit for disposal of Christmas tree waste, as defined in ARM 17.8.601(2).

(2) The department may issue an air quality Christmas tree waste open burning permit if the department determines that emissions from open burning will not endanger public health or welfare or cause or contribute to a violation of any Montana or federal ambient air quality standard.

(3) Christmas tree waste open burning must conform with BACT.

(4) A permit issued under this rule is valid for one year, and applicants may reapply for a permit annually.

(5) The department may place any reasonable requirements in an air quality Christmas tree waste open burning permit that the department determines will reduce emissions of air pollutants or minimize the impact of emissions, and the recipient of a permit must adhere to those conditions. The following conditions, at a minimum, must be included in any air quality Christmas tree waste open burning permit:

(a) BACT for the year covered by the permit; and

(b) a provision that the source may be required, prior to each burn, to receive approval from the department of the date and time of the proposed burn to ensure that good ventilation exists and to assign burn priorities, if necessary. Approval may be requested by calling the department at (800) 225-6779.

(6) An application for an air quality Christmas tree waste open burning permit must be made on a form provided by the department. The applicant shall provide adequate information to enable the department to determine whether the application satisfies the requirements of this rule for a permit.

(7) An applicant for an air quality Christmas tree waste open burning permit shall notify the public of its application either by publishing a notice in a newspaper of general circulation or by posting at least two public notices, one on the property as described in (a)(i), and one in a conspicuous location at the county courthouse as described in (a)(ii).

(a) Posted public notices must comply with the following conditions:

(i) at least one public notice must be posted on the property where the open burning is to occur, near the closest public right-of-way to the property, in a location clearly visible from the right-of-way;

(ii) at least one public notice must be posted in a conspicuous location at the county courthouse in the county where the burning is to take place;

(iii) the two public notices must be posted no sooner than ten days prior to submittal of the application and no later than ten days after submittal of the application and must remain posted in a visible condition for a minimum of 15 days; and

(iv) the two public notices must state the information in the application, the procedure for providing public comment to the department on the application, the date by which public comments must be submitted to the department, and the procedure for requesting a copy of the department's decision.

(b) Publication of public notices in a newspaper must:

(i) be by legal publication, at least once, in a newspaper of general circulation in the area affected by the application;

(ii) be published no sooner than ten days prior to submittal of the application and no later than ten days after submittal of the application; and

(iii) follow a form provided by the department, including a statement that public comments may be submitted to the department concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

(8) When the department approves or denies the application for a permit under this rule, a person who is directly and adversely affected by the department's decision may request a hearing before the board in the manner provided in 75-2-211, MCA. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, 75-2-211, MCA; NEW, 1994 MAR p. 2528, Eff. 9/9/94; TRANS, from DHES, 1996 MAR p. 2285; AMD, 1999 MAR p. 1660, Eff. 7/23/99; AMD, 2011 MAR p. 569, Eff. 4/15/11; AMD, 2016 MAR p. 1164, Eff. 7/9/16.)

17.8.614 COMMERCIAL FILM PRODUCTION OPEN BURNING PERMITS

(1) he department may issue an air quality commercial film production open burning permit for open burning of otherwise prohibited material as part of a commercial, 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 open burning.

(2) he department may issue an air quality commercial film production open burning permit under this rule if the department determines that emissions from open burning will 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) Open burning under this rule must conform with BACT.

(5) The department may place any reasonable requirements in an air quality commercial film production open burning permit issued under this rule that the department determines will reduce emissions of air pollutants or minimize the impact of emissions, and the recipient of a permit must adhere to those conditions.

(6) n application for an air quality commercial film production open burning permit must be made on a form provided by the department. The applicant shall provide adequate information to enable the department to determine whether the application satisfies the requirements of this rule for a permit. Proof of publication of public notice, as required by (7), must be submitted to the department before an application will be considered complete.

(7) n applicant for an air quality commercial film production open burning permit shall notify the public of its application by legal publication, at least once, in a newspaper of general circulation in the area affected by the application. The notice must be published no sooner than ten days prior to submittal of the application and no later than ten days after submittal of the application. Form of the notice must be provided by the department and must include a statement that public comments may be submitted to the department concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

(8) When the department approves or denies the application for a permit under this rule, a person who is directly and adversely affected by the department's decision may request a hearing before the board in the manner provided in 75-2-211, MCA. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, 75-2-211, MCA; NEW, 1994 MAR p. 2528, Eff. 9/9/94; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2002 MAR p. 3586, Eff. 12/27/02; AMD, 2011 MAR p. 569, Eff. 4/15/11; AMD, 2016 MAR p. 1164, Eff. 7/9/16.)

17.8.615 FIREFIGHTER TRAINING

(1) The department may issue an air quality open burning permit for open burning of asphalt shingles, tar paper, or insulated wire which is part of a building or standing structure, oil or petroleum products, and automobile or aircraft bodies and interiors, for training firefighters, if:

(a) the fire will be restricted to a building or structure, a permanent training facility, or other appropriate training site, in a site other than a solid waste disposal site;

(b) the material to be burned will not be allowed to smolder after the training session has terminated, and no public nuisance will be created;

(c) all asbestos-containing material has been removed;

(d) asphalt shingles, flooring material, siding, and insulation which might contain asbestos have been removed, unless samples have been analyzed by a certified laboratory and shown to be asbestos-free;

(e) all prohibited material that can be removed safely and reasonably has been removed;

(f) the open burning accomplishes a legitimate training need;

(g) 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 open 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) The department may place any reasonable requirements in an air quality firefighter training open burning permit that the department determines will reduce emissions of air pollutants or will minimize the impact of emissions, and the recipient of a permit must adhere to those conditions.

(3) The applicant may be required, prior to each burn, to notify the department of the anticipated date and location of the proposed training exercise and the type and amount of material to be burned. The department may be notified by phone, fax, or in writing.

(4) An application for an air quality firefighter training open burning permit must be made on a form provided by the department. The applicant must provide adequate information to enable the department to determine whether the application satisfies the requirements of this rule for a permit.

(5) Proof of publication of public notice, consistent with this rule, must be submitted to the department before an application will be considered complete. An applicant for an air quality firefighter training open burning permit shall notify the public of the application for a permit by legal publication, at least once, in a newspaper of general circulation in the area affected by the application. The notice must be published no sooner than ten days prior to submittal of an application and no later than ten days after submittal of an application. The form of the notice must be provided by the department and must include a statement that public comments may be submitted to the department concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

(6) When the department approves or denies the application for a permit under this rule, a person who is directly and adversely affected by the department's decision may request a hearing before the board in the manner provided in 75-2-211, MCA. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, 75-2-211, MCA; NEW, 1982 MAR p. 691, Eff. 4/1/82; AMD, 1994 MAR p. 2528, Eff. 9/9/94; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2011 MAR p. 569, Eff. 4/15/11; AMD, 2016 MAR p. 1164, Eff. 7/9/16.)

17.8.740 DEFINITIONS For the purposes of this subchapter:

(1) "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 42 U.S.C. 7410, et seq. or 75-2-101, et seq., MCA, that would be emitted from any proposed emitting unit or modification which the department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such emitting unit 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 contaminant. In no event may application of BACT result in emission of any regulated air pollutant that would exceed the emissions allowed by any applicable standard under ARM Title 17, chapter 8, subchapter 3, and this subchapter. If the department determines that technological or economic limitations on the application of measurement methodology to a particular class of emitting units 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 that achieve equivalent results.

(2) "Construct" or "construction" means:

(a) initiation of on-site fabrication, erection, or installation of an emitting unit or control equipment including, but not limited to:

(i) installation of building supports or foundations;

(ii) laying of underground pipework; or

(iii) construction of storage structures; or

(b) the installation of any portable or temporary equipment or facilities.

(3) "Day" means calendar day unless otherwise stated.

(4) "Emitting unit" means:

(a) any equipment that emits or has the potential to emit any regulated air pollutant under the Clean Air Act of Montana through a stack(s) or vent(s); or

(b) any equipment from which emissions consist solely of fugitive emissions of a regulated air pollutant under the Clean Air Act of Montana.

(5) "Existing emitting unit" means an emitting unit that was in existence and operating or was capable of being operated on March 16, 1979, or for which the department had issued a permit by that date.

(6) "Facility" means any real or personal property that is either stationary or portable and is located on one or more contiguous or adjacent properties under the control of the same owner or operator and that emits or has the potential to emit any air pollutant subject to regulation under the Clean Air Act of Montana or the Federal Clean Air Act, including associated control equipment that affects or would affect the nature, character, composition, amount, or environmental impacts of air pollution and that has the same two-digit standard industrial classification code. A facility may consist of one or more emitting units.

(7) "Install" or "installation" means to set into position and connect or adjust for use.

(8) "Modify" does not include routine maintenance, repair, or replacement but means:

(a) construction or changes in operation at a facility or emitting unit for which the department has issued a Montana air quality permit under this chapter, except when a permit is not required under ARM 17.8.745;

(b) construction or changes in operation at a facility or emitting unit for which a Montana air quality permit has not been issued under this chapter but that subjects the facility or emitting unit to the requirements of ARM 17.8.743;

(c) construction or changes in operation at a facility or emitting unit that would violate any condition in the facility's Montana air quality permit, any board or court order, any control plan within the Montana state implementation plan, or any rule in this chapter, except as provided in ARM 17.8.745;

(d) construction or changes in operation at a facility or emitting unit that would qualify as a major modification of a major stationary source under subchapters 8, 9, or 10 of this chapter;

(e) construction or changes in operation at a facility or emitting unit that would affect the plume rise or dispersion characteristics of emissions in a manner that would cause or contribute to a violation of an ambient air quality standard or an ambient air increment, as defined in ARM 17.8.804; or

(f) any change in operation that affects emissions and that was not previously permitted, except that a change in operation that does not result in an increase in emissions because of the change is not a modification.

(9) "Montana air quality permit" means a preconstruction permit issued under this subchapter that may include requirements for the construction and subsequent operation of an emitting unit(s) or facility.

(11) "New or modified emitting unit" means an emitting unit that was not constructed or upon which construction was not commenced prior to March 16, 1979.

(12) "Owner or operator" means the owner of a facility or other person designated by the owner as responsible for overall operation of the facility.

(13) "Potential to emit" means the maximum capacity of a facility or emitting unit, within physical and operational design, to emit a pollutant. Any physical or operational limitation on the capacity of the facility or emitting unit 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, is treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions are not considered in determining potential to emit.

(a) have associated fixed capital costs in excess of 50% of the fixed capital cost necessary to construct a comparable, entirely new emitting *unit;*

(b) change the design of the emitting unit, including associated control equipment; or

(c) increase the potential to emit of the emitting unit.

(15) "Secondary emissions" means emissions that would occur as a result of the construction or operation of a facility or emitting unit, but do not come from the facility or emitting unit itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the facility or emitting unit which causes the secondary emissions. Secondary emissions may include, but are not limited to:

(a) emissions from trains coming to or from the facility or emitting unit;

(b) emissions from any off-site support facility that otherwise would not be constructed or increase its emissions as a result of the construction or operation of the facility or emitting unit. (History: 75-2-111, 75-2-204, MCA; IMP, 75-2-211, MCA; NEW, 2002 MAR p. 3567, Eff. 12/27/02.)

17.8.743 MONTANA AIR QUALITY PERMITS--WHEN REQUIRED

(1) Except as provided in ARM 17.8.744 and 17.8.745, a person may not construct, install, modify, or operate any of the following without first obtaining a Montana air quality permit issued by the department:

(a) a new facility or emitting unit with the potential to emit airborne lead in an amount greater than five tons per year or a modification to an existing facility or emitting unit that results in an increase in the facility or emitting unit's potential to emit airborne lead by an amount greater than 0.6 tons per year;

(b) ~~asphalt concrete plants, mineral crushers, and~~ mineral screens that have the potential to emit more than 15 tons per year of any airborne pollutant, other than lead, that is regulated under this chapter;

(c) ~~any incinerator, as defined in 75-2-103(11), MCA, and that is subject to the requirements of 75-2-215, MCA~~;

(d) any facility or emitting unit upon which construction commenced, or that was installed, before November 23, 1968, when that facility or emitting unit is modified after that date and the modification increases the potential to emit by more than 25 tons per year of any airborne pollutant, other than lead, that is regulated under this chapter; or

(e) any other facility or emitting unit upon which construction was commenced, or that was installed, after November 23, 1968, that is not specifically excluded under ARM 17.8.744, and that has the potential to emit more than 25 tons per year of any airborne pollutant, other than lead, that is regulated under this chapter.

(2) An owner or operator who has submitted an application and received a completeness determination from the department pursuant to ARM 17.8.759 may, prior to receiving a Montana air quality permit, initiate the following seasonal construction activities that, when completed, would have no anticipated increases in emissions of regulated air pollutants associated with them:

(a) installing concrete foundation work;

(b) installing below-ground plumbing;

(c) installing ductwork; or

(d) other infrastructure and/or excavation work involving the same.

(3) Notwithstanding the ability to undertake the construction activities described above, the department may issue a letter instructing the owner or operator to immediately cease such activities pending a final determination on an application if it finds that the proposed project would result in a violation of the state implementation plan or would interfere with the attainment or maintenance of any federal or state ambient air quality standard.

(4) Nothing in (2) obligates the department to issue a Montana air quality permit. An owner or operator who has received a completeness determination and who elects to engage in initial construction activities accepts the regulatory risks of engaging in such activities. The owner or operator acknowledges that the department may subsequently order cessation of initial construction activities, ultimately decline to issue a Montana air quality permit, or issue a permit that diminishes or renders useless the value of work completed prior to permit issuance. In voluntarily choosing to engage in such activities while knowing of these risks, the owner or operator agrees that, in the event the department seeks injunctive relief to halt or prohibit construction, no irreparable harm has resulted in any way to the owner or operator from these activities.

(5) The provisions of (2) do not supersede any other local, state, or federal requirements associated with the activities set forth therein . (History: 75-2-111, 75-2-204, MCA; IMP, 75-2-211, MCA; NEW, 2002 MAR p . 3567, Eff . 12/27/02 .)

17.8.744 MONTANA AIR QUALITY PERMITS--GENERAL EXCLUSIONS

(1) A Montana air quality permit is not required under ARM 17.8.743 for the following:

(a) residential fireplaces, barbecues, and similar devices for recreational, cooking, or heating use;

(b) mobile emitting units, including motor vehicles, trains, aircraft, and other such self-propelled vehicles;

(c) laboratory equipment used for chemical or physical analysis;

(d) any activity or equipment associated with the use of agricultural land or the planting, production, harvesting, or storage of agricultural crops (this exclusion does not apply to the processing of agricultural products by commercial businesses);

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

(f) emergency equipment installed in industrial or commercial facilities for use when the usual sources of heat, power, or lighting are temporarily unobtainable or unavailable and when the loss of heat, power, or lighting causes, or is likely to cause, an adverse effect on public health or facility safety. Emergency equipment use extends only to those uses that alleviate such adverse effects on public health or facility safety;

(g) any activity or equipment associated with the construction, maintenance, or use of roads except emitting units for which a permit is required under ARM 17.8.743;

(h) open burning, which is regulated under ARM Title 17, chapter 8, subchapter 6, and an open burning permit may be required under that subchapter;

(i) drilling rig stationary engines and turbines that do not have the potential to emit more than 100 tons per year of any pollutant regulated under this chapter and that do not operate in any single location for more than 12 months;

(j) temporary process or emission control equipment, replacing malfunctioning process or emission control equipment, and meeting the requirements of ARM 17.8.110(7) through (9);

(k) routine maintenance, repair, or replacement of equipment and equipment used to perform routine maintenance, repair, or replacement.

(History: **75-2-111**, **75-2-204**, **75-2-234**, MCA; IMP, **75-2-211**, **75-2-234**, MCA; NEW, 2002 MAR p. 3567, Eff. 12/27/02.)

17.8.745 MONTANA AIR QUALITY PERMITS--EXCLUSION FOR DE MINIMIS CHANGES

(1) A Montana air quality permit is not required under ARM 17.8.743 for de minimis changes as specified below:

(a) Construction or changed conditions of operation at a facility for which a Montana air quality permit has been issued that do not increase the facility's potential to emit by more than five tons per year of any pollutant except:

(i) any construction or changed conditions of operation at a facility that would violate any condition in the facility's existing Montana air quality permit or any applicable rule contained in this chapter is prohibited, except as allowed in (2);

(ii) any construction or changed conditions of operation at a facility that would qualify as a major modification of a major stationary source under subchapters 8, 9, or 10 of this chapter;

(iii) any construction or changed conditions of operation at a facility that would affect the plume rise or dispersion characteristics of the emissions in a manner that would cause or contribute to a violation of an ambient air quality standard or an ambient air increment, as defined in ARM 17.8.804;

(iv) any construction or improvement project with a potential to emit more than five tons per year may not be artificially split into smaller projects to avoid permitting under this subchapter; and

(v) emission reductions obtained through offsetting within a facility are not included when determining the potential emission increase from construction or changed conditions of operation, unless such reductions are made federally enforceable.

(b) The owner or operator of any facility making a de minimis change pursuant to (1)(a) shall notify the department if the change would include addition of a new emissions unit, a change in control equipment, stack height, stack diameter, stack flow, stack gas temperature, source location, or fuel specifications, or would result in an increase in source capacity above its permitted operation.

(c) The following are excluded from the notice requirements of (1)(b):

(i) day-to-day fluctuations of the parameters described in (1)(b), occurring as a result of the design or permitted operations of the facility, including startup and shutdown of emission sources at the facility; and

(ii) addition, modification, or replacement of pumps, valves, flanges, and similar emission sources. The department shall develop, maintain, and update a list of emission sources it believes qualify for exclusion from the notice requirements. Upon request, the department shall provide a copy of the list to interested persons.

(d) If notice is required under (1)(b), the owner or operator shall submit the following information to the department in writing at least ten days prior to startup or use of the proposed de minimis change or as soon as reasonably practicable in the event of an unanticipated circumstance causing the de minimis change:

(i) a description of the proposed de minimis change requiring notice, including the anticipated date of the change;

(ii) sufficient information to calculate the potential emissions resulting from the proposed de minimis change; and

(iii) if applicable, an explanation of the unanticipated circumstance causing the change.

(e) The notice requirements under (1)(d) do not supersede, or otherwise change, any requirements in 40 CFR Parts 60, 61, or 63.

(2) A Montana air quality permit may be amended pursuant to ARM 17.8.764, for changes made under (1)(a)(i) that would otherwise violate an existing condition in the permit. Conditions in the permit concerning control equipment specifications, operational procedures, or testing, monitoring, record keeping, or reporting requirements may be modified if the modification does not violate any statute, rule, or the state implementation plan. Conditions in the permit establishing emission limits, or production limits in lieu of emission limits, may be changed or added under (1)(a), if the owner or operator agrees to such changes or additions. (History: 75-2-111, 75-2-204, MCA; IMP, 75-2-211, MCA; NEW, 2002 MAR p. 3567, Eff. 12/27/02; AMD, 2010 MAR p. 1292, Eff. 5/28/10.)

17.8.748 NEW OR MODIFIED EMITTING UNITS--PERMIT APPLICATION REQUIREMENTS

(1) The owner or operator of a proposed new or modified facility or emitting unit that is subject to ARM 17.8.743, shall, no later than 180 days before construction begins, or if construction is not required, no later than 120 days before installation, modification, or operation begins, submit an application to the department for a Montana air quality permit on an application form provided by the department. The department may, for good cause shown, waive or shorten the time required for filing the application.

(2) The department may provide pre-application consultation and nonbinding, advisory opinions regarding any potential issues identified by the owner or operator that may arise regarding the permit application.

(3) A permit application submitted pursuant to this subchapter must contain certification by a responsible official of truth, accuracy, and completeness. This certification must state that, based on information and belief formed after reasonable inquiry, the statements and information in the application are true, accurate, and complete. The following persons are authorized to sign an application on behalf of the owner or operator of a new or modified facility or emitting unit(s) :

(a) an application submitted by a corporation or a limited liability company must be signed by an individual specified in the corporate bylaws or the limited liability company operating agreement as having the authority to bind the corporation or limited liability company in contracts, liabilities, and other company obligations;

(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 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 the individual's authorized agent.

(4) An application for a Montana air quality permit must include the following:

(a) a map and diagram showing the location of the proposed new or modified facility or emitting unit(s) . The map and diagram must also include the location of each associated stack, the property involved, the height and outline of associated buildings, and the height and outline of each associated stack;

(b) a description of the proposed new or modified facility or emitting unit(s) , including data on expected production capacity, raw materials to be processed, and major equipment components;

(c) a description of any 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 contaminants emitted, quantities and means of disposal of collected contaminants, and the air quality relationship of these factors to conditions created by existing stacks or emitting units or stacks associated with the proposed new or modified emitting unit(s) ;

(e) normal and maximum operating schedules;

(f) drawings, blueprints, specifications, or other information adequate to show the design and operation of process and air pollution control equipment involved;

(g) process flow diagrams showing material balances;

(h) a detailed schedule of construction or modification;

(i) a description of shakedown procedures to the extent shakedown is expected to affect emissions, and the anticipated duration of the shakedown period for each new or modified emitting unit;

(j) any other information requested by the department that is necessary for the department to review the application and determine whether the new or modified facility or emitting unit(s) will comply with applicable standards and rules;

(k) information regarding site characteristics necessary to conduct an assessment of impacts under the Montana Environmental Policy Act, 75-1-101 , et seq., MCA, as required on the application form; and

(l) the appropriate air quality permit application fee required under ARM 17.8.504.

(5) An applicant is not required to submit information previously filed with the department. If an applicant does not want to submit information that has been submitted previously to the department, the applicant shall specify in the application the information previously submitted, and, wherever possible, shall specify the date upon which the information was submitted. Any information the department determines is in its possession becomes part of the application.

(6) Section 75-2-105 , MCA, specifies the procedure for filing a declaratory judgment action to establish the existence, and confidential status of, trade secret information provided in a permit application.

(7) An applicant for a permit shall notify the public of the application by legal publication in a newspaper of general circulation in the area affected by the application. The notice must be published within ten days before, or after, submittal of the application. The form of the notice must be as provided to the applicant by the department.

History: 75-2-111, 75-2-204, MCA; IMP, 75-2-211, MCA; NEW, 2002 MAR p. 3567, Eff. 12/27/02.

17.8.749 CONDITIONS FOR ISSUANCE OR DENIAL OF PERMIT

(1) When the department issues a Montana air quality permit, the permit must authorize the construction and operation of the facility or emitting unit subject to the conditions in the permit and to the requirements of this subchapter. The permit must contain any conditions necessary to assure compliance with the Federal Clean Air Act, with the Clean Air Act of Montana and rules adopted under those acts.

~~(2) The permit may contain a schedule for specified permit conditions to become effective, subject to the time limits stated in ARM 17.8.762. The department may extend a deadline specified in the schedule, but an extension may not exceed five years.~~

(3) A Montana air quality permit may not be issued for a new or modified facility or emitting unit unless the applicant demonstrates that the facility or emitting unit can be expected to operate in compliance with the Clean Air Act of Montana and rules adopted under that Act, the Federal Clean Air Act and rules promulgated under that Act (as incorporated by reference in ARM 17.8.767) , and any applicable requirement contained in the Montana State Implementation Plan (as incorporated by reference in ARM 17.8.767) , and that it will not cause or contribute to a violation of any Montana or national ambient air quality standard.

(4) The department shall issue a Montana air quality permit for the following unless the department demonstrates that the emitting unit is not expected to operate in compliance with applicable rules, standards, or other requirements:

(a) emitting units constructed or installed between November 23, 1968, and March 16, 1979; and

(b) emitting units constructed or installed before November 23, 1968, and modified between November 23, 1968, and March 16, 1979.

(5) In a Montana air quality permit, the department shall identify those conditions that are derived from state law, and are not derived from the Federal Clean Air Act, 42 U.S.C. 7401, et seq., the Montana State Implementation Plan, or other federal air quality requirements. Compliance with these conditions is not required by the state implementation plan, and is not necessary for attainment or maintenance of federal ambient air quality standards. These conditions must be identified in the permit as "state-only," and are not intended by the department to be enforceable under federal law.

(6) Nothing in this subchapter obligates the department to issue a Montana air quality permit. The department may subsequently order cessation of initial construction activities, decide not to issue the permit, or issue a permit that diminishes or renders useless the value of work completed prior to permit issuance.

(7) If the department denies an application for a Montana air quality permit it shall notify the applicant in writing of the reasons for the permit denial and advise the applicant of the right to appeal the department's decision to the board as provided in 75-2-211 or 75-2-213, MCA, as applicable.

(8) If the department denies an application for a Montana air quality permit, it may not accept any further air quality permit application from the owner or operator for that project for which the permit was sought until:

(a) the time for requesting a hearing before the board has expired; or

(b) if a hearing before the board is requested, the board has issued a final decision in the matter; or

(c) the applicant has submitted additional information in writing that adequately addresses the reasons for denial.

(History: 75-2-111, 75-2-204, MCA; IMP, 75-2-211, MCA; NEW, 2002 MAR p. 3567, Eff. 12/27/02; AMD, 2003 MAR p. 2272, Eff. 10/17/03; AMD, 2016 MAR p. 1164, Eff. 7/9/16.)

17.8.752 EMISSION CONTROL REQUIREMENTS

(1) The owner or operator of a new or modified facility or emitting unit for which a Montana air quality permit is required by this subchapter shall install on the new or modified facility or emitting unit the maximum air pollution control capability that is technically practicable and economically feasible, except that:

(a) BACT must be utilized.

(i) Existing emitting units and those emitting units constructed or installed after March 16, 1979, that were not previously subject to this subchapter become subject to this rule when any modification to the emitting unit requires a Montana air quality permit; however, only the specific emitting unit that is modified becomes subject to this rule.

(b) The lowest achievable emission rate must be met to the extent required by ARM Title 17, chapter 8, subchapters 9 and 10, for those emitting units subject to those subchapters.

(2) The owner or operator of a new or modified facility or emitting unit for which a permit is required by this subchapter shall operate all equipment to provide the maximum air pollution control for which it was designed.

(History: 75-2-111, 75-2-204, MCA; IMP, 75-2-211, MCA; NEW, 2002 MAR p. 3567, Eff. 12/27/02.)

17.8.755 INSPECTION OF PERMIT

(1) Current Montana air quality permits must be made available for department inspection at the location of the facility or emitting unit for which the permit has been issued, unless the permittee and the department mutually agree on a different location.

(History: 75-2-111, 75-2-204, MCA; IMP, 75-2-211, MCA; NEW, 2002 MAR p. 3567, Eff. 12/27/02.)

17.8.756 COMPLIANCE WITH OTHER REQUIREMENTS

(1) This subchapter does not relieve any owner or operator of the responsibility for complying with any applicable federal or Montana statute, rule or board or court order, except as specifically provided in this subchapter.
(2) Issuance of a Montana air quality permit does not affect the responsibility of a permittee to comply with the applicable requirements of any control strategy contained in the Montana State Implementation Plan.
(3) A permittee may not commence operation of a facility or emitting unit if construction, modification or installation has been completed in such a manner that the facility or emitting unit cannot operate in compliance with applicable statutes, rules, or requirements specified in the permit.
(History: 75-2-111, 75-2-204, MCA; IMP, 75-2-211, MCA; NEW, 2002 MAR p. 3567, Eff. 12/27/02.)

17.8.759 REVIEW OF PERMIT APPLICATIONS
(1) Except for applications subject to ARM 17.8.760, when an application for a permit does not require an environmental impact statement, the application is not considered filed until the owner or operator has submitted to the department all required fees and all information and completed application forms.
(2) The department shall notify the applicant in writing within 30 days after receiving an application if an application is incomplete. The notice must list the reasons the application is considered incomplete, any additional information required, and the date by which the applicant must submit any additional required information. If the requested additional information is not submitted by the date specified by the department in the notice, the application is considered withdrawn unless the applicant requests in writing an extension of time for submission of the additional information. If the department receives additional application information, whether prior to a determination of completeness or in response to a notice of incompleteness, the 30-day application completeness review period begins again.
(3) Within 40 days after receiving a complete application for a permit, the department shall make a preliminary determination as to whether the permit should be issued, issued with conditions, or denied.
(4) After making a preliminary determination, the department shall notify those members of the public who requested such notification subsequent to the notice required by ARM 17.8.748 and the applicant of the department's preliminary determination. The notice must specify that comments may be submitted on the information submitted by the applicant and on the department's preliminary determination. The notice must also specify the following:
(a) that a complete copy of the application and the department's analysis of the application is available from the department and in the air quality control region where the emitting unit is located;
(b) the date by which all comments on the preliminary determination must be submitted in writing, which must be within:
(i) 30 days after the notice is mailed for applications subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661 or the provisions of 75-2-215 , MCA, or applications that require preparation of an environmental impact statement; or
(ii) 15 days after the notice is mailed for all other applications, except as provided in (5) ; and
(c) the date by which a final decision must be made pursuant to 75-2-211 (9) , MCA.
(5) The department may, on its own action, or at the request of the applicant or member of the public, extend by 15 days the period within which public comments may be submitted as described in (4) (b) (ii) and the date for issuing a final decision on a permit application as described in 75-2-211 (9) (b) , MCA, if the department finds that an extension is necessary to allow the department to make an informed decision.
(a) Any request for an extension, as provided under (5) , by the applicant or a member of the public must be submitted to the department by the date that written comments on the preliminary determination originally were due.
(b) The department shall extend the comment period if the preliminary determination contains one or more requirements of 40 CFR part 63, as incorporated by reference in this chapter, that require a 30-day comment period.
(c) The department shall notify the applicant of any extensions granted under (5) .
(6) The time for issuing a final decision may be extended for 30 days by written agreement of the department and the applicant. The department may grant additional 30-day extensions at the request of the applicant.
(History: 75-2-111, 75-2-204, MCA; IMP, 75-2-211, MCA; NEW, 2002 MAR p. 3567, Eff. 12/27/02; AMD, 2003 MAR p. 2272, Eff. 10/17/03; AMD, 2005 MAR p. 2663, Eff. 12/23/05.)

17.8.760 ADDITIONAL REVIEW OF PERMIT APPLICATIONS
(1) When an application for a Montana air quality permit requires an environmental impact statement under the Montana Environmental Policy Act, 75-1-101 , et seq., MCA, the procedures for public review are those required by the Montana Environmental Policy Act and the rules adopted by the board and department to implement the Act, ARM Title 17, chapter 4, subchapter 6, and ARM 17.4.701 through 17.4.703.
(2) When an application for a Montana air quality permit is also an application for certification under the Major Facility Siting Act, public review is governed by the rules implementing that Act, ARM Title 17, chapter 20.
(History: 75-2-111, 75-2-204, 75-20-216, MCA; IMP, 75-2-211, 75-20-216, MCA; NEW, 2002 MAR p. 3567, Eff. 12/27/02.)

17.8.762 DURATION OF PERMIT

(1) A Montana air quality permit is in effect until the permit is revoked under ARM 17.8.763, amended under ARM 17.8.764, or modified under ARM 17.8.748. Portions of a Montana air quality permit may be revoked, amended, or modified without invalidating the remainder of the permit.
(2) A permit issued prior to construction or installation of a new or modified facility or emitting unit may provide that the permit or a portion of the permit will expire unless construction or installation is commenced within the time specified in the permit, which may not be less than one year or more than three years after the permit is issued.
(History: 75-2-111, 75-2-204, MCA; IMP, 75-2-211, MCA; NEW, 2002 MAR p. 3567, Eff. 12/27/02.)

17.8.763 REVOCATION OF PERMIT
(1) The department may revoke a Montana air quality permit or any portion of a permit upon written request of the permittee, or for violation of any requirement of the Clean Air Act of Montana, rules adopted under that Act, the Federal Clean Air Act and rules promulgated under that Act (as incorporated by reference in ARM 17.8.767), or any applicable requirement contained in the Montana State Implementation Plan (as incorporated by reference in ARM 17.8.767).
(2) The department shall notify the permittee in writing of its intent to revoke a permit or a portion of a permit. The department's decision to revoke a permit or any portion of a permit becomes final when 15 days have elapsed after the permittee's receipt of the notice unless the permittee requests a hearing before the board.
(3) When the department has attempted unsuccessfully by certified mail, return receipt requested, to deliver a notice of intent to revoke a permit to a permittee at the last address provided by the permittee to the department, the permittee is deemed to have received the notice on the date that the department publishes the last of three notices of revocation, once each week for three consecutive weeks, in a newspaper published in the county in which the permitted facility was located, if a newspaper is published in the county or if no newspaper is published in the county in a newspaper having a general circulation in the county.
(4) When the department revokes a permit under this rule, the permittee may request a hearing before the board. A hearing request must be in writing and must be filed with the board within 15 days after receipt of the department's notice of intent to revoke the permit. Filing a request for a hearing postpones the effective date of the department's decision until issuance of a final decision by the board.
(5) A hearing under this rule is governed by the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.

(History: 75-2-111, 75-2-204, MCA; IMP, 75-2-211, MCA; NEW, 2002 MAR p. 3567, Eff. 12/27/02; AMO, 2003 MAR p. 2272, Eff. 10/17/03; AMO, 2011 MAR p. 568, Eff. 4/15/11.)

17.8.764 ADMINISTRATIVE AMENDMENT TO PERMIT (1) The department may amend a Montana air quality permit, or any portion of a permit, for the following reasons:

(a) changes in any applicable rules adopted by the board;

(b) changes in operation that do not result in an increase in emissions. The owner or operator of a facility may not increase the facility's emissions beyond permit limits unless the increase meets the criteria in ARM 17.8.745 for a de minimis change not requiring a permit, or unless the owner or operator applies for and receives another permit in accordance with ARM 17.8.748, 17.8.749, 17.8.752, 17.8.755, and 17.8.756, and with all applicable requirements in ARM Title 17, chapter 8, subchapters 8, 9, and 10;

(c) administrative errors in the permit that do not affect substantive provisions of the permit.

(2) The department shall notify the permittee in writing of any proposed amendments to the permit. The department shall serve the notice as provided for in ARM 17.8.749. The permit is deemed amended in accordance with the notice when 15 days have elapsed after service of the notice unless the permittee requests a hearing before the board.

(3) When the department amends a permit under this rule, the permittee may request a hearing before the board. A hearing request must be in writing and must be filed with the board within 15 days after service of the department's notice of intent to amend the permit. Filing a request for hearing postpones the effective date of the department's decision until issuance of a final decision by the board.

(4) A hearing under this rule is governed by the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA. (History: 75-2-111, 75-2-204, MCA; IMP, 75-2-211, MCA; NEW, 2002 MAR p. 3567, Eff. 12/27/02.)

17.8.765 TRANSFER OF PERMIT

(1) A Montana air quality permit may be transferred from one location to another if:
(a) the department receives a complete notice of intent to transfer location, including:
(i) written notice of intent to transfer location on forms provided by the department; and
(ii) 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 a statement that public comment will be accepted by the department for 15 days after the date of publication and that comments should be addressed to: Air Quality Permitting Section, Air and Waste Management Bureau, Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901;
(b) the permitted facility will operate in the new location for less than one year;
(c) the permitted facility can be expected to operate in compliance with:
(i) the Federal Clean Air Act, the Clean Air Act of Montana and rules adopted under those acts, including the ambient air quality standards; and
(ii) the Montana State Implementation Plan.
(d) the owner or operator of the permitted facility complies with ARM Title 17, chapter 8, subchapters 8, 9 and 10, as applicable.
(2) A Montana air quality permit may be transferred from one owner or operator to another if the department receives written notice of intent to transfer, including the names and authorized signatures of the transferor and the transferee.
(3) The department may not approve or conditionally approve a permit transfer if approval would result in a violation of the Clean Air Act of Montana or rules adopted under that Act, including the ambient air quality standards. If the department does not approve, conditionally approve, or deny a permit transfer within 30 days after receipt of a complete notice of intent to transfer, as described in (1) (a) or (2) , the transfer is deemed approved.
(History: 75-2-111, 75-2-204, MCA; IMP, 75-2-211, MCA; NEW, 2002 MAR p. 3567, Eff. 12/27/02.)

17.8.767 INCORPORATION BY REFERENCE

(1) For the purposes of this subchapter, the board adopts and incorporates by reference:
(a) 40 CFR Part 51, subpart I, specifying requirements for state programs for issuing Montana air quality permits;
(b) 40 CFR Part 51, Appendix M, specifying recommended test methods for state implementation plans;
(e) Tables 4-1 and 4-3 of the Department of Environmental Quality Air Quality Health Risk Assessment Procedures/Model, January 1995;
(f) 42 USC 7412, et seq., listing hazardous air pollutants; and
(g) 40 CFR Part 75, pertaining to mercury requirements.
(2) Copies of materials incorporated by reference in this subchapter may be obtained as referenced in ARM 17.8.102(3) and (4).

Subchapter 8

Prevention of Significant Deterioration of Air Quality

17.8.801 DEFINITIONS In this subchapter, the following definitions apply:

(1) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with (1)(a) through (c).

(a) Actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The department may determine that a different time period is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(b) The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(c) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(2) "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate or hours of operation, or both) and the most stringent of the following:

(a) the applicable standards as set forth in ARM 17.8.340 or 17.8.341;

(b) the applicable Montana State Implementation Plan emissions limitation, including those with a future compliance date; or

(c) the emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(3) "Baseline area" means any intrastate area (and every part thereof) designated as attainment or unclassifiable in 40 CFR 81.327 in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than one $\mu g/m^3$ (annual average) of the pollutant for which the minor source baseline date is established, except baseline areas for PM-2.5 are designated when a major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than 0.3 $\mu g/m^3$ as an annual average for PM-2.5.

(a) Area redesignations under section 107 of the FCAA to attainment or unclassifiable cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

(i) establishes a minor source baseline date; or

(ii) is subject to 40 CFR 52.21 or regulations approved pursuant to 40 CFR 51.166, and would be constructed in the same state as the state proposing the redesignation.

(b) Any baseline area established originally for the total suspended particulate increments shall remain in effect and shall apply for purposes of determining the amount of available PM-10 increments, except that such baseline area shall not remain in effect if the department rescinds the corresponding minor source baseline date in accordance with (21)(d).

(4) "Baseline concentration" means that ambient concentration level which exists in the baseline area at the time of the applicable minor source baseline date.

(a) A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(i) the actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in (4)(b); and

(ii) the allowable emissions of major stationary sources which commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

(b) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(i) actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

(ii) actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

(5) "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.

(6) "Best available control technology (BACT)" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each pollutant subject to regulation under the FCAA, excluding hazardous air pollutants except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in section 108(a)(1) of the FCAA, which would be emitted from any proposed major stationary source or major modification which the department, on a case-by-case basis, taking into account energy impacts, environmental impacts (including, but not limited to, the effect of the control technology option on hazardous air pollutants), 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 shall application of BACT result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under ARM 17.8.340 and 17.8.341. If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, any design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation, and shall provide for compliance by means which achieve equivalent results.

(7) "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two-digit code) as described in the standard industrial classification manual, 1987.

(8) "Commence", as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(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.

(9) "Complete" means, in reference to an application for a permit, that the application contains all the information necessary for processing the application, except that designating an application complete for purposes of permit processing does not preclude the department from requesting or accepting any additional information.

(10) "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

(11) "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the FCAA.

(12) "Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

(13) "Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the Montana State Implementation Plan, and any permit requirement established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the Montana State Implementation Plan and expressly requires adherence to any permit issued under such program.

(14) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(15) "High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

(16) "Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

(17) "Indian reservation" means any federally recognized reservation established by treaty, agreement, executive order, or act of Congress.

(18) "Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

(19) "Low terrain" means any area other than high terrain.

(20) "Major modification" means any physical change in, or change in the method of operation of, a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the FCAA, excluding hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in section 108(a)(1) of the FCAA.

(a) Any net emissions increase that is significant for volatile organic compounds or NO_x will be considered significant for ozone.

(b) A physical change or change in the method of operation shall not include:

(i) routine maintenance, repair, and replacement;

(ii) use of an alternative fuel or raw material by reason of any order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, 15 USC 791, et seq. (1988), or by reason of a natural gas curtailment plan pursuant to the Federal Power Act, 16 USC 791a, et seq. (1988 and Supp. III 1991);

(iii) use of an alternative fuel by reason of an order or rule under section 125 of the FCAA;

(iv) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) use of an alternative fuel or raw material by a stationary source which:

(A) the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR subpart I or section 51.166; or

(B) the source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;

(vi) an increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR subpart I or section 51.166; or

(vii) any change in ownership at a stationary source.

(21) The following apply to the definitions of the terms "major source baseline date" and "minor source baseline date":

(a) "major source baseline date" means:

(i) in the case of PM-10 and sulfur dioxide (SO_2), January 6, 1975;

(ii) in the case of nitrogen dioxide (NO_2), February 8, 1988; and

(iii) in the case of PM-2.5, October 20, 2010.

(b) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 or to regulations approved pursuant to 40 CFR 51.166 submits a complete application under the relevant regulation. The trigger date is:

(i) in the case of PM-10 and sulfur dioxide (SO_2), August 7, 1977;

(ii) in the case of nitrogen dioxide (NO_2), February 8, 1988; and

(iii) in the case of PM-2.5, October 20, 2011.

(c) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(i) the area in which the proposed source or modification would construct is designated as attainment or unclassifiable in 40 CFR 81.327 for the pollutant on the date of its complete application under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166; and

(ii) in the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

(d) Any minor source baseline date established originally for the total suspended particulate increments shall remain in effect and shall apply for purposes of determining the amount of available PM-10 increments, except that the department may rescind any such minor source baseline date where it can be shown, to the satisfaction of the department, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM-10 emissions.

(22) The following apply to the definition of the term "major stationary source":

(a) "major stationary source" means:

(i) any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the FCAA, excluding hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in section 108(a)(1) of the FCAA: fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, Portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

(ii) notwithstanding the stationary source size specified in (22)(a)(i), any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the FCAA, excluding hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in section 108(a)(1) of the FCAA; or

(iii) any physical change that would occur at a stationary source not otherwise qualifying under (22)(a)(i) or (ii), as a major stationary source if the change would constitute a major stationary source by itself.

(b) A major source that is major for volatile organic compounds or NO_x will be considered major for ozone.

(c) The fugitive emissions of a stationary source may not be included in determining, for any of the purposes of this subchapter, whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(i) coal cleaning plants (with thermal dryers);

(ii) kraft pulp mills;

(iii) Portland cement plants;

(iv) primary zinc smelters;

(v) iron and steel mills;

(vi) primary aluminum ore reduction plants;

(vii) primary copper smelters;

(viii) municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) hydrofluoric, sulfuric, or nitric acid plants;

(x) petroleum refineries;

(xi) lime plants;

(xii) phosphate rock processing plants;

(xiii) coke oven batteries;

(xiv) sulfur recovery plants;

(xv) carbon black plants (furnace process);

(xvi) primary lead smelters;

(xvii) fuel conversion plants;

(xviii) sintering plants;

(xix) secondary metal production plants;

(xx) chemical process plants;

(xxi) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) taconite ore processing plants;

(xxiv) glass fiber processing plants;

(xxv) charcoal production plants;

(xxvi) fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and

(xxvii) any other stationary source category which, as of August 7, 1980, is being regulated under sections 111 or 112 of the FCAA.

(23) "Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the Montana State Implementation Plan.

(24) The following apply to the definition of the term "net emissions increase":

(a) "net emissions increase" means the amount by which the sum of the following exceeds zero:

(i) any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(ii) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date five years before construction on the particular change commenced, and the date that the increase from the particular change occurs.

(c) An increase or decrease in actual emissions is creditable only if the department has not relied on it in issuing a permit for the source under this subchapter, which permit is in effect when the increase in actual emissions from the particular change occurs.

(d) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides which occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM-10 emissions may be used to evaluate the net emissions increase for PM-10.

(e) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(f) A decrease in actual emissions is creditable only to the extent that:

(i) the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) it is federally enforceable at and after the time that actual construction on the particular change begins; and

(iii) it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(g) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(25) "Nitrogen oxides" or "NO_x" means the sum of nitric oxide and nitrogen dioxide in the flue gas or emission point.

(26) "Potential to emit" means the maximum capacity of a stationary 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, shall 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 stationary source.

(27) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this chapter, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(28) The following apply to the definition of the term "significant":

(a) "significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)
Nitrogen oxides (NO_x): 40 tpy
Sulfur dioxide (SO_2): 40 tpy
Particulate matter: 25 tpy of particulate matter emissions
15 tpy of PM-10 emissions
PM-2.5: 10 tpy of direct PM-2.5 emissions, 40 tpy of sulfur dioxide emissions, or 40 tpy of ~~nitrogen oxides (NOx)~~ emissions unless demonstrated not to be a PM-2.5 precursor
Ozone: 40 tpy of volatile organic compounds or nitrogen oxides
Lead: 0.6 tpy
Fluorides: 3 tpy
Sulfuric acid mist: 7 tpy
Hydrogen sulfide (H_2S): 10 tpy
Total reduced sulfur (including H_2S): 10 tpy
Reduced sulfur compounds (including H_2S): 10 tpy
Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): $3.2 * 10^{-6}$ megagrams per year ($3.5 * 10^{-6}$ tpy)
Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tpy)
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tpy)

(b) "significant" means, in reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the FCAA, that (28)(a) does not list any emissions rate. This does not include hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in section 108(a)(1) of the FCAA.

(c) Notwithstanding (28)(a), "significant" means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than one $\mu g/m^3$ (24-hour average).

(29) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the FCAA, excluding hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in section 108(a)(1) of the FCAA.

(30) "Volatile organic compounds (VOC)" means the same as defined in 40 CFR 51.100(s). (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; AMD, 1994 MAR p. 2829, Eff. 10/28/94; AMD, 1995 MAR p. 2410, Eff. 11/10/95; AMD, 1996 MAR p. 1843, Eff. 7/4/96; TRANS, from DHES, 1996 MAR p. 2285; AMD, 1998 MAR p. 1725, Eff. 6/26/98; AMD, 2002 MAR p. 1747, Eff. 6/28/02; AMD, 2003 MAR p. 645, Eff. 4/11/03; AMD, 2004 MAR p. 724, Eff. 4/9/04; AMD, 2006 MAR p. 1956, Eff. 8/11/06; AMD, 2007 MAR p. 1663, Eff. 10/26/07; AMD, 2011 MAR p. 2134, Eff. 10/14/11; AMD, 2012 MAR p. 2058, Eff. 10/12/12.)

17.8.802 INCORPORATION BY REFERENCE

(1) For the purposes of this subchapter, the board adopts and incorporates by reference the following:

(a) 40 CFR 51.102, pertaining to requirements for public hearings for state programs;

(b) 40 CFR Part 51, Appendix W, pertaining to the Guideline on Air Quality Models, as published January 17, 2017, and effective May 22, 2017;

(e) 40 CFR 81.327, pertaining to the air quality attainment status designations for Montana; and

(f) the Standard Industrial Classification Manual (1987), Office of Management and Budget (PB 87-100012), pertaining to a system of industrial classification and definition based upon the composition and structure of the economy.

(2) Copies of materials incorporated by reference in this subchapter may be obtained as referenced in ARM 17.8.102(3) and (4).

17.8.804 AMBIENT AIR INCREMENTS

(1) In areas designated as Class I, II, or III, increases in pollutant concentration over the baseline concentration shall be limited to the following:

Pollutant	**Maximum Allowable Increase** (micrograms per cubic meter)
CLASS I	
Particulate matter:	
PM-10, annual arithmetic mean	4
PM-10, 24-hr maximum	8

Sulfur dioxide: Annual arithmetic mean 24-hr maximum 3-hr maximum	 2 5 25
Nitrogen dioxide: Annual arithmetic mean	 2.5
CLASS II	
Particulate matter: PM-10, annual arithmetic mean PM-10, 24-hr maximum	 17 30
Sulfur dioxide: Annual arithmetic mean 24-hr maximum 3-hr maximum	 20 91 512
Nitrogen dioxide: Annual arithmetic mean	 25
CLASS III	
Particulate matter: PM-10, annual arithmetic mean PM-10, 24-hr maximum	 34 60
Sulfur dioxide: Annual arithmetic mean 24-hr maximum 3-hr maximum	 40 182 700
Nitrogen dioxide: Annual arithmetic mean	 50

(2) For any period other than an annual period, the applicable maximum allowable increase may be exceeded during 1 such period per year at any 1 location. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; AMD, 1994 MAR p. 2829, Eff. 10/28/94; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.805 AMBIENT AIR CEILINGS

(1) No concentration of a pollutant shall exceed the concentration permitted under either the applicable secondary or primary national ambient air quality standard, whichever concentration is lowest for the pollutant for a period of exposure. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.806 RESTRICTIONS ON AREA CLASSIFICATIONS

(1) All of the following areas are designated Class I areas and may not be redesignated:

(a) Bob Marshall Wilderness Area;

(b) Anaconda Pintler Wilderness Area;

(c) Cabinet Mountains Wilderness Area;

(d) Gates of the Mountains Wilderness Area;

(e) Glacier National Park;

(f) Medicine Lake Wilderness Area;

(g) Mission Mountains Wilderness Area;

(h) Red Rock Lake Wilderness Area;

(i) Scapegoat Wilderness Area;

(j) Selway-Bitterroot Wilderness Area;

(k) UL Bend Wilderness Area; and

(l) Yellowstone National Park.

(2) Areas which were redesignated as Class I under regulations promulgated before August 7, 1977, shall remain Class I, but may be redesignated as provided in this subchapter.

(3) The extent of the areas designated as Class I under (1) and (2) of this rule shall conform to any changes in the boundaries of such areas which have occurred subsequent to August 7, 1977, or which may occur subsequent to November 15, 1990.

(4) Any other area, unless otherwise specified in the legislation creating such an area, is initially designated Class II, but may be redesignated as provided in this subchapter.

(5) The following areas may be redesignated only as Class I or II:

(a) an area which, as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(b) a national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

(6) The following 3 areas have been designated as Class I by EPA and may be redesignated to another class only by EPA:

(a) Northern Cheyenne Reservation;

(b) Flathead Reservation; and

(c) Fort Peck Reservation. (History: 75-2-111, 75-2-203,
MCA; IMP, 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.807 EXCLUSIONS FROM INCREMENT CONSUMPTION

(1) The following concentrations will be excluded in determining compliance with a maximum allowable increase:

(a) concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, 15 USC 791, et seq. (1988), over the emissions from such sources before the effective date of such an order;

(b) concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act, 16 USC 791a, et seq. (1988 and Supp. III 1991), over the emissions from such sources before the effective date of such plan;

(c) concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

(d) the increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and

(e) concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources meeting the criteria specified in (3) of this rule.

(2) With respect to (1)(a) or (b) of this rule, no exclusion of such concentrations shall apply more than 5 years after the effective date of the order to which (1)(a) of this rule refers, or the plan to which (1)(b) of this rule refers,

whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than 5 years after the later of such effective dates.

(3) For purposes of excluding concentrations pursuant to (1)(e) of this rule:

(a) The time period for a temporary increase in emissions may not exceed 2 years and is not renewable.

(b) No emissions increase from a stationary source would be allowed which would:

(i) impact a Class I area or an area where an applicable increment is known to be violated; or

(ii) cause or contribute to the violation of a national ambient air quality standard. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.808 REDESIGNATION

(1) All areas of the state (except as otherwise provided under ARM 17.8.806) are designated Class II. Redesignation (except as otherwise precluded by ARM 17.8.806) shall be subject to the redesignation procedures of this rule. Lands within the exterior boundaries of Indian reservations may be redesignated only by the appropriate Indian governing body, as required by 40 CFR 51.166(g)(4).

(2) The department may submit to the administrator a proposal to redesignate areas of the state Class I or Class II, provided that:

(a) at least 1 public hearing has been held in accordance with procedures established in 40 CFR 51.102;

(b) other states, Indian governing bodies, and federal land managers whose lands may be affected by the proposed redesignation were notified at least 30 days prior to the public hearing;

(c) a discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation, was prepared and made available for public inspection at least 30 days prior to the hearing and the notice announcing the hearing contained appropriate notification of the availability of such discussion;

(d) prior to the issuance of notice respecting the redesignation of an area that includes any federal lands, the department has provided written notice to the appropriate federal land manager and afforded adequate opportunity (not in excess of 60 days) to confer with the department respecting the redesignation and to submit written comments and recommendations. In redesignating any area with respect to which any federal land manager had submitted written comments and recommendations, the department shall have published a list of any inconsistency between such redesignation and such comments and recommendations (together with the reasons for making such redesignation against the recommendation of the federal land manager); and

(e) the department has proposed the redesignation after consultation with the elected leadership of any local governmental bodies located within the area covered by the proposed redesignation.

(3) Any area other than an area to which ARM 17.8.806 refers may be redesignated as Class III if:

(a) the redesignation would meet the requirements of (2) of this rule;

(b) the redesignation, except any established by an Indian governing body, has been specifically approved by the governor, after consultation with the appropriate committees of the legislature (if it is in session, or with the leadership of the legislature, if it is not in session), and if the local governmental bodies representing a majority of the residents of the area to be redesignated enact ordinances or regulations (including resolutions where appropriate) concurring in the redesignation;

(c) the redesignation would not cause, or contribute to, a concentration of any air pollutant which would exceed any maximum allowable increase permitted under the classification of any other area or any national ambient air quality standard; and

(d) any permit application for any major stationary source or major modification subject to ARM 17.8.820, which could receive a permit under this subchapter only if the area in question were redesignated as Class III, and any material

submitted as part of that application, were available, as was practicable, for public inspection prior to any public hearing on redesignation of any area as Class III.

(4) If the administrator disapproves any proposed area designation, the classification of the area will be that which was in effect prior to the proposed redesignation which was disapproved, and the state may resubmit the proposal after correcting the deficiencies noted by the administrator. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.809 STACK HEIGHTS

(1) The degree of emission limitation required for control of any air pollutant under this subchapter may not be affected in any manner by:

(a) so much of a stack height, not in existence before December 31, 1970, as exceeds good engineering practice; or

(b) any other dispersion technique not implemented before December 31, 1970. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.818 REVIEW OF MAJOR STATIONARY SOURCES AND MAJOR MODIFICATIONS--SOURCE APPLICABILITY AND EXEMPTIONS (1) No major stationary source or major modification shall begin actual construction unless, as a minimum, requirements contained in ARM 17.8.819 through 17.8.827 have been met. A major stationary source or major modification exempted from the requirements of subchapter 7 under ARM 17.8.744 or 17.8.745 shall, if applicable, still be required to obtain a Montana air quality permit and comply with all applicable requirements of this subchapter.

(2) The requirements contained in ARM 17.8.819 through 17.8.827 shall apply to any major stationary source and any major modification with respect to each pollutant subject to regulation under the FCAA that it would emit, except as this subchapter would otherwise allow. This does not include hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in section 108(a)(1) of the FCAA, or must be considered in the BACT analysis.

(3) The requirements contained in ARM 17.8.819 through 17.8.827 apply only to any major stationary source or major modification that would be constructed in an area which is designated as attainment or unclassifiable under 40 CFR 81.327, except that the requirements contained in ARM 17.8.819 through 17.8.827 do not apply to a particular major stationary source or major modification if:

(a) the major stationary source would be a nonprofit health or nonprofit educational institution or a major modification that would occur at such an institution; or

(b) the source or modification is a portable stationary source which has previously received a permit under requirements contained in ARM 17.8.819 through 17.8.827, but only if the source proposes to relocate and emissions at the new location would be temporary, the emissions from the source would not exceed its allowable emissions and would impact no Class I area and no area where an applicable increment is known to be violated, and reasonable notice is given to the department prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice must be given to the department not less than ten days in advance of the proposed relocation unless a different time duration is previously approved by the department.

(c) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and such source does not belong to any of the following categories:

(i) coal cleaning plants (with thermal dryers);

(ii) kraft pulp mills;

(iii) Portland cement plants;

(iv) primary zinc smelters;

(v) iron and steel mills;

(vi) primary aluminum ore reduction plants;

(vii) primary copper smelters;

(viii) municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) hydrofluoric, sulfuric, or nitric acid plants;

(x) petroleum refineries;

(xi) lime plants;

(xii) phosphate rock processing plants;

(xiii) coke oven batteries;

(xiv) sulfur recovery plants;

(xv) carbon black plants (furnace process);

(xvi) primary lead smelters;

(xvii) fuel conversion plants;

(xviii) sintering plants;

(xix) secondary metal production plants;

(xx) chemical process plants;

(xxi) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) taconite ore processing plants;

(xxiv) glass fiber processing plants;

(xxv) charcoal production plants;

(xxvi) fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(xxvii) any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the FCAA.

(4) The requirements contained in ARM 17.8.819 through 17.8.827 do not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment under 40 CFR 81.327.

(5) The requirements contained in ARM 17.8.820, 17.8.822, and 17.8.824 do not apply to a proposed major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from a new source, or the net emissions increase of that pollutant from a modification, would be temporary and impact no Class I area and no area where an applicable increment is known to be violated.

(6) The requirements contained in ARM 17.8.820, 17.8.822, and 17.8.824 as they relate to any maximum allowable increase for a Class II area do not apply to a modification of a major stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each pollutant subject to regulation under the FCAA from the modification after the application of BACT would be less than 50 tons per year. This does not include hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in section 108(a)(1) of the FCAA.

(7) The department may exempt a proposed major stationary source or major modification from the requirements of ARM 17.8.822, with respect to monitoring for a particular pollutant, if:

(a) the emissions increase of the pollutant from a new stationary source or the net emissions increase of the pollutant from a modification would cause, in any area, air quality impacts less than the following amounts:

(i) carbon monoxide: 575 $\mu g/m^3$, eight-hour average;

(ii) nitrogen dioxide (NO_2): 14 $\mu g/m^3$, annual average;

(iii) PM-2.5: 4 $\mu g/m^3$;

(iv) PM-10: 10 $\mu g/m^3$, 24-hour average;

(v) sulfur dioxide (SO_2): 13 $\mu g/m^3$, 24-hour average;

(vi) ozone: no de minimus air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds or nitrogen oxides subject to this subchapter requires an ambient impact analysis, including the gathering of ambient air quality data;

(vii) lead: 0.1 $\mu g/m^3$, three-month average;

(viii) fluorides: 0.25 $\mu g/m^3$, 24-hour average;

(ix) total reduced sulfur: 10 $\mu g/m^3$, one-hour average;

(x) hydrogen sulfide: 0.2 $\mu g/m^3$, one-hour average;

(xi) reduced sulfur compounds: 10 $\mu g/m^3$, one-hour average; or

(b) the concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in (7)(a); or

(c) the pollutant is not listed in (7)(a). (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; AMD, 1994 MAR p. 2829, Eff. 10/28/94; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2002 MAR p. 3567, Eff. 12/27/02; AMD, 2003 MAR p. 645, Eff. 4/11/03; AMD, 2006 MAR p. 1956, Eff. 8/11/06; AMD, 2007 MAR p. 1663, Eff. 10/26/07; AMD, 2011 MAR p. 2134, Eff. 10/14/11; AMD, 2012 MAR p. 2058, Eff. 10/12/12.)

17.8.819 CONTROL TECHNOLOGY REVIEW

(1) A major stationary source or major modification shall meet each applicable emissions limitation under the Montana state implementation plan and each applicable emission standard and standard of performance under ARM 17.8.340 and 17.8.341.

(2) A new major stationary source shall apply BACT for each pollutant subject to regulation under the FCAA that it would have the potential to emit in significant amounts, excluding hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in section 108(a)(1) of the FCAA. In evaluating the environmental impacts of any control technology option, the BACT analysis shall consider all pollutants, including hazardous air pollutants.

(3) A major modification shall apply BACT for each pollutant subject to regulation under the FCAA for which it would be a significant net emissions increase at the source, excluding hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in section 108(a)(1) of the FCAA. In evaluating the environmental impacts of any control technology option, the BACT analysis shall consider all pollutants, including hazardous air pollutants. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

(4) For phased construction projects, the determination of BACT will be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of BACT for the source. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2003 MAR p. 645, Eff. 4/11/03; AMD, 2004 MAR p. 724, Eff. 4/9/04.)

17.8.820 SOURCE IMPACT ANALYSIS

(1) The owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of any national ambient air quality standard in any air quality control region or any applicable maximum allowable increase over the baseline concentration in any area. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.821 AIR QUALITY MODELS

(1) All estimates of ambient concentrations required under this subchapter must be based on the applicable air quality models, data bases, and other requirements specified in the Guideline on Air Quality Models, 40 CFR Part 51, Appendix W.

(2) Where an air quality impact model specified in 40 CFR Part 51, Appendix W, is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific state program. Written approval of the administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures developed in accordance with ARM 17.8.826. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2003 MAR p. 645, Eff. 4/11/03.)

17.8.822 AIR QUALITY ANALYSIS

(1) Any application for a permit pursuant to this subchapter shall contain an analysis of ambient air quality in the area that the emissions from the major stationary source or major modification would affect.

(2) For a major stationary source, the analysis shall address each pollutant that it would have the potential to emit in a significant amount.

(3) For a major modification, the analysis shall address each pollutant for which it would result in a significant net emissions increase.

(4) With respect to any such pollutant for which no national ambient air quality standard exists, the analysis shall contain such air quality monitoring data as the department determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

(5) With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.
(6) The continuous air monitoring data that is required under this rule shall have been gathered over a period of one year and shall represent the year preceding receipt of the application, except that, if the department determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months) , the data that is required shall have been gathered over at least that shorter period.
(7) The owner or operator of a proposed major stationary source or major modification of volatile organic compounds who satisfies all conditions of subchapter 9 may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under (1).
(8) The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the department determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

History: 75-2-111, 75-2-203, MCA; IMP, 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; TRANS, from OHES, 1996 MAR p. 2285; AMO, 2004 MAR p. 724, Eff. 4/9/04; AMO, 2009 MAR p. 1784, Eff. 10/16/09.

17.8.823 SOURCE INFORMATION

(1) The owner or operator of a proposed source or modification shall submit the permit application fee required pursuant to ARM 17.8.504 and all information necessary to perform any analysis or make any determination required under procedures established in accordance with this subchapter.

(2) Such information shall include the following:

(a) a description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

(b) a detailed schedule for construction of the source or modification; and

(c) a detailed description as to what system of continuous emission reduction is planned by the source or modification, emission estimates, and any other information as necessary to determine that BACT as applicable would be applied.

(3) Upon request of the department, the owner or operator shall also provide information regarding the following:

(a) the air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

(b) the air quality impacts and the nature and extent of any or all general commercial, residential, industrial and other growth which has occurred since August 7, 1977, in the area the source or modification would affect. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.824 ADDITIONAL IMPACT ANALYSES

(1) The owner or operator shall provide an analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(2) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the source or modification. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.825 SOURCES IMPACTING FEDERAL CLASS I AREAS--ADDITIONAL REQUIREMENTS

(1) The department shall transmit to the administrator a copy of each permit application relating to a major stationary source or major modification and provide notice to the administrator of every action related to the consideration of such permit.
(2) The federal land manager and the federal official charged with direct responsibility for management of Class I lands have an affirmative responsibility to protect the air quality related values (including visibility) of any such lands and to consider, in consultation with the administrator, whether a proposed source or modification would have an adverse impact on such values.
(3) Federal land managers with direct responsibility for management of Class I lands may present to the department, after reviewing the department's preliminary determination required under ARM 17.8.759, a demonstration that the emissions from the proposed source or modification would have an adverse impact on the air quality-related values (including visibility) of any federal mandatory Class I lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the department concurs with such demonstration, the department may not issue the permit.
(4) The owner or operator of a proposed source or modification may demonstrate to the federal land manager that the emissions from such source would have no adverse impact on the air quality-related values of such lands (including visibility) , notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the federal land manager concurs with such demonstration and so certifies to the department, the department may, provided that applicable requirements are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, particulate matter, and nitrogen oxides would not exceed the following maximum allowable increases over the minor source baseline concentration for such pollutants:

Pollutant	Maximum allowable increase (micrograms per cubic meter)
Particulate matter:	
PM-10, annual arithmetic mean	17
PM-10, 24-hr maximum	30
Sulfur dioxide:	
annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	325
Nitrogen dioxide:	
annual arithmetic mean	25

(5) The owner or operator of a proposed source or modification which cannot be approved under procedures developed pursuant to (4) may seek to obtain a sulfur dioxide variance from the Governor.
(a) The owner or operator of a proposed source or modification must demonstrate to the Governor that the source or modification cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for periods of 24 hours or less applicable to any Class I area and, in the case of federal mandatory Class I areas, that a variance under this clause would not adversely affect the air quality-related values of the area (including visibility) .
(b) The Governor, after consideration of the federal land manager's recommendation (if any) and subject to the concurrence of the federal land manager, may grant, after notice and an opportunity for a public hearing, a variance from such maximum allowable increase.
(c) If the federal land manager does not concur in the Governor's recommendations, the recommendations of the Governor and the federal land manager shall be transferred to the President, and the President may approve the Governor's recommendation if the President finds that such variance is in the national interest.
(d) If such a variance is granted under this rule, the department may issue a permit to such source or modification in accordance with provisions developed pursuant to (6) , provided that the applicable requirements of the plan are otherwise met.
(6) In the case of a permit issued under procedures developed pursuant to (5) , the source or modification shall comply with emission limitations as may be necessary to assure that emissions of sulfur dioxide from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which would exceed the following maximum allowable increases over the baseline concentration and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period:

MAXIMUM ALLOWABLE INCREASE
[Micrograms per cubic meter]

Terrain Areas PERIODS OF EXPOSURE	Low	High
24-hr maximum	36	62
3-hr maximum	130	221

(History: 75-2-111, 75-2-203, MCA; IMP, 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; AMD, 1994 MAR p. 2829, Eff. 10/28/94; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2002 MAR p. 3567, Eff. 12/27/02.)

17.8.826 PUBLIC PARTICIPATION

(1) The department shall notify all applicants in writing within 30 days of the date of receipt of an application as to the completeness of the application or any deficiency in the application or information submitted as provided in ARM 17.8.759. In the event of such a deficiency, the date of receipt of the application will be the date on which the department received all required information unless the department notifies the applicant in writing within 30 days thereafter that the application is still incomplete. This, and any subsequent notice of incompleteness shall follow the same form and requirements as the original notice of incompleteness.

(2) In accordance with ARM 17.8.759, the department shall:

(a) make a preliminary determination whether construction should be approved, approved with conditions, or disapproved;

(b) make available, in at least one location in each region in which the proposed source would be constructed, a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination;

(c) notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed source would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and of the opportunity for comment at a public hearing as well as written public comment;

(d) send a copy of the notice of public comment to the applicant, the administrator, and to officials and agencies having cognizance over the location where the proposed construction would occur, including any local air pollution control agencies, the chief executives of the city and county where the source would be located, any comprehensive regional land use planning agency, and any state, federal land manager, or Indian governing body whose lands may be affected by emissions from the source or modification;

(e) provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source, alternatives to it, the control technology required, and other appropriate considerations;

(f) consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. The department shall make all comments available for public inspection in the same locations where the department made available preconstruction information relating to the proposed source or modification;

(g) make a final determination whether construction should be approved, approved with conditions, or disapproved; and

(h) notify the applicant in writing of the final determination and make such notification available for public inspection at the same locations where the department made available preconstruction information and public comments relating to the source or modification.

(History: 75-2-111, 75-2-203, MCA; IMP, 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2002 MAR p. 3567, Eff. 12/27/02.)

17.8.827 SOURCE OBLIGATION

(1) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions and requirements under local, state or federal law.

(2) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of ARM 17.8.819 through 17.8.828 shall apply to the source or modification as though construction had not yet commenced on the source or modification. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.828 INNOVATIVE CONTROL TECHNOLOGY

(1) An owner or operator of a proposed major stationary source or major modification may request the department approve a system of innovative control technology.

(2) The department may, with the consent of the governor of any other affected state, determine that the source or modification may employ a system of innovative control technology, if:

(a) the proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

(b) the owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under ARM 17.8.819(2), by a date specified by the department, provided that such date may not be later than 4 years from the time of start-up or 7 years from permit issuance;

(c) the source or modification would meet the requirements equivalent to those in ARM 17.8.819 and 17.8.820, based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the department;

(d) the source or modification would not, before the date specified by the department, cause or contribute to any violation of an applicable national ambient air quality standard or impact any area where an applicable increment is known to be violated;

(e) all other applicable requirements including those for public participation have been met; and

(f) the provisions of ARM 17.8.825 (relating to Class I areas) have been satisfied with respect to all periods during the life of the source or modification.

(3) The department shall withdraw any approval to employ a system of innovative control technology made under this subchapter if:

(a) the proposed system fails by the specified date to achieve the required continuous emissions reduction rate;

(b) the proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

(c) the department decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

(4) If a source or modification fails to meet the required level of continuous emissions reduction within the specified time period, or if the approval is withdrawn in accordance with (3) of this rule, the department may allow the source or modification up to an additional 3 years to meet the requirement for the application of BACT through use of a demonstrated system of control. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.901 DEFINITIONS

In this subchapter the following definitions apply:

(1) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit as determined in accordance with (1) (a) through (c) .

(a) Actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The department may determine that a different time is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(b) If the department is unable to determine actual emissions consistent with (1) (a) , the department may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(c) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(2) "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate or hours of operation, or both) and the most stringent of the following:

(a) the applicable standards as set forth in ARM 17.8.340 or 17.8.341;

(b) the applicable emissions limitation contained in the Montana State Implementation Plan, including those with a future compliance date; or

(c) the emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(3) "Begin actual construction" means, in general, initiation of physical on-site construction activities of a permanent nature on an emissions unit. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(4) "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) , except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., having the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

(5) "Commence", as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(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.

(6) "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

(7) "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the FCAA.

(8) "Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the Montana State Implementation Plan, and any permit requirement established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the Montana State Implementation Plan and expressly requires adherence to any permit issued under such program.

(9) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(10) "Lowest achievable emission rate" means, for any source, the more stringent rate of emissions based on the following:

(a) the most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(b) the most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance under 40 CFR Parts 60 and 61.

(11) "Major modification" means any physical change in, or change in the method of, operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the FCAA.

(a) Any net emissions increase that is considered significant for volatile organic compounds is considered significant for ozone.
(b) A physical change in, or change in the method of, operation does not include:
(i) routine maintenance, repair, and replacement;
(ii) use of an alternative fuel or raw material by reason of an order under (2)(a) and (2)(b) of the Energy Supply and Environmental Coordination Act of 1974, 15 USC 791, et seq. (1988), or by reason of a natural gas curtailment plan pursuant to the Federal Power Act, 16 USC 791a, et seq. (1988 and Supp. III 1991);
(iii) use of an alternative fuel by reason of an order or rule under section 125 of the FCAA;
(iv) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
(v) use of an alternative fuel or raw material by a stationary source which:
(A) the source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, subpart I, or section 51.166; or
(B) the source is approved to use under any permit issued under regulations approved pursuant to 40 CFR 51.165;
(vi) an increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable air quality preconstruction permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, subpart I, or section 51.166;
(vii) any change in ownership at a stationary source.
(12) The following apply to the definition of the term "major stationary source":
(a) "major stationary source" means:
(i) any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the FCAA; or
(ii) any stationary source of air pollutants located in a serious particulate matter (PM-10) nonattainment area which emits, or has the potential to emit, 70 tons per year or more of PM-10; or
(iii) any physical change that would occur at a stationary source not qualifying under (12)(a)(i) or (ii) as a major stationary source, if the change would constitute a major stationary source by itself.
(b) The fugitive emissions of a stationary source will not be included in determining, for any of the purposes of this subchapter, whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:
(i) coal cleaning plants (with thermal dryers) ;
(ii) kraft pulp mills;
(iii) Portland cement plants;
(iv) primary zinc smelters;
(v) iron and steel mills;
(vi) primary aluminum ore reduction plants;
(vii) primary copper smelters;
(viii) municipal incinerators capable of charging more than 250 tons of refuse per day;
(ix) hydrofluoric, sulfuric, or nitric acid plants;
(x) petroleum refineries;
(xi) lime plants;
(xii) phosphate rock processing plants;
(xiii) coke oven batteries;
(xiv) sulfur recovery plants;
(xv) carbon black plants (furnace process) ;
(xvi) primary lead smelters;
(xvii) fuel conversion plants;
(xviii) sintering plants;
(xix) secondary metal production plants;
(xx) chemical process plants;
(xxi) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
(xxii) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(xxiii) taconite ore processing plants;
(xxiv) glass fiber processing plants;
(xxv) charcoal production plants;
(xxvi) fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and
(xxvii) any other stationary source category which, as of August 7, 1980, is being regulated under sections 111 or 112 of the FCAA.
(13) "Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the Montana State Implementation Plan.
(14) The following apply to the definition of the term "net emissions increase":

(a) "net emissions increase" means the amount by which the sum of the following exceeds zero:
(i) any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and
(ii) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.
(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date five years before construction on the particular change commenced, and the date that the increase from the particular change occurs.
(c) An increase or decrease in actual emissions is creditable only if the department has not relied on it in issuing a permit for the source under regulations approved pursuant to 40 CFR 51.165, which permit is in effect when the increase in actual emissions from the particular change occurs.
(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.
(e) A decrease in actual emissions is creditable only to the extent that:
(i) the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;
(ii) it is federally enforceable at and after the time that actual construction on the particular change begins;
(iii) the department has not relied on it in issuing any Montana air quality permit under regulations approved pursuant to 40 CFR Part 51, subpart I (July 1, 1993 ed.) , or the state has not relied on it in demonstrating attainment or reasonable further progress; and
(iv) it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.
(f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.
(15) "Potential to emit" means the maximum capacity of a stationary 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, shall 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 stationary source.
(16) "Reasonable further progress" means annual incremental reductions in emissions of the applicable air pollutant which are required by the FCAA or the administrator for attainment of the applicable national ambient air quality standard by the date required in section 172(a) of the FCAA.
(17) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this chapter, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.
(18) "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emission Rate	
Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Particulate matter:	25 tpy of particulate matter emissions
or	15 tpy of PM-10 emissions
Lead:	0.6 tpy

(19) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the FCAA.
(20) "Volatile organic compounds (VOC)" means the same as defined in 40 CFR 51.100(s).
(History: 75-2-111, 75-2-203, MCA; IMP, 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; AMD, 1995 MAR p. 2410, Eff. 11/10/95; AMD, 1996 MAR p. 1843, Eff. 7/4/96; AMD, 1996 MAR p. 1844, Eff. 7/4/96; TRANS, from DHES, 1996 MAR p. 2285; AMD, 1998 MAR p. 1725, Eff. 6/26/98; AMD, 2002 MAR p.

1747, Eff. 6/28/02; AMD, 2002 MAR p. 3567, Eff. 12/27/02; AMD, 2003 MAR p. 645, Eff. 4/11/03; AMD, 2007 MAR p. 1663, Eff. 10/26/07; AMD, 2008 MAR p. 2267, Eff. 10/24/08.)

17.8.902 INCORPORATION BY REFERENCE

(1) For the purposes of this subchapter, the board adopts and incorporates by reference the following:

(c) 40 CFR 81.327, pertaining to the air quality attainment status designations for Montana;

(d) section 173 of the FCAA, as codified in 42 USC 7503, pertaining to permit requirements for permit programs in nonattainment areas;

(e) sections 188 through 190 of the FCAA, as codified in 42 USC 7513 through 7513b, pertaining to additional requirements for particulate matter in nonattainment areas; and

(f) the Standard Industrial Classification Manual (1987), Office of Management and Budget (PB 87-100012), pertaining to a system of industrial classification and definition based upon the composition and structure of the economy.

(2) Copies of materials incorporated by reference in this subchapter may be obtained as referenced in ARM 17.8.102(3) and (4).

17.8.904 WHEN MONTANA AIR QUALITY PERMIT REQUIRED

(1) Any new major stationary source or major modification which would locate anywhere in an area designated as nonattainment for a national ambient air quality standard under 40 CFR 81.327 and which is major for the pollutant for which the area is designated nonattainment, shall, prior to construction, obtain from the department a Montana air quality permit in accordance with subchapter 7 and all requirements contained in this subchapter if applicable. A major stationary source or major modification exempted from the requirements of subchapter 7 under ARM 17.8.744 and 17.8.745 which would locate anywhere in an area designated as nonattainment for a national ambient air quality standard under 40 CFR 81.327 and which is major for the pollutant for which the area is designated nonattainment, shall, prior to construction, still be required to obtain a Montana air quality permit and comply with the requirements of ARM 17.8.748, 17.8.749, 17.8.756, 17.8.759 and 17.8.760 and with all applicable requirements of this subchapter.

(2) Any source or modification located anywhere in an area designated as nonattainment for a national ambient air quality standard under 40 CFR 81.327 which becomes a major stationary source or major modification for the pollutant for which the area is designated nonattainment solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant (such as a restriction on hours of operation) shall obtain from the department a Montana air quality permit as though construction had not yet commenced on the source or modification, in accordance with subchapter 7 and all requirements of this subchapter.

(7) Applicability determinations made prior to January 1, 2011, without accounting for condensable particulate matter, are not subject to (6).

17.8.905 ADDITIONAL CONDITIONS OF MONTANA AIR QUALITY PERMIT

(1) The department shall not issue a Montana air quality permit required under ARM 17.8.904, unless the requirements of subchapter 7 and the following additional conditions are met:

(a) The permit for the new source or modification contains an emission limitation which constitutes the lowest achievable emissions rate for such source.

(b) The applicant certifies that all existing major sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control with the applicant) in the state of Montana are in compliance with all

applicable emission limitations and standards under the FCAA or are in compliance with an expeditious schedule of compliance which is federally enforceable or contained in a court decree.
(c) The new source obtains from existing sources emission reductions (offsets) , expressed in tons per year, which provide both a positive net air quality benefit in the affected area in accordance with ARM 17.8.906(7) through (9) , and a ratio of required emission offsets to the proposed source's emissions of 1:1 or greater. The emissions reductions (offsets) required under this subsection must be:
(i) obtained from existing sources in the same nonattainment area as the proposed source, except as specified in ARM 17.8.906(6) (whether or not they are under the same ownership) ;
(ii) subject to the provisions of ARM 17.8.906;
(iii) sufficient to assure that there will be reasonable progress toward attainment of the applicable national ambient air quality standard;
(iv) for the same pollutant (e.g., carbon monoxide increases may only be offset against carbon monoxide reductions) ;
(v) permanent, quantifiable, and federally enforceable; and
(vi) reductions in actual emissions.
(d) The Montana air quality permit contains a condition requiring the source to submit documentation, prior to commencement of operation that the offsets required in the permit have occurred.
(e) The applicant submits an analysis of alternative sites, sizes, production processes and environmental control techniques for such proposed source that demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification.
(2) Any growth allowances which were included in an applicable state implementation plan prior to November 15, 1990 for the purpose of allowing for construction or operation of a new major stationary source or major modification shall not be valid for use in any area that received or receives a notice from the administrator that the applicable state implementation plan containing such allowances is substantially inadequate.
(3) The requirements of (1) (a) and (c) , shall only apply to those pollutants for which the major stationary source or major modification is major and for which the area has been declared nonattainment.
(4) The issuance of a Montana air quality permit shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the Montana State Implementation Plan and any other requirements contained in or pursuant to local, state or federal law.
(History: 75-2-111, 75-2-203, MCA; IMP, 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2002 MAR p. 3567, Eff. 12/27/02; AMD, 2003 MAR p. 645, Eff. 4/11/03.)

17.8.906 BASELINE FOR DETERMINING CREDIT FOR EMISSIONS AND AIR QUALITY OFFSETS
(1) Pursuant to section 7503 of the FCAA, emission offsets in nonattainment areas are required to be in the form of, and against, actual emissions. Actual emissions preceding the filing of the application to construct or modify a source are the baseline for determining credit for emission and air quality offsets, as determined in compliance with this subchapter.
(2) Where the emission limitation under the Montana State Implementation Plan allows greater emissions than the actual emissions of the source, emission offset credit will be allowed only for control below the actual emissions.
(3) For an existing fuel combustion source, credit shall be based on the actual emissions for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offsets credit based on the actual emissions for the fuels involved is not acceptable, unless the Montana air quality permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date. The department shall ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches.
(4) Emission reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if such reductions are permanent, quantifiable, and federally enforceable, and if the area has an EPA-approved attainment plan. In addition, the shutdown or curtailment is creditable only if it occurred on or after the date specified for this purpose in the Montana State Implementation Plan, and if such date is on or after the date of the most recent emissions inventory used in the plan's demonstration of attainment. Where the plan does not specify a cutoff date for shutdown credits, the date of the most recent emissions inventory or attainment demonstration, as the case may be, shall apply. However, in no event may credit be given for shutdowns which occurred prior to August 7, 1977. For purposes of this (4) , the department may choose to consider a prior shutdown or curtailment to have occurred after the date of its most recent emissions inventory, if the inventory explicitly includes as current "existing" emissions the emissions from such previously shutdown or curtailed sources. Such reductions may be credited in the absence of an approved attainment demonstration only if the shutdown or curtailment occurred on or after the date the new source's air quality application is filed, or if the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source, and the cutoff date provisions described earlier in this (4) are observed.

(5) No emissions credit shall be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977) .
(6) All emission reductions claimed as offset credit shall be federally enforceable.
(7) Emission offsets may only be obtained from the same source or other sources in the same nonattainment area, except that the department may allow the owner or operator of a proposed source to obtain such emission reductions in another nonattainment area if:
(a) the other nonattainment area has an equal or higher nonattainment classification for the same pollutant than the area in which the proposed source will locate; and
(b) emissions from the other nonattainment area contribute to a violation of a national ambient air quality standard in the nonattainment area in which the proposed source will locate.
(8) In the case of emission offsets involving oxides of nitrogen, offsets will generally be acceptable if obtained from within the same nonattainment area as the new source or from other nonattainment areas which meet the requirements of (6) . However, if the proposed offsets would be from sources located at considerable distances from the new source, the department shall increase the ratio of the required offsets and require a showing by the applicant that nearby offsets were investigated and reasonable alternatives were not available.
(9) In the case of emission offsets involving sulfur dioxide, particulates, and carbon monoxides, areawide mass emission offsets are not acceptable and the applicant shall perform atmospheric simulation modeling to ensure that the emission offsets provide a positive net air quality benefit. However, the department may exempt the applicant from the atmospheric simulation modeling requirement if the emission offsets provide a positive net air quality benefit, are obtained from an existing source on the same premises or in the immediate vicinity of the new source, and the pollutants disperse from substantially the same effective stack height.
(10) Credits for an emissions reduction can be claimed to the extent that the department has not relied on it in issuing any Montana air quality permit under subchapters 7, 8, 9, and 10, or Montana has not relied on it in a demonstration of attainment or reasonable further progress.
(11) Production of and equipment used in the exploration, production, development, storage, or processing of oil and natural gas from stripper wells, are exempt from the additional permitting requirements of subchapter I, part D, subpart IV of the FCAA, and the application of these additional permitting requirements in this subchapter and subchapter 10 to any nonattainment area designated as serious for particulate matter (PM-10) . These sources must comply with all other requirements of section 173 of the FCAA and this subchapter and subchapter 10.
(12) Emission reductions otherwise required by any applicable rule, regulation, Montana air quality permit condition or the FCAA are not creditable as emissions reductions for the purposes of the offset requirement in ARM 17.8.905(1)(c) . Incidental emission reductions which are not otherwise required by any applicable rule, regulation, Montana air quality permit or the FCAA shall be creditable as emission reductions for such purposes if such emission reduction meets the requirements of this rule.
(History: 75-2-111, 75-2-203, MCA; IMP, 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2002 MAR p. 3567, Eff. 12/27/02.)

17.8.1001 DEFINITIONS For the purpose of this subchapter:

(1) The definitions contained in ARM 17.8.901 shall be applicable.

(2) "Cause or contribute" means, in regard to an ambient air quality impact caused by emissions from a major source or modification, an ambient air quality impact that exceeds the significance level as defined in (3) of this rule, for any pollutant at any location.

(3) "Significance level" means, for any of the following pollutants, an ambient air quality impact greater than any of the averages cited below:

(a) for sulfur dioxide:

(i) an annual average of 1.0 micrograms per cubic meter ($\mu g/m^3$);

(ii) a 24-hour average of 5.0 $\mu g/m^3$; or

(iii) a 3-hour average of 25.0 $\mu g/m^3$

(b) for PM-10:

(i) an annual average of 1.0 $\mu g/m^3$; or

(ii) a 24-hour average of 5.0 $\mu g/m^3$.

(c) for nitrogen dioxide, an annual average of 1.0 $\mu g/m^3$.

(d) for carbon monoxide:

(i) an 8-hour average of 0.5 milligrams per cubic meter (mg/m^3); or

(ii) a 1-hour average of 2.0 mg/m^3. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.1002 INCORPORATION BY REFERENCE

(1) For the purposes of this subchapter, the board adopts and incorporates by reference the following:

(c) 40 CFR 81.327, pertaining to the air quality attainment status designations for Montana;

(d) section 173 of the FCAA, as codified in 42 USC 7503, pertaining to requirements for permit programs in nonattainment areas;

(e) sections 188 through 190 of the FCAA, as codified in 42 USC 7513 through 7513b, pertaining to additional requirements for particulate matter in nonattainment areas; and

(f) the Standard Industrial Classification Manual (1987), Office of Management and Budget (PB 87-100012), pertaining to a system of industrial classification and definition based upon the composition and structure of the economy.

(2) Copies of materials incorporated by reference in this subchapter may be obtained as referenced in ARM 17.8.102(3) and (4).

17.8.1004 WHEN MONTANA AIR QUALITY PERMIT REQUIRED

(1) Any new major stationary source or major modification which would locate anywhere in an area designated as attainment or unclassified for a national ambient air quality standard under 40 CFR 81.327 and which would cause or contribute to a violation of a national ambient air quality standard for any pollutant at any locality that does not or would not meet the national ambient air quality standard for that pollutant, shall obtain from the department a Montana air quality permit prior to construction in accordance with subchapters 7 and 8 and all requirements contained in this subchapter if applicable. A major stationary source or major modification exempted from the requirements of subchapter 7 under ARM 17.8.744 or 17.8.745 which would locate anywhere in an area designated as attainment or unclassified for a national ambient air quality standard under 40 CFR 81.327 and which would cause or contribute to a violation of a national ambient air quality standard for any pollutant at any locality that does not or would not meet the national ambient air quality standard for that pollutant, shall, prior to construction, still be required to obtain a Montana air quality permit and comply with the requirements of ARM 17.8.748, 17.8.749, 17.8.756, 17.8.759 and 17.8.760 and other applicable requirements of this subchapter.
(2) In the absence of emission reductions compensating for the adverse impact of the source, the Montana air quality permit will be denied.
(History: 75-2-111, 75-2-203, MCA; IMP, 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; AMD, 1995 MAR p. 535, Eff. 4/14/95; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2003 MAR p. 106, Eff. 12/27/02.)

17.8.1005 ADDITIONAL CONDITIONS OF MONTANA AIR QUALITY PERMIT

(1) The department will not issue a Montana air quality permit required under ARM 17.8.1004 unless the requirements of subchapters 7 and 8 and the following additional conditions are met:
(a) the new source is required to meet an emission limitation, as more fully described in (2) and (3) of this rule, which specifies the lowest achievable emission rate for such source;
(b) the applicant certifies that all existing major stationary sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control with the applicant) in the state of Montana are in compliance with all applicable emission limitations and standards under the FCAA or are in compliance with an expeditious schedule of compliance which is federally enforceable or contained in a court decree;
(c) the new source must obtain from existing sources emission reductions (offsets) , expressed in tons per year, which provide both a positive net air quality benefit in the affected area as determined in accordance with (3) of this rule, ARM 17.8.1006 and 17.8.1007, and a ratio of required emission offsets to the proposed source's emissions of 1:1 or greater; and
(d) the air quality preconstruction permit contains a condition requiring the source to submit documentation, prior to commencement of operation that the offsets required in the permit have occurred.
(2) 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 enforceable numerical emission standard infeasible, the department may, instead, prescribe a design, operational or equipment standard. In such cases, the department shall make its best estimate as to the emission rate that will be achieved, and must take such steps as are necessary to ensure that this rate is federally enforceable. Any air quality preconstruction permit issued without an enforceable numerical emission standard must contain enforceable conditions which assure that the design characteristics or equipment will be properly maintained (or that the operational conditions will be properly performed) so as to continuously achieve the assumed degree of control. As used in this subchapter, the term "emission limitation" shall also include such design, operational, or equipment standards.
(3) The requirements of (1) (a) and (c) of this rule, shall only apply to those pollutants for which the major stationary source or major modification is major and for which the source is causing or contributing to a violation of a national ambient air quality standard.
(4) If the emissions from the proposed source would cause a new violation of a national ambient air quality standard but would not contribute to an existing violation, the new source must meet a more stringent and federally enforceable emission limitation, as more fully described in (2) of this rule, and/or control existing sources below allowable levels through federally enforceable methods so that the source will not cause a violation of any national ambient air quality standard. The new emission limitation must be accomplished prior to the new source's startup date.
(5) The issuance of an air quality preconstruction permit does not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the Montana State Implementation Plan and any other requirements of local, state or federal law.

(6) Emission reductions (air quality offsets) under (1) (c) must also comply with the additional requirements for determining the baseline and magnitude of emission reductions (air quality offsets) contained in ARM 17.8.905(1) (c) and 17.8.906, except that 17.8.906(7) through (9) shall not be applicable to offsets required under this subchapter. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; AMD, 1995 MAR p. 535, Eff. 4/14/95; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2002 MAR p. 1747, Eff. 6/28/02; AMD, 2002 MAR p. 3567, Eff. 12/27/02.)

17.8.1006 REVIEW OF SPECIFIED SOURCES FOR AIR QUALITY IMPACT

(1) For "stable" air pollutants (i.e., sulfur dioxide, particulate matter and carbon monoxide), the determination of whether a source will cause or contribute to a violation of a national ambient air quality standard generally should be made on a case-by-case basis as of the proposed new source's startup date using the source's allowable emissions in an atmospheric simulation model (unless a source will clearly impact on a receptor which exceeds a national ambient air quality standard).

(2) For sources of nitrogen oxides, the initial determination of whether a source would cause or contribute to a violation of the national ambient air quality standard for nitrogen dioxide should be made using an atmospheric simulation model assuming all the nitric oxide emitted is oxidized to nitrogen dioxide by the time the plume reaches ground level. The initial concentration estimates may be adjusted if adequate data are available to account for the expected oxidation rate. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.1007 BASELINE FOR DETERMINING CREDIT FOR EMISSIONS AND AIR QUALITY OFFSETS

(1) For the purposes of this subchapter, the following requirements shall apply:

(a) the requirements of ARM 17.8.906, except that 17.8.906(7) through (9) are not applicable to offsets required under this subchapter;

(b) emission offsets must be reductions in actual emissions for the same pollutant obtained from the same source or other sources which are located in the same general area of the proposed major stationary source or modification, and that contribute to or would contribute to the violation of the national ambient air quality standard;

(c) in the case of emission offsets involving volatile organic compounds and oxides of nitrogen, offsets will generally be acceptable if they are obtained from within the areas specified in (1)(b). If the proposed offsets would be from sources located at considerable distances from the new source, the department shall increase the ratio of the required offsets and require a showing by the applicant that nearby offsets were investigated and reasonable alternatives were not available;

(d) in the case of emission offsets involving sulfur dioxide, particulates, and carbon monoxide, areawide mass emission offsets are not acceptable, and the applicant shall perform atmospheric simulation modeling to ensure that emission offsets provide a positive net air quality benefit. The department may exempt the applicant from the atmospheric simulation modeling requirement if the emission offsets provide a positive net air quality benefit, are obtained from an existing source on the same premises or in the immediate vicinity of the new source, and the pollutants disperse from substantially the same effective stack height; and

(e) no emissions credit shall be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977).

(History: 75-2-111, 75-2-203, MCA; IMP, 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2007 MAR p. 1663, Eff. 10/26/07; AMD, 2008 MAR p. 2267, Eff. 10/24/08.)

17.8.1101 DEFINITIONS For the purposes of this subchapter:

(1) "Federal Class I area" means those areas listed in ARM 17.8.806(1) and any other federal land that is classified or reclassified as Class I.

(2) "Adverse impact on visibility" means visibility impairment which the department determines does or is likely to interfere with the management, protection, preservation, or enjoyment of the visual experience of visitors within a federal Class I area. The determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairment, and how these factors correlate with times of visitor use of the federal Class I area, and the frequency and occurrence of natural conditions that reduce visibility.

(3) "Visibility impairment" means any humanly perceptible change in visual range, contrast or coloration from that which would have existed under natural conditions. Natural conditions include fog, clouds, windblown dust from natural sources, rain, naturally ignited wildfires, and natural aerosols. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, 75-2-204, 75-2-211, MCA; NEW, 1985 MAR p. 1326, Eff. 9/13/85; AMD, 1995 MAR p. 535, Eff. 4/14/95; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.1102 INCORPORATION BY REFERENCE

(1) For the purposes of this subchapter, the board adopts and incorporates by reference the following:

(a) 40 CFR 81.327, providing attainment status designation for Montana pursuant to section 107 of the FCAA;

(b)"Workbook for Plume Visual Impact Screening and Analysis" (Revised) (EPA-454/R-92/023), specifying methods for estimating visibility impairment.

(2) Copies of materials incorporated by reference in this subchapter may be obtained as referenced in ARM 17.8.102(3) and (4).

17.8.1103 APPLICABILITY--VISIBILITY REQUIREMENTS

(1) This subchapter is applicable to the owner or operator of a proposed major stationary source, as defined by ARM 17.8.801(22), or of a source proposed for a major modification, as defined by ARM 17.8.801(20) proposing to construct such a source or modification after July 1, 1985, in any area within the state of Montana designated as attainment, unclassified, or nonattainment, in accordance with 40 CFR 81.327, incorporated by reference in ARM 17.8.1102. The requirements of this subchapter shall be integrated with the requirements of ARM Title 17, chapter 8, subchapters 7 (Permit, Construction and Operation of Air Contaminant Sources) and 8 (Prevention of Significant Deterioration of Air Quality). (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, 75-2-204, 75-2-211, MCA; NEW, 1985 MAR p. 1326, Eff. 9/13/85; AMD, 1995 MAR p. 535, Eff. 4/14/95; AMD, 1996 MAR p. 1844, Eff. 7/4/96; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.1106 VISIBILITY IMPACT ANALYSIS

(1) The owner or operator of a major stationary source or modification as described in ARM 17.8.1103, shall demonstrate that the actual emissions [as defined by ARM 17.8.801(1)] from the major source or modification (including fugitive emissions) will not cause or contribute to adverse impact on visibility within any federal Class I area or the department shall not issue a permit.

(2) The owner or operator of a proposed major stationary source or major modification shall submit all information necessary to support any analysis or demonstration required by these rules pursuant to ARM 17.8.748.

(History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, 75-2-204, 75-2-211, MCA; NEW, 1985 MAR p. 1326, Eff. 9/13/85; AMD, 1995 MAR p. 535, Eff. 4/14/95; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2002 MAR p. 3567, Eff. 12/27/02.)

17.8.1107 VISIBILITY MODELS

(1) All estimates of visibility impact required under this subchapter shall be based on those models contained in "Workbook for Plume Visual Impact Screening and Analysis" (EPA-450/4-88-015, 1988), incorporated by reference in ARM 17.8.1102. Equivalent models may be substituted if approved by the department. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, 75-2-204, 75-2-211, MCA; NEW, 1985 MAR p. 1326, Eff. 9/13/85; AMD, 1992 MAR p. 2741, Eff. 12/25/92; AMD, 1996 MAR p. 1844, Eff. 7/4/96; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.1108 NOTIFICATION OF PERMIT APPLICATION

(1) Where a proposed major stationary source or major modification will impact or may impact visibility within a federal Class I area, the department shall provide written notice to the environmental protection agency and to the appropriate federal land managers. Notification shall be in writing, include all information relevant to the permit application including an analysis of the anticipated impacts on visibility in any federal Class I area, and be within 30 days of the receipt of the application.

(2) Where the department receives advance notification of a permit application of a source that may affect federal Class I area visibility, the department will notify all affected federal land managers within 30 days of such advance notice. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, 75-2-204, 75-2-211, MCA; NEW, 1985 MAR p. 1326, Eff. 9/13/85; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.1109 ADVERSE IMPACT AND FEDERAL LAND MANAGER

(1) Federal land managers may present to the department, after the preliminary determination required under ARM 17.8.759, a demonstration that the emissions from the proposed source or modification may cause or contribute to adverse impact on visibility in any federal Class I area, notwithstanding that the air quality change resulting from the emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increment defined in ARM 17.8.804 (PSD) for a federal Class I area.

(2) The department will consider the comments of the federal land manager in its determination of whether adverse impact on visibility may result. Should the department determine that such impairment may result, a permit for the proposed source will not be granted.

(3) Where the department finds such an analysis does not demonstrate to the satisfaction of the department that an adverse impact on visibility will result, the department will provide written notification to the affected federal land manager within five days of the department's final decision on the permit. The notification will include an explanation of the department's decision or give notice as to where the explanation can be obtained.

(History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, 75-2-204, 75-2-211, MCA; NEW, 1985 MAR p. 1326, Eff. 9/13/85; AMD, 1995 MAR p. 535, Eff. 4/14/95; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2002 MAR p. 3567, Eff. 12/27/02.)

17.8.1110 VISIBILITY MONITORING

(1) The owner or operator of a proposed major stationary source or major modification shall submit with the application an analysis of existing visibility in or immediately adjacent to the federal Class I area potentially impacted by the proposed project. The validity of the analysis shall be determined by the department.

(2) As necessary to establish visibility conditions within the mandatory Class I area prior to construction and operation of the source or modification, the analysis shall include a collection of continuous visibility monitoring data. Such data shall relate to and shall have been gathered over the year preceding receipt of the complete application, except that if the department determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than 1 year, the data that is required must have been gathered over at least that shorter period. Where applicable, the owner or operator may demonstrate that existing visibility monitoring data may be sufficient.

(3) Pursuant to the requirements of this subchapter, the owner or operator of the source shall submit a preconstruction visibility monitoring plan prior to the filing of a permit application. Within 30 days, the department must, after consultation with the affected federal land manager, review and either approve the monitoring program or specify the changes necessary for approval. If the department fails to act within the 30 days, the monitoring program shall be deemed approved.

(4) The owner or operator of a proposed major stationary source or major modification, after construction has been completed, shall conduct such visibility monitoring as the department may require as a permit condition to establish the effect the source has on visibility conditions within the mandatory Class I area being impacted.

(5) The department may waive the requirements of (1), (2), and (3) of this rule if the value of "V" in the equation below is less than 0.50 or, if for any other reason which can be demonstrated to the satisfaction of the department, an analysis of visibility is not necessary.

$$V = \frac{\text{(Emissions)}}{\text{Distance}}$$

where: Emissions = emissions from the major stationary source or modification of nitrogen oxides, particulate matter, or sulfur dioxide, whichever is highest, in tons per year.

Distance = distance, in kilometers, from the proposed major stationary source or major modification to each federal Class I area.

(History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, 75-2-204, MCA; NEW, 1985 MAR p. 1326, Eff. 9/13/85; AMD, 1988 MAR p. 826, Eff. 4/29/88; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.1111 ADDITIONAL IMPACT ANALYSIS

(1) The owner or operator of a proposed major stationary source or major modification subject to the requirements of ARM 17.8.824 (PSD) shall provide a visibility impact analysis of the visibility impact likely to occur as a result of the major source or major modification and as a result of general commercial, residential, industrial, and other growth associated with the source or major modification. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, 75-2-204, 75-2-211, MCA; NEW, 1985 MAR p. 1326, Eff. 9/13/85; AMD, 1995 MAR p. 535, Eff. 4/14/95; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.1301 DEFINITIONS

(1) For the purposes of this subchapter, terms have the meaning as defined in 40 CFR 93.101, except that the definition of "regionally significant project" is modified below.

(2) For the purposes of this subchapter and 40 CFR Part 93, subpart A, as adopted by reference in this subchapter, the following additional definitions apply:

(a) "Adoption or approval of a regionally significant project" means, for the purposes of 40 CFR 93.121, the first time action necessary to authorize a project occurs, such as the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to construct the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with construction of the project, or any written decision or authorization from the metropolitan planning organization or the local agency that the project may be adopted or approved.

(b) "Consulted agency" means a federal, state, or local agency or MPO required to be consulted pursuant to this subchapter.

(c) "MPO" means a metropolitan planning organization created pursuant to 23 CFR Part 450, subpart C (Metropolitan Transportation Planning and Programming) for the purpose of carrying out transportation planning in urban areas. This includes the MPOs in Billings, Great Falls and Missoula, any successors to these MPOs, and any MPO that is subsequently created for any area.

(d) "Regionally significant project" means a transportation project (other than an exempt project) that is on a facility that serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a rural nonattainment area or metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that will offer an alternative to regional highway travel.

(e) "Responsible entity" means a federal, state or local government agency having primary responsibility for planning or approving an action for which consultation is required under 40 CFR Part 93, subpart A or this subchapter.

(f) "State air quality agency" means the Montana department of environmental quality ("department" or "DEQ") or its successor agency.

(g) "State department of transportation" means the Montana department of transportation ("MDT") provided for in 2-15-2501, MCA, or its successor agency. (History: 75-2-111, MCA; IMP, 75-2-202, MCA; NEW, 1996 MAR p. 2299, Eff. 8/23/96; AMD, 1999 MAR p. 1216, Eff. 6/4/99.)

17.8.1304 DETERMINING CONFORMITY OF TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS TO STATE OR FEDERAL IMPLEMENTATION PLANS

(1) Any entity responsible for preparing any transportation plan, program or project developed, funded or approved under Title 23 USC or the Federal Transit Act shall comply with 40 CFR Part 93, subpart A and this subchapter.

(2) Any entity responsible for developing transportation related air quality emission inventories or implementation plans shall comply with 40 CFR Part 93, subpart A and this subchapter. (History: 75-2-111, MCA; IMP, 75-2-202, MCA; NEW, 1996 MAR p. 2299, Eff. 8/23/96.)

17.8.1305 CONSULTATION REQUIREMENTS: APPLICABILITY

(1) The consultation procedures set out in this subchapter must be utilized by the department and local air quality agencies in developing applicable air quality control plans, and by the federal highway administration (FHWA) and federal transit administration (FTA), MDT, MPOs, and local transportation planning agencies in making conformity determinations or in deciding that a conformity determination is not necessary because a revision to a transportation plan or transportation improvement program merely adds or deletes an exempt project listed in 40 CFR Part 93, subpart A.

(2) Tables A through E below identify the specific actions for which consultation is required under this subchapter, and specify the parties, timing, methods, and documentation required for consultations.

TABLE A

ACTION: Research and Data Collection.
RESPONSIBLE ENTITY: MDT, DEQ, MPO, local air quality and transportation planning agencies

Action Step	Consult With	When to Consult	Consultation Method	Consultation Documentation
1. Design/ scheduling/ funding of research and data collection for transportation related air quality inventories, transportation modeling, or planning efforts	local air and transportation agencies, MPO, DEQ, MDT	before starting research or data collection	letter of notification (meet at consulted agency request)	not required
2. Completion of project	same as above	project completion	distribute summary of findings	not required

TABLE B

ACTION: Preparation or revision of emission inventory (involving transportation-related emission sources).
RESPONSIBLE ENTITY: Local air quality agency or DEQ.

Action Step	Consult With	When to Consult	Consultation Method	Consultation Documentation
1. Selection of methods, models, assumptions, data sources for determining transportation emissions	local transportation and air agencies, MPO, DEQ, MDT, EPA, FHWA, FTA	before starting analysis using these parameters	letter of notification (meet at consulted agency request)	describe consultation, response, and response use in draft inventory
2. Release of draft emission inventory	same as above	release of draft inventory	distribution of draft inventory	discuss in final inventory
3. Release of final emission inventory	same as above	release of final inventory	distribution of final inventory*	not required

* If consultation on draft does not result in any revisions, distribution of a separate final document is not required. In this case consulted agencies may simply be notified that the draft has been adopted as final.

TABLE C

ACTION: Preparation or revision of air quality control plan.
RESPONSIBLE ENTITY: Local air quality agency or DEQ.

Action Step	Consult With	When to Consult	Consultation Method	Consultation Documentation
1. Selection of methods, models, assumptions, data sources for determining transportation- related emissions*	local transportation and air agencies, MPO, DEQ, MDT, EPA, FHWA, FTA	before starting analysis using these parameters	letter of notification (meet at consulted agency request)	describe consultation, response, and response use in draft control plan
2. Selecting transportation- related control strategies, transportation control measures (TCMs), and proposed transportation emissions budget	same as above	before strategy/TCM selection and budget allocation	letter of notification (meet at consulted agency request)	draft control plan
3. Distribution of draft control plan	same as above	release of proposed control plan	distribute proposed control plan	written response to consulted agency comment
4. State conflict resolution appeal period, per ARM 17.8.1312	local transportation and air agencies MPO, DEQ, MDT	Initiated by responsible entity written response to comments on draft	appeals to governor by consulted agencies	discuss comments on draft, appeals (if any), and appeal resolution in final document
5. Adoption of final control plan (emission budget determination)	local transportation and air agencies MPO, DEQ, MDT, FHWA, FTA, EPA	Upon end of appeal period or resolution of any appeals	distribute final control plan**	not required

* Consultation at this step is not required if these factors are unchanged from those used in an emission inventory on which consultation requirements were fulfilled.
** If consultation on draft does not result in an appeal to the governor or in any revisions to the draft, distribution of a separate final document is not required. In this case consulted agencies may simply be notified that the draft has been adopted as final.

TABLE D

ACTION: Transportation Conformity Determination (for
Transportation Plan, Transportation Improvement Program (TIP), Transportation Project, and Hot-Spot Analyses.
RESPONSIBLE ENTITY: MPO (MDT outside metropolitan areas and
for issues covered in ARM 17.8.1310(1)(h) and (i)).

** NOTE ** For guidance relating to the specific action steps required for plan, TIP, project, or hot-spot analysis (and directions for accomplishing those steps) refer to 40 CFR Part 93.

Action Step	Consult With	When to Consult	Consultation Method	Consultation Documentation
1. Selection of methods, models, assumptions, data sources, and routes (including any minor arterials and projects otherwise exempted to be used in emissions analysis*	local transportation and air agencies, DEQ, MDT, FHWA, FTA, EPA	before starting analysis using these parameters	letter of notification (meet at consulted agency request)	discuss consultation, response, and response use in draft determination
2. Identify projects to be included in the analysis (include exempt projects treated as non-exempt)*	same as above	upon initial selection and any revisions during analysis	same as above	same as above
3. Determine TCM implementation status per 40 CFR 93.113*	same as above	before starting emission analysis	same as above	discuss in draft conformity determination
4. Draft conformity determination release	same as above	before or with draft plan, TIP, or project document release	distribute determination	written response to comment on draft determination
5. State conflict resolution appeal period, per ARM 17l8.1312	local air and transportation agencies, MPO, DEQ, MDT	initiated by responsible entity written response to comments on draft determination	appeals to governor by consulted agencies	discuss comments on draft, appeals (if any), and appeal resolution in final determination
6. Responsible entity final conformity determination	FHWA, FTA (notify local air and transportation agencies, MPO, DEQ, MDT)	upon conclusion of appeal period or resolution of any appeals	distribute and request concurrence from FHWA and FTA	not required
7. Conformity determination concurrence by FHWA and FTA	local air and transportation agencies DEQ, MDT, FHWA, FTA, EPA	upon notice of FHWA and FTA concurrenct	distribute final plan, TIP, or project document	summarize consultation process and conformity determination in final plan, TIP, or project document

* Consultation on these steps will often be done concurrently.

TABLE E

ACTION: Determination that a transportation plan or TIP revision or amendment merely adds or deletes exempt projects listed in 40 CFR 93.134.
RESPONSIBLE ENTITY: MPO or MDT.

Action Step	Consult With	When to Consult	Consultation Method	Consultation Documentation
1. Identification of projects included in the revision or amendment and initial finding that all are exempt and do not hinder TCM implementation	local transportation and air agencies, DEQ, MDT, FHWA, FTA, EPA	upon preliminary determination that all projects are exempt	letter of notification (meet at consulted agency request)	describe consultation, response, and response use in notice of final determination
2. Determination that all included projects are exempt and do not interfere with TCM implementation	same as above	upon responsible entity determination	same as above	not required
OR 3. Determination that one or more included projects are not exempt or do interfere with TCM implementation	same as above	upon responsible entity determination	same as above	implement conformity determination process, per Table D

(History: 75-2-111, MCA; IMP, 75-2-202, MCA; NEW, 1996 MAR p. 2299, Eff. 8/23/96; AMD, 1999 MAR p. 1216, Eff. 6/4/99.)

17.8.1306 CONSULTATION PROCEDURES

(1) Responsible entities shall conduct consultations in accordance with the specific procedures set out in Tables A through E of ARM 17.8.1305. In conducting consultations, responsible entities shall comply with the following general requirements:

(a) The responsible entity shall allow reasonable time for consultation. Because the time available to accomplish many of the actions required under this subchapter will be limited, consulted agencies shall make a reasonable effort to develop response procedures that will allow them to respond quickly. In its request for consultation, the responsible entity shall specify the date by which a response is needed. If a consulted agency is unable to respond by the date specified, it shall contact the responsible entity to arrange a mutually acceptable date.

(b) The responsible entity shall provide sufficient information to provide a basis for meaningful consultation. If the supporting materials for a particular action are too voluminous for reasonable circulation, the responsible entity shall summarize and make available the materials not circulated. The responsible entity shall provide additional information upon request of a consulted agency.

(c) The responsible entity may use meetings for consultation and shall convene a consultation meeting upon request of a consulted agency. If a meeting is scheduled, the responsible entity shall notify all consulted agencies of the meeting. The responsible entity shall make a written record of the issues discussed and any decisions or commitments made during a consultation meeting.

(d) The responsible entity shall include in the draft and final documentation of the actions covered by this subchapter a description of the consultation opportunities provided during accomplishment of the action, a summary of the responses received, and a discussion of how those responses were used in accomplishing the action.

(2) For purposes of consultation contacts, the department shall maintain a list of offices and officials from each federal, state and local government agency involved in actions requiring consultation pursuant to 40 CFR Part 93. The department shall distribute the list to all involved agencies, and update the list as necessary. (History: 75-2-111, MCA; IMP, 75-2-202, MCA; NEW, 1996 MAR p. 2299, Eff. 8/23/96; AMD, 1999 MAR p. 1216, Eff. 6/4/99.)

17.8.1310 SPECIAL ISSUES

(1) In conducting consultations pursuant to ARM 17.8.1306, responsible entities shall ensure that the following special issues are addressed, when applicable:

(a) evaluating and choosing a model or models and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses (see Table D, action step number 1);

(b) determining which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel) (see Table D, action step number 1), and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP (see Table D, action step number 2);

(c) evaluating whether projects otherwise exempted from meeting the requirements of 40 CFR Part 93, subpart A (see 40 CFR 93.134 and 93.135) should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason (see Table E);

(d) determining, as required by 40 CFR 93.113(c)(1), whether past obstacles to implementation of transportation control measures ("TCMs") that are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs. This process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures (see Table D, action step number 3);

(e) identifying, as required by 40 CFR 93.131(d), projects located at sites in PM10 nonattainment areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM10 hot-spot analysis (see Table D, action step number 1);

(f) choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas as required by 40 CFR 93.109(g)(2)(iii) (see Table D, action step number 1);

(g) determining which transportation plan or TIP revisions or amendments merely add or delete exempt projects listed in 40 CFR Part 93, subpart A (see Table E);

(h) consulting on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment areas or air basins (see Table D, action step number 1);

(i) whenever the MPO does not include the entire nonattainment or maintenance area, determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area (see Table D, action step number 1);

(j) designing, scheduling, and funding research and data collection efforts and regional transportation model development by the MPO or MDT (e.g., household/travel transportation surveys) (see Table A, action step number 1). (History: 75-2-111, MCA; IMP, 75-2-202, MCA; NEW, 1996 MAR p. 2299, Eff. 8/23/96; AMD, 1999 MAR p. 1216, Eff. 6/4/99.)

17.8.1311 NOTICE REQUIREMENTS FOR NON-FHWA/FTA PROJECTS

(1) Any state or local agency having the authority for planning or approving the construction of non-FHWA/FTA transportation project (including those by recipients of funds designated under Title 23 USC or the Federal Transit Act) shall ensure that the MPO and MDT are informed of project plans and plan changes on a timely basis. This requirement includes projects for which alternative locations, design concept and scope, or the no-build option are still being considered. Notice to the MPO and MDT must be in accordance with the following procedures:

(a) The agency planning or approving the project shall inform the MPO and MDT prior to obligating or expending funds for project design or construction or when the first consultation request following project concept identification is received from a responsible entity performing an action covered by this subchapter, whichever occurs first.

(b) Whenever the project information provided by an agency planning or approving a project is not adequate to determine whether the project is regionally significant or to perform a regional emissions analysis, the responsible entity shall coordinate with the agency planning or approving the project to reach agreement on significance and the assumptions about project parameters to be used in the responsible entity's analysis.

(c) If a project has not been disclosed to the responsible entity in accordance with (a) above and is subsequently disclosed and determined to be regionally significant, the project must be deemed not to meet the requirements of 40

CFR 93.121 for adoption, approval, or funding. (History: 75-2-111, MCA; IMP, 75-2-202, MCA; NEW, 1996 MAR p. 2299, Eff. 8/23/96; AMD, 1999 MAR p. 1216, Eff. 6/4/99.)

17.8.1312 CONFLICT RESOLUTION

(1) Conflicts among state agencies or between state agencies and an MPO or a local agency that arise during consultations conducted pursuant to this subchapter may be appealed to the governor as follows if the conflict cannot be resolved by the affected agencies:

(a) A consulted agency that has submitted comments pursuant to this subchapter on a proposed implementation plan or conformity determination has 14 days to appeal to the governor after being notified by the responsible entity of the response to the consulted agency's comments. The specific actions that start the 14-day appeal period are identified in Tables C and D of ARM 17.8.1305.

(b) The consulted agency must provide written notice of the appeal to the responsible entity and to the governor.

(c) If no appeal is filed within 14 days, the responsible entity may proceed with the final implementation plan or conformity determination. If an appeal is filed within 14 days, the final implementation plan or conformity determination must have the concurrence of the governor.

(2) The governor may delegate the conflict resolution and concurrence roles to another official or agency within the state, but not to the Montana board of environmental review, the environmental quality council, the Montana transportation commission, the directors or staffs of the department or MDT, or the MPO or local government entity involved in the dispute. (History: 75-2-111, MCA; IMP, 75-2-202, MCA; NEW, 1996 MAR p. 2299, Eff. 8/23/96; AMD, 1999 MAR p. 1216, Eff. 6/4/99.)

17.8.1313 PUBLIC CONSULTATION PROCEDURES

(1) The following public consultation procedures must be adhered to during actions required by 40 CFR Part 93, subpart A, or this subchapter:

(a) Local air quality agencies and the department shall utilize a proactive public involvement process which provides opportunity for public review and comment prior to taking formal action establishing emissions budgets or allocating budgets among sources.

(b) MPOs and MDT shall utilize a proactive public involvement process which provides opportunity for public review and comment by, at a minimum, providing reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and prior to taking formal action on conformity determinations for all transportation plans and TIPs, consistent with the requirements of 23 CFR Part 450.316(b). Any charges imposed for public inspection and copying must be consistent with the fee schedule contained in 49 CFR 7.95, except that state agency charges must be consistent with the governor's April 9, 1996, or most current, guidelines for responding to requests for access to, and/or copying, of agency documents. In addition, state agencies shall specifically address in writing all public comments that known plans for a regionally significant project that is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. State agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law. (History: 75-2-111, MCA; IMP, 75-2-202, MCA; NEW, 1996 MAR p. 2299, Eff. 8/23/96; AMD, 1999 MAR p. 1216, Eff. 6/4/99.)

17.8.1401 DEFINITIONS (1) For the purposes of this subchapter, terms have the meaning as defined in 40 CFR 93.152.

(2) For the purposes of this subchapter and 40 CFR Part 93, subpart B, as adopted by reference in this subchapter, the following additional definitions apply:

(a) "MPO" means metropolitan planning organization and is that organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 USC 134 and 49 USC 1607. This includes the MPOs in Billings, Great Falls and Missoula, any successors to these MPOs, and any MPO that is subsequently created for any area.

(b) "State air quality agency" means the Montana department of environmental quality ("department" or "DEQ"), or its successor agency. (History: 75-2-111, MCA; IMP, 75-2-202, MCA; NEW, 1999 MAR p. 1216, Eff. 6/4/99.)

17.8.1402 INCORPORATION BY REFERENCE

(1) For purposes of this subchapter, the board hereby adopts and incorporates herein by reference the following:

(a) 40 CFR Part 93, subpart B, which requires the conformity of general federal actions, other than those covered by subpart A, to state or federal implementation plans, with the following changes:

(i) the reference to 40 CFR Part 51, subpart T, in 40 CFR 93.153(a), is replaced by ARM 17.8.1301, et seq.

(ii) the references to 40 CFR Part 51, subpart T, and 40 CFR 93, subpart A, in 40 CFR 93.158(a)(5)(ii) are replaced by ARM 17.8.1301, et seq.

(iii) 40 CFR 93.160(f) is replaced by: "written commitments to mitigation measures must be obtained prior to a positive conformity determination and such commitments must be fulfilled."

(iv) 40 CFR 93.160(g) is replaced by:"Any agreements, including mitigation measures, necessary for a conformity determination will be both state and federally enforceable. Enforceability through the state implementation plan (SIP) will apply to all persons who agree to mitigate direct and indirect emissions associated with a federal action for a conformity determination." (History: 75-2-111, MCA; IMP, 75-2-202, MCA; NEW, 1999 MAR p. 1216, Eff. 6/4/99.)

(2) Copies of materials incorporated by reference in this subchapter may be obtained as referenced in ARM 17.8.102(3) and (4).

Subchapter 16

Emission Control Requirements for
Oil and Gas Well Facilities Operating
Prior to Issuance of a Montana Air Quality Permit

17.8.1601 DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) "Emissions minimizing technology" means a technology that reduces the amount of volatile organic compound (VOC) emissions from oil and gas well facilities through the use of resource recovery as fuel for process units or technology that results in significantly lower emissions of VOCs through the use of vapor capture and introduction into a pipeline.

(2) "Initial well completion date" has the meaning provided in 75-2-211(2)(b), MCA.

(3) "Oil and gas well facility" has the meaning provided in 75-2-103(13), MCA.

(4) "Potential to emit (PTE)" means the maximum capacity of a facility or emitting unit, within physical and operational design, to emit a pollutant. Any physical or operational limitation on the capacity of the facility or emitting unit 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, is treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions are not considered in determining potential to emit. (History: 75-2-111, 75-2-211, MCA; IMP, 75-2-211, MCA; NEW, 2005 MAR p. 2660, Eff. 1/1/06.)

Subchapter 16

Emission Control Requirements for
Oil and Gas Well Facilities Operating
Prior to Issuance of a Montana Air Quality Permit

17.8.1602 APPLICABILITY AND COORDINATION WITH MONTANA AIR QUALITY PERMIT RULES (1) The requirements of this subchapter apply to oil and gas well facilities that were completed after March 16, 1979, or that were modified after March 16, 1979, and that have the potential to emit (PTE) more than 25 tons per year (TPY) of any airborne pollutant that is regulated under this chapter.

(2) Notwithstanding (1), the requirements of ARM 17.8.1603 do not apply until July 1, 2006, to oil and gas well facilities completed prior to January 3, 2006.

(3) The owner or operator of an oil and gas well facility shall submit to the department an application for a Montana air quality permit, pursuant to ARM 17.8.748, no later than January 3, 2006, or within 60 days after the initial well completion date for the facility, whichever is later.

(4) An owner or operator who complies with the requirements of this subchapter may construct, install, or use equipment necessary to complete or operate an oil or gas well facility without a permit until the department's decision on the application is final. (History: 75-2-111, 75-2-211, MCA; IMP, 75-2-211, MCA; NEW, 2005 MAR p. 2660, Eff. 1/1/06.)

17.8.1603 EMISSION CONTROL REQUIREMENTS (1) The owner or operator of an oil and gas well facility shall install and operate the following air pollution control equipment and comply with the following air pollution control practices:

(a) volatile organic compound (VOC) vapors greater than 500 British thermal units per standard cubic foot (BTU/scf) from oil and gas wellhead equipment must be routed to a gas pipeline, or, if a gas pipeline is not located within a 1/2 mile of the oil and gas well facility, VOC vapors greater than 500 BTU/scf must be captured and routed to emissions minimizing technology or to a smokeless combustion device equipped with an electronic ignition device or a continuous burning pilot system;

(b) VOC vapors greater than 500 BTU/scf from oil and condensate storage tanks with the PTE of 15 TPY or greater must be captured and routed to a gas pipeline, or if a gas pipeline is not located within a 1/2 mile of the oil and gas well facility, VOC vapors greater than 500 BTU/scf from storage tanks with the PTE of 15 TPY must be captured and routed to emissions minimizing technology, or to a smokeless combustion device equipped with an electronic ignition device or a continuous burning pilot system;

(c) hydrocarbon liquids must be loaded into transport vehicles using submerged fill technology;

(d) VOC vapors greater than 500 BTU/scf from loading transport vehicles with the PTE greater than 15 TPY must be captured and routed to a gas pipeline, or, if a gas pipeline is not located within a 1/2 mile of the oil and gas well facility, VOC vapors greater than 500 BTU/scf from loading transport vehicles with a PTE greater than 15 TPY must be routed to emissions minimizing technology, or to a smokeless combustion device equipped with an electronic ignition device or a continuous burning pilot system;

(e) stationary internal combustion engines of rich burn design greater than 85 brake horsepower (BHP) must be equipped with nonselective catalytic reduction or its equivalent to control air emissions;

(f) stationary internal combustion engines of lean burn design greater than 85 BHP must be equipped with oxidation catalytic reduction or its equivalent to control air emissions; and

(g) oil and gas well facility operations must comply with the ambient air quality standards for hydrogen sulfide and other criteria pollutants.

(2) The owner or operator of an oil and gas well facility shall operate the air pollution control equipment and comply with the air pollution control practices required in (1) from the initial well completion date for the facility until the department decision on the permit application is final. (History: 75-2-111, 75-2-211, MCA; IMP, 75-2-211, MCA; NEW, 2005 MAR p. 2660, Eff. 1/1/06.)

17.8.1604 INSPECTION AND REPAIR REQUIREMENTS (1) The owner or operator of an oil and gas well facility shall inspect all VOC piping components for leaks each calendar month. Leak detection methods may incorporate the use of sight, sound, or smell.

(2) The owner or operator shall make the first attempt to repair any leaking VOC equipment within five days after the leak is detected.

(3) Any leaking VOC equipment must be repaired as soon as practicable, but no later than 15 days after the leak is initially detected, unless the repair is technically infeasible without a facility shutdown. Such equipment shall be repaired before the end of the first facility shutdown after the leak is initially detected. (History: 75-2-111, 75-2-211, MCA; IMP, 75-2-211, MCA; NEW, 2005 MAR p. 2660, Eff. 1/1/06.)

17.8.1605 RECORDKEEPING REQUIREMENTS (1) The owner or operator of an oil and gas well facility shall record, and maintain onsite or at a central field office, a record of each monthly inspection.

(2) Inspection records must include, at a minimum, the following information:

(a) the date of the inspection;

(b) the findings of the inspection;

(c) the leak determination method used;

(d) any corrective action taken; and

(e) the inspector's name and signature.

(3) All records of inspection and repair must be kept as a permanent business record for at least five years, be available for inspections, and be submitted to the department upon request. (History: 75-2-111, 75-2-211, MCA; IMP, 75-2-211, MCA; NEW, 2005 MAR p. 2660, Eff. 1/1/06.)

17.8.1606 DELAYED EFFECTIVE DATE (1) The requirements of ARM 17.8.1601 through 17.8.1605 are not effective until January 1, 2006. (History: 75-2-111, 75-2-211, MCA; IMP, 75-2-211, MCA; NEW, 2005 MAR p. 2660, Eff. 12/23/05.)

Subchapter 17

Registration of Air Contaminant Sources

17.8.1701 DEFINITIONS For the purposes of this subchapter:

(1) "Emitting unit" means:

(a) any equipment that emits or has the potential to emit any regulated air pollutant under the Clean Air Act of Montana through a stack(s) or vent(s); or

(b) any equipment from which emissions consist solely of fugitive emissions of a regulated air pollutant under the Clean Air Act of Montana.

(2) "Potential to emit (PTE)" means the maximum capacity of a facility or emitting unit, within physical and operational design, to emit a pollutant. Any physical or operational limitation on the capacity of the facility or emitting unit 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, is treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions are not considered in determining potential to emit.

(3) "Registered facility" means any registration eligible facility that has been registered for operation under the requirements in this subchapter.

(4) "Registration" means identifying equipment and/or processes to the department in accordance with this subchapter.

(5) "Registration eligible facility" means an oil or gas well facility as defined in 75-2-103(13), MCA, and subject to the requirements of ARM 17.8.743.

(6) "VOC piping components" means valves, pumps, compressors, flanges, pressure relief valves and connectors, and other piping components that have VOC emissions. (History: 75-2-111, 75-2-234, MCA; IMP, 75-2-234, MCA; NEW, 2006 MAR p. 893, Eff. 4/7/06.)

17.8.1702 APPLICABILITY (1) The owner or operator of a registration eligible facility may register with the department in lieu of submitting an application for, and obtaining, a Montana air quality permit (MAQP). Nothing in this subchapter precludes an owner or operator from obtaining and/or maintaining a MAQP in accordance with ARM Title 17, chapter 8, subchapter 7.

(2) The owner or operator of an oil or gas well facility subject to the requirements of ARM Title 17, chapter 8, subchapter 12, is not eligible to register under this subchapter. (History: 75-2-111, 75-2-234, MCA; IMP, 75-2-234, MCA; NEW, 2006 MAR p. 893, Eff. 4/7/06.)

17.8.1703 REGISTRATION PROCESS AND INFORMATION (1) A registration eligible facility is registered upon the department's receipt of the form and information required in (2) and (3) and the appropriate fee required in ARM 17.8.1704. The department shall acknowledge receipt of a registration within 30 days after receiving the registration.

(2) The owner or operator shall provide the following information to the department, using a form provided by the department:

(a) facility name and mailing address;

(b) owner or operator's name, address, and telephone number;

(c) physical location of facility (legal description to the nearest 1/4 section);

(d) contact person and telephone number;

(e) general nature of business;

(f) standard industrial classification code (SIC);

(g) SIC description;

(h) narrative description of the site and facility; and

(i) site map.

(3) The owner or operator shall provide the following additional equipment-specific information to the department for each emitting unit, including any air pollution control equipment:

(a) manufacturer's name;

(b) unit type;

(c) date of manufacture; and

(d) maximum rated design capacity.

(4) The owner or operator of a registered facility shall notify the department, using the registration form provided by the department, of any change(s) to the registration information, within 15 days after the change(s).

(5) The owner or operator of a registered facility that is modified and becomes subject to the provisions of 42 USC 7475, 7503, or 7661 shall meet the requirements of ARM Title 17, chapter 8, subchapters 8, 9, 10 and/or 12.

(6) The owner or operator of a registration eligible facility may not commence operations under the provisions of this subchapter until the facility has been registered with the department, except as provided in ARM 17.8.1710(1).

(7) The owner or operator of a registration eligible facility for which a valid MAQP has been issued may register with the department and request revocation of the MAQP. (History: 75-2-111, 75-2-234, MCA; IMP, 75-2-234, MCA; NEW, 2006 MAR p. 893, Eff. 4/7/06.)

17.8.1704 REGISTRATION FEE (1) The registration fee required by ARM 17.8.504 must be submitted to the department with each registration submitted under this subchapter. No fee is required for notifying the department, pursuant to ARM 17.8.1703(4), of changes to registration information.

(2) The registration fee must be paid in its entirety at the time the registration form is submitted to the department. (History: 75-2-111, 75-2-234, MCA; IMP, 75-2-234, MCA; NEW, 2006 MAR p. 893, Eff. 4/7/06.)

17.8.1705 OPERATING REQUIREMENTS: FACILITY-WIDE (1) The owner or operator of a registered facility shall allow the department's representatives access to the facility at all reasonable times for the purpose of making inspections or surveys, collecting samples, obtaining data, auditing any monitoring equipment, observing any monitoring or testing, and otherwise conducting all necessary functions related to this subchapter.

(2) The owner or operator of a registered facility shall monitor and record annual production information for all emission points, as required by the department in the annual emission inventory request. The request will include, but is not limited to, all emissions associated with emitting units registered to operate at the facility. Production information must be gathered on a calendar year basis and submitted to the department by the date required in the emission inventory request. Information must be in the units required by the department.

(3) The owner or operator of a registered facility shall maintain onsite records showing daily hours of operation and daily production rates and corresponding emission levels for the previous 12 months. The records compiled in accordance with this subchapter must be maintained by the owner or operator for at least five years following the date of the measurement, must be available at the plant site, unless otherwise specified in this subchapter, for inspection by the department, and must be submitted to the department upon request. (History: 75-2-111, 75-2-234, MCA; IMP, 75-2-234, MCA; NEW, 2006 MAR p. 893, Eff. 4/7/06.)

17.8.1710 OIL OR GAS WELL FACILITIES GENERAL REQUIREMENTS

(1) The owner or operator of a registration eligible oil or gas well facility may submit to the department a complete registration form, pursuant to ARM 17.8.1701 through 17.8.1705, within 60 days after the initial well completion date for the facility.

(2) The owner or operator of an oil or gas well facility who submits an application for a Montana air quality permit to the department prior to the effective date of this subchapter may request that the application be used in lieu of a registration form for registration of the oil or gas well facility by completing the form provided by the department.

(3) The owner or operator of a registered oil or gas well facility shall operate all emissions control equipment to provide the maximum air pollution control for which it was designed. (History: 75-2-111, 75-2-203, 75-2-211, 75-2-234, MCA; IMP, 75-2-211, 75-2-234, MCA; NEW, 2006 MAR p. 893, Eff. 4/7/06.)

17.8.1711 OIL OR GAS WELL FACILITIES EMISSION CONTROL REQUIREMENTS (1) The owner or operator of a registered oil or gas well facility shall install and operate the following air pollution control equipment and comply with the following air pollution control practices beginning at the time of registration:

(a) VOC vapors of 200 Btu/scf or greater from each piece of oil or gas well facility equipment, with a PTE greater than 15 tpy, must be captured and routed to a gas pipeline, routed to a smokeless combustion device equipped with an electronic ignition device or a continuous burning pilot system, meeting the requirements of 40 CFR 60.18, and operating at a 95% or greater control efficiency, or routed to air pollution control equipment with equal or greater control efficiency than a smokeless combustion device. The phrase "oil or gas well facility equipment" includes, but is not limited to, wellhead assemblies, amine units, prime mover engines, phase separators, heater treatment units, dehydrator units, tanks, and connecting tubing, but does not include equipment such as compressor engines used for transmission of oil or natural gas;

(b) hydrocarbon liquids must be loaded into, or unloaded from, transport vehicles using submerged fill technology;

(c) stationary internal combustion engines of rich-burn design greater than 85 brake horsepower (BHP) must be equipped with nonselective catalytic reduction or its equivalent to control air emissions; and

(d) stationary internal combustion engines of lean-burn design greater than 85 BHP must be equipped with oxidation catalytic reduction or its equivalent to control air emissions. (History: 75-2-111, 75-2-203, 75-2-234, MCA; IMP, 75-2-234, MCA; NEW, 2006 MAR p. 893, Eff. 4/7/06.)

17.8.1712 OIL OR GAS WELL FACILITIES INSPECTION AND REPAIR REQUIREMENTS (1) The owner or operator of an oil or gas well facility shall inspect all VOC piping components for leaks each calendar month. Leak detection methods may incorporate the use of sight, sound, or smell.

(2) The owner or operator shall make the first attempt to repair any leaking VOC equipment within five days after the leak is detected.

(3) The owner or operator shall repair any leaking VOC equipment as soon as practicable, but no later than 15 days after the leak is initially detected, unless the repair is technically infeasible without a facility shutdown. Such equipment shall be repaired before the end of the first facility shutdown after the leak is initially detected. (History: 75-2-111, 75-2-234, MCA; IMP, 75-2-234, MCA; NEW, 2006 MAR p. 893, Eff. 4/7/06.)

17.8.1713 OIL OR GAS WELL FACILITIES RECORDKEEPING AND REPORTING REQUIREMENTS (1) The owner or operator of an oil or gas well facility shall record, and maintain onsite or at a central field office, a record of each monthly inspection required by ARM 17.8.1712.

(2) Inspection records must include, at a minimum, the following information:

(a) the date of the inspection;

(b) the findings of the inspection;

(c) the leak determination method used;

(d) any corrective action taken; and

(e) the inspector's name and signature.

(3) All records of inspection and repair must be kept as a permanent business record for at least five years, be available for department inspections, and be submitted to the department upon request.

(4) The owner or operator of a registration eligible oil or gas well facility with a detectible level of hydrogen sulfide from the well shall submit, with the registration form, an air quality analysis demonstrating compliance with ARM 17.8.210 and 17.8.214. (History: 75-2-111, 75-2-234, MCA; IMP, 75-2-234, MCA; NEW, 2006 MAR p. 893, Eff. 4/7/06.)

Section 7-1 Definitions

(1) Best available control technology (BACT): Those techniques and methods of controlling emission of pollutants from an existing or proposed open burning source which limit those emissions to the maximum degree which the Department determines, on a case-by-case basis, is achievable for that source, taking into account impacts on energy use, the environment and the economy, and any other costs, including cost to the source. Such techniques and methods may include the following: scheduling of burning during periods and seasons of good ventilation; applying dispersion forecasts; utilizing predictive modeling results performed by and available from the Department to minimize smoke impacts; limiting the amount of burning to be performed during any one period of time; using ignition and burning techniques which minimize smoke production; selecting fuel preparation methods that will minimize dirt and moisture content promoting fuel configurations which create an adequate air to fuel ratio; prioritizing burns as to air quality impact and assigning control techniques accordingly; and, promoting alternative treatments and uses of materials to be burned. For essential agricultural open burning or prescribed wildland open burning during September, October, or November, BACT includes burning only during the time periods specified by the Department of Environmental Quality, which may be determined by calling 1-800-225-6779. For prescribed wildland open burning during December, January, or February, BACT includes burning only during the time periods specified by the department, which may be determined by calling (406)454-6950.

(2) Essential agricultural open burning: Any open 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 after harvest has been completed 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.

(3) Major open burning source: Any person, agency, institution, business or industry conducting any open burning that, on a statewide basis, will emit more than 500 tons per calendar year of carbon monoxide or 50 tons per calendar year of any other pollutant regulated under ARM Title 17, Chapter 8, except hydrocarbons.

(4) Minor open burning source: Any person, agency, institution, business, or industry conducting any open burning which is not a major burning source.

(5) Open burning: Combustion of any material directly in the open air without a receptacle, or in a receptacle other than a furnace, multiple chamber incinerator, or wood waste burner, with the exception of small recreation fires, construction site heating devices used to warm workers, or safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants or elemental phosphorus plants.

(6) Prescribed wildland open burning: Any planned open burning, either deliberately or naturally ignited, which is conducted on forest land or relatively undeveloped range land 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 located in close proximity to a timber harvest site;

(e) control forest pests and diseases; or

(f) promote any other accepted silvicultural practices.

(7) Salvage operation: means any operation conducted in whole or in part to salvage or reclaim any product or material, except the silvicultural practice commonly referred to as a salvage cut.

(8) Trade wastes: Solid, liquid, or gaseous material resulting from construction or the operation of any business, trade, industry, or demolition project. Wood product industry wastes

such as sawdust, bark, peelings, chips, shavings, and cull wood are considered trade wastes. Trade wastes do not include wastes generally disposed of by essential agricultural open burning and prescribed wildland open burning.

(9) Wood waste burner: A device commonly called a teepee burner, silo, truncated cone, wigwam burner, or other similar burner commonly used by the wood products industry for the disposal of wood.

Section 7-2 Prohibited Open Burning - When Permit Required

(1) The board hereby adopts and incorporates by reference 40 (CFR) Part 261, identifying and defining hazardous wastes. A copy of 40 CFR Part 261 may be obtained from the Department of Environmental Quality, 1520 E Sixth Ave., PO Box 200901, Helena, Montana 59620-0901, or from the Superintendent of Documents, US Government Printing Office, Washington, D.C. 20402.

(2) The following material may not be disposed of by open burning:

(a) any waste, which is moved from the premises where it was generated, including waste moved to a solid waste disposal site, except as provided for in Section 7-7 or Section 7-8;

(b) food wastes;

(c) styrofoam and other plastics;

(d) wastes generating noxious odors;

(e) wood and wood byproducts other than trade wastes that have been treated, coated, painted, stained, or contaminated by a foreign material, such as papers or cardboard or painted or stained wood, unless a public or private garbage hauler or rural container system, is unavailable, or unless allowed under Section 7-9;

(f) poultry litter;

(g) animal droppings;

(h) dead animals or dead animal parts;

(i) tires, except as provided in 7-6;

(j) rubber materials;

(k) asphalt shingles, except as provided in Section 7-6 or Section 7-9;

(l) tarpaper, except as provided in Section 7-6 or Section 7-9;

(m) automobile or aircraft bodies and interiors, except as provided in Section 7-6 or Section 7-9;

(n) insulated wire, except as provided in Section 7-6 or Section 7-9;

(o) oil or petroleum products, except as provided in Section 7-6 or Section 7-9;

(p) treated lumber and timbers;

(q) pathogenic wastes;

(r) hazardous wastes as defined by 40 CFR Part 261;

(s) trade wastes, except as provided in Section 7-7 or Section 7-8;

(t) any materials resulting from a salvage operation;

(u) chemicals, except as provided in Section 7-6 or Section 7-9;

(v) asbestos or asbestos-containing materials;

(w) standing or demolished structures except as provided in Section 7-6 or Section 7-9

(3) Except as provided in Section 7-3, no person may open burn any non-prohibited material without first obtaining an air quality open burning permit from the department.

Section 7-3 Minor Open Burning Source Requirements

(1) Unless required to obtain an open burning permit under another provision of this chapter, a minor open burning source need not obtain an air quality open burning permit.

(2) A minor open burning source must:

(a) conform with BACT;

(b) comply with any requirements or regulations relating to open burning established by any municipal or county agency responsible for protecting public health and welfare;

(c) notify the fire control authority for the area of the burn of the intent to burn, giving location, time, and material to be burned, and comply with proper fire safety directions given by the fire control authority, including obtaining a burning permit from appropriate city or county fire control authority if required.

(3) During September, October, or November to conduct essential agricultural open burning or prescribed wildland open burning, a minor open burning source must adhere to the time periods set for burning by the Montana Department of Environmental Quality that are available by calling 1-800-225-6779;

(4) During December, January, or February to conduct essential agricultural open burning or prescribed wildland open burning, a minor open burning source need only notify the department by telephone of any burning and obtain a burning permit from the Cascade County Sheriffs Department, City of Great Falls Fire Department, or any other municipality within Cascade County depending on burn location, prior to ignition. Burning is allowed when ventilation conditions are good or excellent. Forecasts of ventilation conditions may be obtained by calling the department at (406) 454-6950.

(5) During March through August, subject to (2) above, a minor open burning source may conduct open burning not prohibited under Section 7.2.

Section 7-4 Major Open Burning Source Restrictions

The major open burning source permitting program administered under the Cascade County Air Pollution Control Program has been repealed. A major open burning source, as defined in section 7.1(3) of this rule or section 17.8.601(5) of the Administrative Rules of Montana, that desires to conduct open burning in Cascade County is subject to state open burning permit requirements, and should contact the Montana Department of Environmental Quality at (406) 444-3490.

Section 7-5 Special Burning Periods

(1) The following categories of open burning may be conducted during the entire year:

(a) prescribed wildland open burning;

(b) open burning to train firefighters under Section 7-6;

(c) open burning authorized under the emergency open burning permit provisions in section 7-8; and

(d) essential agricultural open burning.

(2) Open burning other than those categories listed in (1) of this section may be conducted only during the months of March through November.

Section 7-6 Firefighting Training

(1) The department may issue an air quality open burning permit for open burning of asphalt shingles, tarpaper, or insulated wire which is a part of a building, oil or petroleum products, and automobile or aircraft bodies and interiors for training firefighters if:

(a) the fire is restricted to a building or structure, a permanent training facility, or other appropriate training site in a site other than a solid waste disposal site;

(b) the material to be burned will not be allowed to smolder after the training session has terminated, and no public nuisance will be created;

(c) all asbestos-containing material has been removed;

(d) asphalt shingles, flooring material, siding, and insulation, which might contain asbestos have been removed, unless samples have been analyzed by a certified laboratory and shown to be asbestos free;

(e) all prohibited material that can be removed safely and reasonably has been removed;

(e) the open burning accomplishes a legitimate training need;

(g) 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 open 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) The department may place any reasonable requirements in an air quality firefighter training open burning permit that the department determines will reduce emissions of air pollutants or will minimize the impact of emissions, and the recipient of a permit must adhere to those conditions.

(3) The applicant may be required, prior to each burn, to notify the department of the anticipated date and location of the proposed training exercise and the type and amount of material to be burned. The department may be notified by phone, fax, or in writing.

(4) An application for an air quality firefighter training open burning permit must be made on a form provided by the department. The applicant shall provide adequate information to enable the department to determine whether the application satisfies the requirements of this rule for a permit.

(5) Proof of publication of public notice, consistent with this rule, must be submitted to the department as part of any application. An applicant for an air quality firefighter training open burning permit shall notify the public of the application for a permit by legal publication, at least once, in a newspaper of general circulation in the area affected by the application. The notice must be published no sooner than 10 days prior to submittal of an application and no later than 10 days after submittal of an application. The form of the notice must be provided by the department and must include a statement that public comments may be submitted to the department concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants if the public notice lists all covered applicants.

(6) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the department’s decision may request a

hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this section. 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 the section. The filing of the request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and the issuance of a final decision by the board.

Section 7-7 Conditional Air Quality Open Burning Permits

(1) The department may issue a conditional air quality open burning permit if the department determines:

(a) alternative methods of disposal would result in extreme economic hardship to the applicant; and

(b) emissions from open 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) The department must be reasonable when determining whether alternative methods of disposal would result in extreme economic hardship to the applicant.

(3) Conditional open burning must conform with BACT.

(4) The department may issue a conditional air quality open burning permit to dispose of:

(a) wood and wood byproduct trade wastes by any business, trade, industry, or demolition project; or

(b) untreated wood waste at a licensed landfill site, if the department determines that:

(i) the proposed open burning would occur at an approved burn site, as designated in the solid waste management system license issued by the Montana Department of Environmental Quality pursuant to ARM Title 17, chapter 50 subchapter 5; and

(ii) prior to issuance of the conditional air quality open burning permit, the wood waste pile is inspected by the

department or its designated representative and no prohibited materials listed in Section 7-2, other than wood waste, are present.

(5) A permit issued under this rule is valid for the following periods:

(a) Wood and wood byproduct trade wastes - one year, annually renewable; and

(b) untreated wood waste at licensed landfill sites - single burn. A new permit must be obtained for each burn.

(6) A permit granted under (4)(a) above is a temporary measure to allow time for the entity generating the trade wastes to develop alternative means of disposal.

(7) The department may place any reasonable requirements in a conditional air quality open burning permit that the department determines will reduce emissions of air pollutants or will minimize the impact of emissions, and the recipient of such a permit must adhere to those conditions. For a permit granted pursuant to subsection (4) (a) above, BACT for the year covered by the permit will be specified in the permit; however the source may be required, prior to each burn, to receive approval from the department of the date of the proposed burn to ensure that good ventilation exists and to assign priorities if other sources in the area request to burn on the same day. Approval may be obtained by calling the City-County Health Department at (406)454-6950.

(8) An application for a conditional air quality open burning permit must be made on a form provided by the department. The applicant shall provide adequate information to enable the department to determine that the application satisfies the requirements for a conditional air quality open burning permit contained in this rule. Proof of publication of public notice, as required in subsection (9) of this rule, must be submitted to the department as part of any application.

(9) An applicant for a conditional air quality open burning permit shall notify the public of the application by legal publication, at least once, in a newspaper of general circulation in the area affected by the application. The notice must be published no sooner than 10 days prior to submittal of an application and no later than 10 days after submittal of an application. The form of the notice must be provided by the

department and must include a statement that public comments may be submitted to the department concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants if the public notice lists all covered applicants.

(10) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this section. 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 the section. The filing of the request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and the issuance of a final decision by the board.

Section 7-8 Emergency Open Burning Permits

(1) The department may issue an emergency air quality open burning permit to allow burning of a substance not otherwise approved for burning under this rule 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) Oral authorization to conduct emergency open burning may be requested from the department by telephone at (406)454-6950. The applicant must provide 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; and

(f) The date and time that the spill or incident giving rise to the emergency was first noticed.

(3) Within 10 days of receiving oral authorization to conduct emergency open burning under (2) above, the applicant must submit to the department a written application for an emergency open burning permit containing the information required above under (2)(a-f)

Section 7-9 Commercial Film Production Open Burning Permits

(1) The department may issue an air quality open burning permit for open burning of otherwise prohibited material as part of a commercial or educational film or video production for motion pictures or television.

(2) The department may issue an air quality open burning permit under this rule if the department determines that emissions from open burning will not endanger public health or welfare or cause or contribute to a violation of any Montana or Federal ambient air quality standard.

(3) An open burning permit issued under this rule is valid for a single production.

(4) Open burning under this rule must conform with BACT.

(5) The department may place any reasonable requirements in an air quality permit issued under this rule that the department determines will reduce emissions of air pollutants or minimize the impact of emissions, and the recipient of a permit must adhere to those conditions.

(6) An application for an air quality permit under this rule must be made on a form provided by the department. The applicant shall provide adequate information to enable the department to determine whether the application satisfies the requirements of this rule for a permit. Proof of publication of public notice, as required in subsection (7) of this rule, must be submitted to the department before an application will be considered complete.

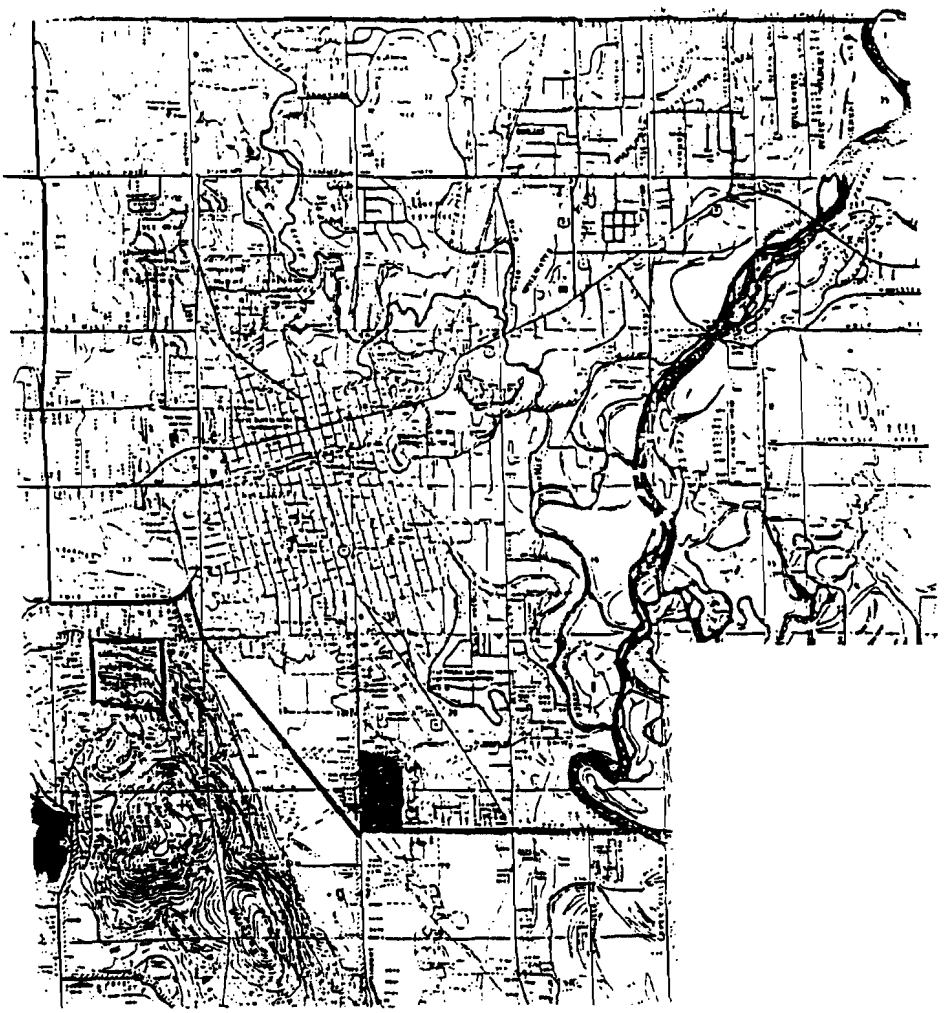
(7) An applicant for an air quality commercial film production open burning permit shall notify the public of its application by legal publication, at least once, in a newspaper of general circulation in the area affected by the application. The notice must be published no sooner than 10 days prior to submittal of an application and no later than 10 days after submittal of an application. Form of the notice must be provided by the department and must include a statement that public comments may be submitted to the department concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants if the public notice lists all covered applicants.

(8) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the deportment's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. 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. The filing of a request for a hearing postpones the effective date of the department's decision until conclusion of the hearing and issuance of a final decision by the board.

Section 7-10 Fees

The department may charge an appropriate permit fee for a firefighting training permit, conditional air quality open burning permit, emergency open burning permit, or commercial film production open burning permit.

TABLE OF CONTENTS



APPENDIX "A"
KALISPELL AIR POLLUTION CONTROL DISTRICT

APPENDIX “B“
KALISPELL AIR POLLUTION CONTROL DISTRICT

The District is described as follows:

Commencing at the intersection of the south limit of the right-of-way of West Reserve and east limit of the right-of-way of Stillwater Road, then east along the south limit of the right-of-way of West Reserve Drive and East Reserve Drive to the intersection with the Flathead River, then,

South along the west bank of the main course of the Flathead River to a point of intersection with Lower Valley Road, then,

West along the north limit of the right-of-way of Lower Valley Road and Cemetery Road to the intersection with the east limit of the right-of-way of Airport Road, then,

South along the east limit of the right-of-way of Airport Road to the intersection with the east limit of the right-of-way of the Burlington Northern Railroad right-of-way, then,

Northwest along the east limit of the Burlington Northern Railroad right-of-way to the intersection with the north limit of the right-of-way of Foys Lake Road, then,

West along the north limit of the right-of-way of Foys Lake Road to the intersection of the west line of Section 13, Township 28N, Range 22W, then,

North along west line of Sections 13 and 12, Range 28N, Range 22W, continuing north along the east limit of the right-of-way of Stillwater Road to the point of beginning which is the intersection of the south limit of the right-of-way of West Reserve Drive and east limit of the right-of-way of Stillwater Road.

Chapter I. SHORT TITLE

These regulations shall be known and may be cited as the Flathead County Air Pollution Control Program.

Chapter II. DECLARATION OF POLICY AND PURPOSE

It is hereby declared to be the public policy of the Flathead County, and the purpose of this Program, to preserve, protect, improve, achieve and maintain such levels of air quality of the

Flathead County and the State of Montana, as will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the inhabitants of Flathead County, facilitate the enjoyment of the natural attractions of Flathead County, and promote the economic and social development of Flathead County. To this end, it is the purpose of this program to require the use of all available practicable methods to reduce, prevent and control air pollution in Flathead County. To prevent, abate or control air pollution in the Flathead County, the regulations contained herein are hereby established for Flathead County by the Board of Commissioners for Flathead County.

Chapter III. AUTHORITIES FOR PROGRAM

(1) The authority to enact this Program and these regulations contained herein is provided in the Montana Code Annotated, Section 75-2-301.

(2) Unless otherwise provided, the provisions of this program shall not apply to air contaminant sources or classes of air contaminant sources and operations over which exclusive jurisdiction and control is retained by the Montana Board of Health and Environmental Sciences for the Montana Department of Health and Environmental Sciences under provisions of the Montana Clean Air Act or the findings and determinations of the Montana Board of Health and Environmental Sciences at the time of approval of this program.

Chapter IV. ADMINISTRATION

There is created a Flathead County Air Pollution Control Board, which shall be responsible for the administration of this Program. The Flathead City-County Board of Health shall be the Flathead County Air Pollution Control Board.

Chapter V. CONTROL BOARD, MEETINGS-DUTIES-POWERS

(1) The chairperson of the Board of Health or their designee shall be the Chairperson of the Control Board.

(2) The Control Board shall hold meetings as necessary and keep minutes of its proceedings. Special meetings may be called by the Chairperson of the Control Board or upon request of two members of the Control Board.

(3) The Control Board may:

(a) Recommend to the Board of Commissioners of Flathead County the adoption, the amendment, or the repeal of any regulations necessary to implement the provisions of this Program.

(b) Hold hearings related to any aspect of the Program, and compel the attendance of witnesses and the production of evidence at such hearings.

(c) Issue orders necessary to effectuate the purpose of this Program, and enforce them by appropriate judicial or administrative proceedings.

(d) Instruct the Department to measure pollution levels and take samples of air pollution at designated sites.

(e) Instruct the Department to conduct surveys, investigation and research related to air contamination in Flathead County.

(f) Instruct the Department to collect and disseminate information and conduct educational and training programs related to prevention of air pollution.

(g) Adopt a schedule of fees required for permits and administrative penalties under this Program.

(h) Hear and decide appeals from decisions of the Department issuing, denying, suspending, revoking, amending, or modifying any permits required by this program.

(i) Establish policy to be followed by the Department in implementing this Program.

(j) Perform any and all acts which may be necessary for the successful implementation of this Program.

Chapter VI. AIR QUALITY STAFF

There shall be an air quality staff within the Flathead City-County Health Department. This staff shall consist of such employees as deemed necessary by the Control Board.

(1) The Department shall employ personnel who shall possess such training and qualifications as are commensurate with the

financial budget and the technical and administrative requirements of the Control Board.

(2) The Department’s Air Quality Staff, under the direction of the Control Officer or their designated representative, shall:

(a) issue, deny, modify, revoke, and suspend permits provided for or required under this program;

(b) issue written notices of violation, orders to take corrective action, and citations, and by appropriate administrative and judicial proceedings, enforce the provisions of this program;

(c) measure pollution levels and take samples of air pollution at designated sites in Flathead County; conduct investigative surveys, and research related to air contaminant in Flathead County; and collect and disseminate information and conduct educational and training, programs related to the prevention of air pollution;

(d) accept, receive and administer grants or other funds from public or private agencies for the purpose of carrying out any provisions of the Program;

(e) provide necessary scientific, technical, administrative, and operational services to the Control Board;

(f) establish an inventory of sources of air pollution under the programs jurisdiction within in the County;

(g) perform such other acts and functions designated by the Control Board for the successful implementation of ths Program;

(h) investigate complaints; and

(i) administer this program.

Chapter VII. INSPECTIONS

(1) Any duly authorized officer, employee, or representative of the Control Board or the Department, upon the showing of identifying credentials, may enter and inspect any property except for a private residence, at any reasonable time, for investigating or testing any actual or suspected source of air pollution or ascertaining the state of compliance with this Program and regulations in force pursuant thereto.

(2) No person shall refuse entry or access to any authorized member or representative of the Control Board or Department, who requests entry for the purposes mentioned in section (1) or obstruct, hamper, or interfere in any manner with any such inspection.

Sub-Chapter 1 For the purposes of this program, the following definitions apply:

(1) ”Air Contaminant” means dust, ash, fumes, gas, vapor, mist, smoke, odor, or any particulate matter or combination thereof present in the outdoor atmosphere.

(2) “Air Pollution” means the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof in sufficient quantities, and of such character and duration as is or is likely to be injurious to the health or welfare of human, plant, animal life, or property, or which will unreasonably interfere with the enjoyment of life or property of the conduct of business.

(3) “Air Pollution Control District” means the Flathead County Air Pollution Control District as defined by the area within the boundaries of Flathead County.

(4) “Ambient Air’ means that portion of the atmosphere, external to buildings, to which the general public has access.

(5) “Animal Matter” means any product or derivative of animal life.

(6) “Board of Health” means the Flathead City-County Board of Health.

(7) “Chairperson” means the chairperson of the Board of Health and the Flathead City-County Air Pollution Control Board.

(8) “Columbia Falls Air Pollution Control District” means a special district within Flathead County defined by the area within the city limits of Columbia Falls.

(9) “Contingency Plan” means specific measures which would be implemented if a nonattainment areas’ State Implementation Plan fails to timely attain the National Ambient Air Quality Standards (NAAQS) or make reasonable further progress.

(10) “Control Board" means the Flathead City-County Board of Health.

(11) “Control Officer” means the Health Officer for the Flathead City-County Health Department, or any employee of the Department designated by the Health Officer.

(12) “Department” means the Flathead City-County Health Department.

(13) “Emission” means a release of an air contaminant into the outdoor atmosphere.

(14) “EPA” means the United State Environmental Protection Agency.

(15) “Kalispell City/County Air Pollution Control District” means a special air quality district within Flathead County defined as the area within the city limits of Kalispell and the extraterritorial area as shown in Appendix A and described in Appendix B.

(16) “Odor” means that property of an emission which stimulates the sense of smell.

(17) “Opacity” means the degree, expressed in percent, to which emissions reduce the transmission of light and obscure the view of an object in the background. Where the presence of uncombined water is the only reason for failure of an emission to meet the an applicable opacity limitation contained in this chapter, that limitation shall not apply. For the purpose of this chapter, opacity determination shall follow all requirements, procedures, specifications, and guidelines contained in 40 CRF Part 60, appendix A, Method 9 (July 1, 1987 ed.) Or by in-stack transmissometer which complies with all requirements, procedures, specifications, and guidelines contained in 40 CFR Part 60, Appendix B, performance specification 1 (July 1, 1987 ed.).

(18) “Open Burning” means combustion of any material directly in the open air without a receptacle or in a receptacle other than a furnace, multiple chambered incinerator, or wood waste burner, with the exception of small recreational fired, construction site heating devices used to warm workers, or safety flares used to dispose of dangerous gases at refineries, gas sweetening plants, or oil and gas wells.

(19) “Particulate Matter” means any material, except water in uncombined forms, that is or has been airborne and exists as a liquid or a solid at standard conditions.

(20) “Person” means any individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate, or any other legal entity.

(21) “PM-10" means particulate matter with an aerodynamic diameter of less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50, Appendix J, (52 FR 24664, July 1, 1987) and designated in accordance with 40 CFR Part 53 (52 FR 24727, July 1, 1987), or by an equivalent method designated in accordance with 40 CFR Part 53 (52 FR 24727, July 1, 1987).

(22) “Premises” means any property, piece of land, real estate, or building.

(23) “Public Nuisance” means any condition which endangers health or safety, is offensive to the senses or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood or by any considerable number of persons.

(24) “Salvage Operation” means any operation conducted in whole or in part for the salvaging or reclaiming of any product or material.

(25) “Source" means any property, real or personal, or person contributing to air pollution.

(26) “State Implementation Plan or SIP” means the emission control plan for the State of Montana that is required by the federal Clean Air Act including state-wide and area specific provisions.

(27) “Stack or Chimney” means any flue, conduit, or duct arranged to conduct emissions.

(28) “Trade Waste” means solid, liquid, or gaseous material resulting from construction or the operation of any business, trade, industry, or demolition operation including but not limited to wood, wood products, plastic, cartons, grease, oil, chemicals, and cinders.

(29) Wood-Waste Burners: Devices commonly called tepee burners, silos, truncated cones, wigwam burners, and other such burners commonly used by the wood products industry for the disposal or burning of wood wastes.

Rule 20l Definitions

For the purpose of the open burning sub-chapter the following definitions apply:

(1) “Best Available Control Technology” (BACT) means those techniques and methods of controlling emissions of pollutants from an existing or proposed open burning source which limit those emissions to the maximum degree to which the department determines, on a case-by-case basis, is achievable for that source, taking into consideration impacts on energy use, the environment, and the economy, and any other costs, including the cost to the source. Such techniques and methods may include the following: scheduling of burning during periods and seasons of good ventilation, applying dispersion forecasts, utilizing predictive modeling results performed by and available from the department to minimize smoke impacts, limiting the amount of burning to be performed during any one period of time, using ignition and burning techniques which minimize smoke production, selecting fuel preparation methods that will minimize dirt and moisture content, promoting fuel configurations which create an adequate air to fuel ratio, prioritizing burns as to air quality impact and assigning control techniques accordingly, and promoting alternative treatments and uses of materials to be burned. In the case of essential agricultural open burning during September or October, or prescribed wildland open burning during September, October, or November, BACT includes burning only during the time periods specified by the department. In the case of wildland open burning during December, January, and February, BACT includes burning during the times specified by the department.

(2) “Essential Agricultural Open Burning” means any open burning conducted on a farm or ranch for the purpose of:

(a) Eliminating excess vegetative matter from an irrigation ditch where no reasonable alternative method of disposal is available.

(b) Eliminating excess vegetative matter from cultivated fields where no reasonable alternative method of disposal is available.

(c) Improving range conditions when no reasonable method of disposal is available.

(d) Improving wildlife habitat when no reasonable alternative method is available.

(3) Major Open Burning Source: Any person, agency, institution, business, or industry conducting any open burning within Flathead County which on a countywide basis will burn more than 100 acres of forestry slash or emit more than 500 tons per calendar year of carbon monoxide or 50 tons per calendar year of any other pollutant regulated by Chapter 16 of the Administrative Rules of Montana.

(4) Minor Open Burning Source: Any person, agency, institution, business, or industry conducting open burning which is not a major open burning source.

Rule 202 Materials Prohibited

(1) The Control Board hereby adopts and incorporates by reference 40 Code of Federal Regulations (CFR) Part 261, which identifies and defines hazardous wastes.

(2) The following material may not be disposed of by open burning:

(a) Any wastes which are moved from the premises where it was generated, including that moved to a solid waste disposal site, except as provided for in Sub-chapter 2, Rule 207, Rule 208, and Rule 209.

(b) Food wastes.

(c) Styrofoam and other plastics.

(d) Wastes generating noxious odors.

(e) Wood and wood by-products other than trade wastes unless a public or private garbage hauler, or rural container system is unavailable.

(f) Poultry litter.

(g) Animal droppings.

(h) Dead animals or dead animal parts.

(i) Tires.

(j) Rubber materials.

(k) Asphalt shingles, except as provided in Sub-chapter 2, Rule 206.

(l) Tar paper, except as provided in Sub-chapter 2, Rule 206.

(m) Automobile bodies and interiors.

(n) Insulated wire, except as provided in Sub-chapter 2, Rule 206.

(o) Oil and petroleum products, except as provided in Sub-chapter 2, Rule 206.

(p) Treated lumber and timbers.

(q) Pathogenic wastes.

(r) Hazardous wastes as defined by 40 CFR Part 261.

(s) Trade wastes, except as provided in Sub-chapter 2; Rule 207, Rule 208, and Rule 209.

(t) Any materials resulting from a salvage operation.

(u) Chemicals

Rule 203 Minor Open Burning Source Requirements

A minor open burning source need not obtain an air quality open burning permit but must:

(1) Comply with all rules within this sub-chapter and burn only clean, dry material.

(2) Comply with restrictions and times specified by the Montana State Airshed Group monitoring unit for major open burning sources or the department when the Montana State Airshed Group Monitoring unit is not in operation.

(3) Comply with any requirements or regulations relating to open burning established by any public agency responsible for protecting public health and welfare, or which is responsible for fire prevention or control.

(4) If it desires to conduct essential agricultural open burning during September or October or prescribed wildland open burning during September, October, or November, adhere to the time periods set by the Department.

(5) If it desires to conduct prescribed wildland open burning during December, January, or February, adhere to the time period set by the Department.

Rule 204. Major Open Burning Source Requirements

Major open burning sources need not apply for and obtain an air quality open burning permit from the department if the source has obtained a permit from the Montana Department of Health and Environmental Sciences (DHES) pursuant to ARM 16.8.1304 (1989) and where no other provisions of these regulations is violated. A permit issued by DHES to burn will be valid in Flathead County only when the Montana State Airshed Group monitoring unit is in operation. Major open burning sources issued a permit pursuant to ARM 16.8.1304 (1989) shall be required to obtain a permit from the department when the Montana State Airshed Group monitoring unit is not in operation and adhere to the conditions of the permit.

Rule 205 Special Open Burning Periods

(1) Prescribed wildland open burning, open burning performed to train fire fighters under Chapter IX. Rule 206, open burning authorized under the emergency open burning permit provision set forth in Chapter IX, Rule 209, and for the purpose of thawing frozen ground to allow excavation of utilities may be conducted during the entire year.

(2) Open burning other than those categories listed in section 1 above may be conducted only during the months of March through October.

Rule 206 Fire Fighter Training

Asphalt shingles, tar paper, or insulated wire which is part of a building, and oil or petroleum products may be burned in the open for the purpose of training fire fighters, if the fire is restricted to a building or structure or a permanent training facility, in a site other than a solid waste disposal site, and if the material to be burned is not allowed to smolder after the training session has terminated, and no public nuisance is

created. A permit must be obtained from the department prior to each burn unless the training occurs at a permanent training facility.

Rule 207 Open Burning Disposal of Christmas Tree Waste

(1) The department may issue an open burning permit to dispose of waste accumulated from the normal operation of Christmas tree farms if:

(a) The wastes are generated on the owner or operators property and not generated from another source; and

(b) Open burning constitutes the BACT; and

(c) Emissions from such open burning would not endanger public health and welfare or cause or contribute to a violation of any Montana or Federal ambient air quality standard.

(2) The department may place any reasonable requirements in the open burning permit that it determines will reduce emissions of air pollutants or will minimize the impact of said emissions, and the recipient of such a permit must adhere to those conditions. In the case of a permit granted pursuant to Section (1) above:

(a) BACT for the period covered by the permit shall be set out within the conditions of the permit; and

(b) with the provision that the source may be required, prior to each burn, to receive approval from the Department of the date and time of the proposed burn to ensure that good ventilation exists and to assign priorities if necessary. Approval will be obtained by calling the Department.

(3) The applicant for this type of permit shall notify the public of its application by posting a pubic notice provided by the Department on the property where, the open burn is to occur. Posting shall be made near the closest public right of way to the property and be clearly visible. The posted sign is to convey the information supplied on the application. The notice shall remain on the property in a visible condition for a period of 15 days. The notice shall include a statement that public comments may be submitted to the Department during the time period specified on the public notice.

(4) The Department’s decision to approve or deny an application for this type of open burning permit shall be posted at the Department for three working days. The Departments decision may be reviewed by the Board in accordance with the following provisions:

(a) A person who has submitted written comments and who is adversely affected by the department’s final decision may request a hearing before the Control Board within 3 days after the Department’s final decision. The request must be made in writing. The request for hearing must state specific grounds why the permit should not be issued or why it should be issued with particular conditions and why the complainant is adversely affected. The Control Officer shall determine, within 10 days, if a hearing need be held by the Control Board. If the Control Officer determines no hearing need be held, the decision of the department is affirmed, and said officer shall notify the complainant of the action. The Control Board may conduct a hearing within 30 days after receipt of such request upon due notice to the applicant, to the person requesting the hearing, and to the public. Within 10 days following the hearing the Control Board shall instruct the Department to issue, issue with conditions, or deny the open burning permit.

(b) The filing of a request for a hearing postpones the effective date of the Department’s decision until the conclusion of the hearing and the issuance of the final decision by the Board.

Rule 208 Conditional Air Quality Open Burning Permits

(1) The department may issue a conditional air quality open burning permit for the disposal of:

(a) Wood and wood by-product trade wastes by any business, trade, industry, or demolition project if it is determined that:

(i) Open burning constitutes the BACT; and

(ii) Emissions from such open burning would not endanger public health and welfare or cause a violation of any Montana or Federal ambient air quality standards.

(b) Untreated wood waste at a licensed landfill site if:

(i) alternative methods of disposal would result in extreme economic hardship to the solid waste management system owner or operator; and

(ii) emissions from such air quality open burning would not endanger public health or welfare or cause violation of any Montana or Federal ambient air quality standard.

(iii) prior to issuance of a conditional air quality open burning permit, the wood waste pile is inspected by the Department and no prohibited materials listed in ARM 16.8.1302, other than wood wastes, are present.

(2) A conditional air quality open burning permit issued under this rule is valid for the following periods:

(a) Wood and wood by-product trade waste - one calendar year.

(b) Untreated wood wastes at licensed landfill sites - single burn. A new permit must be obtained for each burn.

(3) The department may place any reasonable requirements in a conditional air quality open burning permit that it determines will reduce emissions of air pollutants or will minimize the impact of said emissions, and the recipient of such a permit must adhere to those conditions. In the case of a permit granted pursuant to section (1)(a) above, BACT for the year covered by the permit will be set out within the conditions of the permit, with the provision that the source may be required, prior to each burn, to receive approval from the Department of the date of the proposed burn to ensure that good ventilation exists and to assign priorities if necessary. Approval may be obtained by calling the Department.

(4) An application for a conditional air quality open burning permit must be made on a form provided by the Department. The applicant must provide adequate information to enable the department to determine that the application satisfies the requirements for a conditional air quality open burning permit contained in this rule. Proof of publication of public notice, as required in section (5) of this rule, shall be submitted as part of any application.

(5) The applicant for a conditional air quality open burning permit shall notify the public of its application for a permit by means of legal publication in a newspaper of general circulation in the area affected by the application. The notice

shall be made not sooner than 10 days prior to submittal of an application and not later than 10 days after submittal of an application. Form of the notice shall be provided by the Department and shall include a statement that public comments may be submitted to the Department concerning the application within 20 days after publication of the notice or filing of the application, whichever is later.

(6) A conditional air quality open burning permit granted pursuant to section (1)(a) above is a temporary measure to allow time for an entity generating the trade wastes to develop alternative means of disposal.

(7) The Department's decision to approve or deny an application for a conditional air quality open burning permit shall be posted at the Department for three working days. The Department's decision may be reviewed by the Board in accordance with the following provisions:

(a) A person who has submitted written comments and who is adversely affected by the Department's final decision may request a hearing before the Control Board within 3 days after the Department's final decision. The request must be made in writing. The request for hearing must state specific grounds why the permit should not be issued or why it should be issued with particular conditions and why the complainant is adversely affected. The Control Officer shall determine, within 10 days, if a hearing need be held by the Control Board. If the Control Officer determines no hearing need be held, the decision of the Department is affirmed, and said officer shall notify the complainant of the action. The Control Board may conduct a hearing within 30 days after receipt of such request upon due notice to the applicant, the person requesting the hearing and to the public. Within 10 days following the hearing the Control Board shall instruct the Department to issue, issue with conditions, or deny the conditional air quality open burning permit.

(b) The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and the issuance of the final decision by the Board.

Rule 209 Emergency Open Burning Permits

(1) The Department may issue an emergency air quality open burning permit to allow the burning of a substance not otherwise

approved for burning under this sub-chapter if the applicant demonstrates that the substance poses an immediate threat to public health and safety, plant or animal life, and that no alternative method of disposal is reasonably available.

(2) Application for such a permit may be made to the department by telephone of in writing and must include:

(a) Evidence why alternative methods of disposal 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 if not disposed of by burning.

(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.

Rule 210 Permit Fees

(1) The Control Board shall establish a fee schedule for the issuance of air quality open burning permits and the inspection of open burning sites. Such fees will be based on the cost associated with conducting the service.

(2) All fees collected shall be deposited in the Flathead City-County Health fund.

Sub-Chapter 3 Voluntary Solid Fuel Burning Device Curtailment Program

It is intent of this program to establish guidelines which may be utilized to control emissions of air contaminants from solid fuel burning devices in order to further the policy and purpose declared in Chapter II.

(1) For the purpose of this rule, the following definition applies:

(a) “Air Pollution Alert” means a period when the PM-10 levels exceed or are expected to exceed 100 micrograms per cubic meter as measured with a tapered element oscillating microbalance (TEOM) or other Department approved monitoring device.

(2) Within the Control District, a voluntary curtailment program for solid fuel burning devices will be initiated by January 1, 1992.

(3) It is the Departments duty, when declaring an Air Pollution Alert to take reasonable steps to inform the public.

Rule 401

(1) No person may cause or authorize the use of the following materials to be combusted in any residential solid-fuel combustion device such as a wood, coal, pellet stove, or fireplace:

(a) Food wastes

(b) Styrofoam and other plastics.

(c) Wastes generating noxious odors.

(d) Poultry litter.

(e) Animal droppings.

(f) Dead animals or dead animal parts.

(g) Tires.

(h) Asphalt shingles.

(i) Tarpaper

(j) Insulated wire.

(k) Treated lumber or timbers including railroad ties.

(l) Pathogenic wastes.

(m) Colored newspaper or magazine print.

(n) Hazardous wastes as defined by 40 CFR Part 261

(o) Chemicals.

Sub-Chapter 5 Kalispell Air Pollution Control District

It is the intent of this rule to establish a control plan which will provide protection to the residents of the City of

Kalispell from air pollution levels in excess of the state and federal ambient air quality PM-10 standards. The provisions of this Sub-chapter apply only to the Kalispell Air Pollution Control District.

Rule 501 Material To Be Used on Roads and Parking Lots-Standards

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

(a) “Parking Lot” means a parcel of land located off of the public right-of-way not less than 5000 square feet in size which is primarily used for the temporary storage of motor vehicles.

(b) “Road" means any road, street, or alley which is greater than 50 feet in length, and has a projected traffic volume greater than 50 vehicles per day.

(2) Within the Kalispell Air Pollution Control District, no person shall place any sanding or chip seal material upon any road or parking lot which has a durability, as defined by the Montana Modified L.A. Abrasion test of greater than or equal to 7 or other testing method which the Control Board deems suitable, and has a content of material smaller than 200 mesh, as determined by standard wet sieving methods, which exceeds 3.0% oven dry weight.

(3) It shall be the responsibility of the person applying the sanding or chip seal material to test the material and provide the department representative data demonstrating that the material meets the specifications listed in Section (2) prior to application. Such data shall be obtained by gathering a representative sample from the stockpile or the material as it is produced and analyzing the material in accordance with the methods identified in Section (2).

Rule 502 Construction and Demolition Activity

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

(a) “Construction/demolition activity” means any on-site mechanical activity preparatory to or related to building, alteration, maintenance, or demolition of an improvement on real property including, but not limited to: grading, excavation, filling, transport and mixing of material, loading, crushing, cutting, planing, shaping, breaking, sandblasting, or spraying.

(b) “Exempt activity” means any construction/demolition activity consisting of:

(i) A building or improvement with a combined floor space of less than 4000 square feet, or

(ii) A disturbed surface area of less than 4000 square feet.

(c) “Reasonably Available Control Technology” RACT means techniques used to prevent the emission and/or the airborne transport of dust and dirt from a construction/demolition site including: application of water or other liquid, limiting access to the site, securing loads, enclosing, shrouding, compacting, stabilizing, planting, cleaning vehicles as they leave the site, scheduling projects for optimum meteorological conditions, or other such measures the department may specify to accomplish satisfactory results.

(2) No person shall engage in any construction/demolition activity, except for exempt activities, without first applying for and obtaining a permit, which describes the project and contains a dust control plan which constitutes RACT, from the department.

(3) An application for a construction/demolition permit must be made on a form provided by the department. The applicant must provide adequate information to enable the department to determine that the application satisfies the requirements for a construction/demolition permit contained in this rule. Proof of publication of public notice, as required in Section (4) of this rule, shall be submitted as part of any application.

(4) The applicant for a construction/demolition permit shall notify the public of it’s application for a permit by means of legal publication in a newspaper of general circulation in the area affected by the application. The notice shall be made not sooner than 10 days prior to submittal of an application and not later than 10 days after submittal of an application. Form of the notice shall be provided by the Department and shall include a statement that public comments may be submitted to the Department concerning the application within 20 days after publication of the notice or filing of the application, whichever is later. It is the responsibility of the applicant to pay all costs associated with publication.

(5) The Department’s decision to approve or deny an application for a construction/demolition permit shall be posted at the Department for three working days. The Departments decision may be reviewed by the board in accordance with the following provisions:

(a) A person who has submitted written comments and who is adversely affected by the Department’s final decision may request a hearing before the Control Board within 3 days after the Department’s final decision. The request must be made in writing. The request for hearing must state specific grounds why the permit should not be issued or why it should be issued with particular conditions and why the complainant is adversely affected.
The Control Officer shall determine within 10 days, if a hearing need be held by the Control Board. If the Control Officer determines no hearing need be held, the decision of the Department is affirmed, and said officer shall notify the complainant of the action. The Control Board may conduct a hearing within 30 days after receipt of such request upon due notice to the applicant and to the public. Within 10 days following the hearing the Control Board shall instruct the Department to issue, issue with conditions, or deny the construction/demolition permit.

(b) The filing of a request for a hearing postpones the effective date of the department’s decision until the conclusion of the hearing and the issuance of the final decision by the Board.

(6) The Department shall deny an application for a construction/demolition permit unless:

(a) in the opinion of the department, RACT is employed, and

(b) prior written approval had been obtained from the Kalispell Building Department.

Rule 503 Pavement of Roads Required

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

(a) “Compliance plan” means a plan and schedule of implementation to improve an unpaved road by routine application of dust suppressants, or other effective measure to control fugitive dust until the road is paved.

(b) “Existing street or road” means any street, road, or alley which is greater than 50 feet in length, has an average traffic volume greater than 200 vehicles per day, and was in existence on January 1, 1990.

(c) “New street or road” means any street, road, or alley which is greater than 50 feet in length, has a projected average traffic volume greater than 50 vehicles per day, and on which construction commenced or will commence after January 1, 1990.

(2) Within the Kalispell Control District, no person shall allow the construction of a new street of road unless it is paved.

(3) Within the Kalispell Control District, no person shall allow the operation, use, or maintenance of any unpaved existing street or road unless a compliance plan has been filed with and approved by the Department. A compliance plan must be filed with the Department within 60 days of notification that paving is required. The Department may approve a compliance plan as submitted or amend the plan to include any additional reasonable dust control measures.

Rule 504 Pavement of Parking Lots Required

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

(a) “Parking lot” means a parcel of land located off the public right-of-way which is primarily used for the temporary storage of motor vehicles.

(b) “Existing parking lot” means any parking lot which was in existence and in use on January 1, 1990.

(c) “New parking lot” means any parking lot which construction commenced after January 1, 1990.

(d) “Compliance plan” means a plan and schedule of implementation to improve an unpaved parking lot by routine application of dust suppressants or other effective measures to control fugitive dust until the parking lot is paved.

(2) Within the Kalispell Air Pollution Control District, no person shall construct any new parking lot which has a parking area greater than 5000 square feet or private drive through business lane, or a parking capacity greater that 15 vehicles or

a traffic volume of more than 50 vehicles per day, unless the parking lot is paved.

(3) Within the Kalispell Control District, no person shall allow the operation, use, or maintenance of any unpaved existing parking lot which has a parking area greater the 5000 square feet or private drive through business lane, or a parking capacity greater that 15 vehicles or a traffic volume of more than 50 vehicles per day unless a compliance plan has been filed with and approved by the Department. A compliance plan must be filed with the Department with 60 days of notification that paving is required. The Department may approve the compliance plan as submitted or amend the plan to include any additional reasonable control measures.

Rule 505 Street Sweeping and Flushing

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

(a) “Prioritized street sweeping and flushing” means a schedule of street sweeping and/or flushing which cleans streets with the highest traffic volumes first and proceeds in descending order of traffic volume to streets with the lowest traffic volume. When all ice-free streets have been cleaned, the cycle is immediately repeated. In the event that the streets become iced and sanding material is re-applied, the process will begin with the highest traffic volume streets.

(b) “Reasonably available control technology” means:

(i) During Winter months, prioritized street sweeping and flushing shall commence on the first working day after any streets become either temporarily or permanently ice-free and temperatures are above 32^{o} Fahrenheit, and

(ii) During summer months, street sweeping and/or flushing shall be accomplished on a as-needed basis with priority given to streets with the highest traffic volume.

(c) “Summer months” means the months of May, June, July, August, September, and October.

(d) “Winter months” means the months of November, December, January, February, March, and April.

(2) Within the Kalispell Air Pollution Control District, no person shall allow the operation, use, or maintenance of any paved street unless RACT is utilized.

Rule 506 Clearing of land greater than 1/4 acre in size

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

(a) “Reasonably available control technology” (RACT) means techniques used to prevent the emission and/or airborne transport of dust and dirt from any disturbed or exposed land including: planting vegetative cover, providing synthetic cover, water and/or chemical stabilization, covering with coarse aggregate, installing wind breaks, or other equivalent method or technique approved by the department.

(2) Within the Kalispell Air Pollution Control District, the owner or operator of any land greater that 1/4 acre in size that has been cleared or excavated, with the exception of fire breaks approved by the Kalispell Fire Department and the City Council or land cleared solely for agricultural purposes, shall employ RACT to control dust emissions within 30 days after notification by the Department that visible emissions were observed leaving the premises or that the premises have remained in an uncontrolled state for over 90 days.

(3) If it is determined that any land cleared poses an immediate threat to human health and welfare, the department may order the owner or operator to immediately employ RACT to control the dust emissions.

Rule 507 Contingency Plan

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

(a) “Extraordinary Circumstances” means a specific period of time when the thickness of ice on a road, the air temperature and/or the slope of a road would preclude the effective use of liquid de-icer.

(b) “Liquid De-icer” means a Departmentally approved agent which lowers the melting point of ice.

(c) “Priority Route" means a roadway which must remain in a safe driving condition for emergency or safety purposes. Priority

routes will be designated by the appropriate governing body and submitted to the Control Board.

(2) Within 60 days of notification by the EPA that the SIP for the Kalispell nonattainment area failed to timely attain the PM-10 National Ambient Air Quality Standards or make reasonable further progress the following will occur:

(3) Within the Kalispell Air Pollution Control District, only liquid de-icer shall be placed on any road or parking lot with the exception of priority routes with extraordinary circumstances existing. During extraordinary circumstances, priority routes must use sanding material which has a durability, as defined by the Montana Modified L.A. Abrasion test of less than or equal to 7 or other testing method which the Control Boards deems suitable, and has a content of material less than 200 mesh, as determined by standard wet sieving methods, which is less than 3.0% oven dry weight.

(4) The person applying the liquid de-icer must obtain prior approval from the Department for the particular de-icer.

Sub-Chapter 6 Columbia Falls Air Pollution Control District

It is the intent of this rule to establish a control plan which will provide protection to the residents of Columbia Falls from air pollution levels in excess of the state and federal ambient air quality PM-10 standards. The provisions of this Sub-chapter apply only to the Columbia Falls Air Pollution Control District.

Rule 601 Material To Be Used on Roads and Parking Lots-Standards

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

(a) “Parking Lot” means a parcel of land located off of the public right-of-way which is primarily used for the temporary storage of motor vehicles.

(b) “Road” means any road or alley which is greater than 50 feet in length, and has a projected traffic volume greater than 50 vehicles per dry.

(2) Within the Columbia Falls Air Pollution Control District, no person shall place any sanding or chip seal material upon any road or parking lot which has a durability, as defined by the Montana Modified L.A. Abrasion test of greater that or equal to

7 or other testing method which the Control Board deems suitable, and has a content of material smaller than 200 mesh, as determined by standard wet sieving methods, which exceeds 3.0% oven dry weight.

(3) It shall be the responsibility of the person applying the sanding or chip seal material to test the material and provide the department representative data demonstrating that the material meets the specifications listed in Section (2) prior to application. Such data shall be obtained by gathering a representative sample from the stockpile or the material as it is produced and analyzing the material in accordance with the methods identified in Section (2).

Rule 602 Construction and Demolition Activity

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

(a) “Construction/demolition activity” means any on-site mechanical activity preparatory to or related to building, alteration, maintenance, or demolition of an improvement on real property including, but not limited to: grading, excavation, filling, transport and mixing of material, loading, crushing, cutting, planing, shaping, breaking, sandblasting, or spraying.

(b) “Exempt activity” means any construction/demolition activity consisting of:

(i) A building or improvement with a combined floor space of less than 4000 square feet, or

(ii) A disturbed surface area of less than 4000 square feet.

(c) “Reasonably Available Control Technology” RACT means techniques used to prevent the emission and/or the airborne transport of dust and dirt from a construction/demolition site including: application of water or other liquid, limiting access to the site, securing loads, enclosing, shrouding, compacting, stabilizing, planting, cleaning vehicles as they leave the site, scheduling projects for optimum meteorological conditions, or other such measures the department may specify to accomplish satisfactory results.

(2) No person shall engage in any construction/demolition activity, except for exempt activities, without first applying for and obtaining a permit, which describes the project and

contains a dust control plan which constitutes RACT, from the department.

(3) An application for a construction/demolition permit must be made on a form provided by the department. The applicant must provide adequate information to enable the department to determine that the application satisfies the requirements for a construction/demolition permit contained in this rule. Proof of publication of public notice, as required in Section (4) of this rule, shall be submitted as part of any application.

(4) The applicant for a construction/demolition permit shall notify the public of it's application for a permit by means of legal publication in a newspaper of general circulation in the area affected by the application. The notice shall be made not sooner than 10 days prior to submittal of an application and not later than 10 days after submittal of an application. Form of the notice shall be provided by the Department and shall include a statement that public comments may be submitted to the Department concerning the application within 20 days after publication of the notice or filing of the application, whichever is later. It is the responsibility of the applicant to pay all costs associated with publication.

(5)The Department's decision to approve or deny an application for a construction/demolition permit shall be posted at the Department for three working days. The Department's decision may be reviewed by the board in accordance with the following provisions:

(a) A person who has submitted written comments and who is adversely affected by the Department's final decision may request a hearing before the Control Board within 3 days after the Department's final decision. The request must be made in writing. The request for hearing must state specific grounds why the permit should not be issued or why it should be issued with particular conditions and why the complainant is adversely affected. The Control Officer shall determine within 10 days, if a hearing need be held by the Control Board. If the Control Officer determines no hearing need be held, the decision of the Department is affirmed, and said officer shall notify the complainant of the action. The Control Board may conduct a hearing within 30 days after receipt of such request upon due notice to the applicant and to the public. Within 10 days following the hearing the Control Board shall instruct the Department to issue, issue with conditions, or deny the construction/demolition permit.

(b) The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and the issuance of the final decision by the Board.

(6) The Department shall deny an application for construction/demolition permit unless:

(a) in the opinion of the department, RACT is employed, and

(b) prior written approval has been obtain from the Columbia Falls Building Department.

Rule 603 Pavement of Roads Required

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

(a) "Compliance plan" means a plan and schedule of implementation to improve an unpaved road by routine application of dust suppressants, or other effective measure to control fugitive dust until the road is paved.

(b) "Existing street or road" means any street, road, or alley which is greater than 50 feet in length, has an average traffic volume greater than 200 vehicles per day, and was in existence on January 1, 1991.

(c) "New street or road" means any street, road, or alley which is greater than 50 feet in length, has a projected average traffic volume greater than 50 vehicles per day, and on which construction commenced or will commence after January 1, 1991.

(2) Within the Columbia Falls Control District, no person shall allow the construction of a new street of road unless it is paved.

(3) Within the Columbia Falls Control District, no person shall allow the operation, use, or maintenance of any unpaved existing street or road unless a compliance plan has been filed with and approved by the Department. A compliance plan must be filed with the Department within 60 days of notification that paving is required. The Department may approve a compliance plan as submitted or amend the plan to include any additional reasonable dust control measures.

Rule 604 Pavement of Parking Lots Required

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

(a) “Parking lot” means a parcel of land located off the public right-of-way which is primarily used for the temporary storage of motor vehicles.

(b) “Existing parking lot” means any parking lot which was in existence and in use on January 1, 1991.

(c) “New parking lot” means any parking lot which construction commenced after January 1, 1991.

(d) “Compliance plan” means a plan and schedule of implementation to improve an unpaved parking lot by routine application of dust suppressants or other effective measures to control fugitive dust until the parking lot is paved.

(2) Within the Columbia Falls Air Pollution Control District, no person shall construct any new parking lot which has a parking area greater than 5000 square feet or private drive through business lane, or a parking capacity greater that 15 vehicles or a traffic volume of more than 50 vehicles per day, unless the parking lot is paved.

(3) Within the Columbia Falls Air Pollution Control District, no person shall allow the operation, use, or maintenance of any unpaved existing parking lot which has a parking area greater the 5000 square feet or private drive through business lane, or a parking capacity greater that 15 vehicles or a traffic volume of more than 50 vehicles per day unless a compliance plan has been filed with and approved by the Department. A compliance plan must be filed with the Department with 60 days of notification that paving is required. The Department may approve the compliance plan as submitted or amend the plan to include any additional reasonable control measures.

Rule 605 Street Sweeping and Flushing

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

(a) “Prioritized street sweeping and flushing” means a schedule of street sweeping and/or flushing which cleans streets with the highest traffic volumes first and proceeds in descending order

of traffic volume to streets with the lowest traffic volume. When all ice-free streets have been cleaned, the cycle is immediately repeated. In the event that the streets become iced and sanding material is re-applied, the process will begin with the highest traffic volume streets.

(b) “Reasonably available control technology” means:

(i) During Winter months, prioritized street sweeping and flushing shall commence on the first working day after any streets become either temporarily or permanently ice-free and temperatures are above 32^{o} Fahrenheit, and

(ii) During summer months, street sweeping and/or flushing shall be accomplished on a as-needed basis with priority given to streets with the highest traffic volume.

(c) “Summer months” means the months of May, June, July, August, September, and October.

(d) “Winter months” means the months of November, December, January, February, March, and April.

(2) Within the Columbia Falls Air Pollution Control District, no person shall allow the operation, use, or maintenance of any paved street unless RACT is utilized.

Rule 606 Clearing of land greater than 1/4 acre in size

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

(a) “Reasonably available control technology” (RACT) means techniques used to prevent the emission and/or airborne transport of dust and dirt from any disturbed or exposed land including: planting vegetative cover, providing synthetic cover, water and/or chemical stabilization, covering with coarse aggregate, installing wind breaks, or other equivalent method or technique approved by the department.

(2) Within the Columbia Falls Air Pollution Control District, the owner or operator of any land greater that 1/4 acre in size that has been cleared or excavated, with the exception of fire breaks approved by the Columbia Falls Fire Department and the City Council or land cleared solely for agricultural purposes, shall employ RACT to control dust emissions within 30 days after notification by the Department that visible emissions were

observed leaving the premises or that the premises have remained in an uncontrolled state for over 90 days.

(3) If it is determined that any land cleared poses an immediate threat to human health and welfare, the department may order the owner or operator to immediately employ RACT to control the dust emissions.

Rule 607 Contingency Plan

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

(a) “Extraordinary Circumstances” means a specific period of time when the thickness of ice on a road, the air temperature and/or the slope of a road would preclude the effective use of liquid de-icer.

(b) “Liquid De-icer” means a Departmentally approved agent which lowers the melting point of ice.

(c) “Priority Route" means a roadway which must remain in a safe driving condition for emergency or safety purposes. Priority routes will be designated by the appropriate governing body and submitted to the Control Board.

(2) Within 60 days of notification by the EPA that the SIP for the Columbia Falls nonattainment area failed to timely attain the PM-10 National Ambient Air Quality Standards or make reasonable further progress the following will occur:

(3) Within the Columbia Falls Air Pollution Control District, only liquid de-icer shall be placed on any road or parking lot with the exception of priority routes with extraordinary circumstances existing. During extraordinary events, priority routes must use sanding material which has a durability, as defined by the Montana Modified L.A. Abrasion test of less than or equal to 7 or other testing method which the Control Boards deems suitable, and has a content of material less than 200 mesh, as determined by standard wet sieving methods, which is less than 3.0% oven dry weight.

(4) The person applying the liquid de-icer must obtain prior approval from the Department for the particular de-icer.

Chapter IX. ENFORCEMENT, JUDICIAL REVIEW, AND HEARINGS

(1) Whenever the Department determines that there are reasonable grounds to believe that a violation of any provision of this program or 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 their agent. This notice shall specify the provision on the program or permit condition alleged to have been violated and the facts alleged to constitute the violation. The notice may include an order to take necessary corrective action within a reasonable period of time specified in the order. The order becomes final unless, within 30 days after the notice and order is received, the person named requests in writing a hearing before the Control Board. Upon receipt of the request, the Board shall schedule a hearing to be held at the next regular meeting. Each hearing shall be recorded and the record maintained for a period of 5 years.

(2) If, after a hearing held under section (1) of this Chapter, the Control Board finds that the violations have occurred, it shall either affirm or modify the previously issued order or issue an appropriate order for the prevention, abatement, or control of the emissions involved, or for the taking of other corrective action it considers appropriate. An order issued as part of a notice or after a hearing may prescribe the date by which the violation shall cease and may prescribe time limits for particular action in preventing, abating, or controlling emissions. If, after hearing on a order contained in a notice, the Control Board finds that no violation has occurred, it shall rescind the order.

(3) In connection with a hearing held under this Chapter, 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)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 applicant has discovered new evidence, material which could not with reasonable diligence have been discovered and produced at the hearing.

(5)
(a) Within 30 Days after the application for rehearing is denied, or if the application is granted, within 30 days after the decision on the rehearing, a party aggrieved thereby may appeal to the district court of the judicial district which is the situs of the property affected by the order.

(b) The court shall hear and decide the cause upon the record of the Control Board. The court shall determine whether the findings of the Control Board were supported by substantial evidence, and whether the Control made errors in law prejudicial to the appellant.

Chapter X. CIVIL PENALTIES

(1) Any person who violates any provision, rule, with the exception of the voluntary solid-fuel burning device rule, or order under this program, after notice thereof has been given by the Department shall be subject to a civil penalty not to exceed five hundred dollars ($500) per violation. Each day of violation shall constitute a separate violation. The department may institute and maintain any enforcement proceedings hereunder. Upon request of the Department the county attorney shall petition the court to impose, assess, and recover the civil penalty.

(2) Monies collected hereunder shall be deposited in a special fund for the purpose of administering these regulations.

Chapter XI. SEVERABILITY CLAUSE

If any section or part thereof of this program be declared invalid by a court of competent jurisdiction, such decision shall not affect the remainder of the act or any part thereunder.

Chapter XII. AMENDMENTS AND REVISIONS

The Flathead Board of County Commissioners may enact any amendments or revisions of this program which have been approved by the Control Board on public hearing upon due notice. Due notice shall be given by public advertisement once a week for at least two weeks before the public hearing in a weekly or daily newspaper published in Flathead County.

RESOLUTION NO. 1660

RESOLUTION BY THE CITY COUNCIL OF THE CITY OF LIBBY, MONTANA APPROVING AND ADOPTING REVISIONS TO THE LINCOLN COUNTY AIR POLLUTION CONTROL PROGRAM

WHEREAS, pursuant to 75-2-301(4), the City of Libby wishes to adopt revisions to the Lincoln County Air Pollution Control Program regarding outdoor burning which are more stringent than comparable state or federal standards and the Libby City Council finds that, based on information, peer-reviewed scientific studies, and other evidence submitted into the record in proceedings deliberating this matter, the proposed revisions would:

- Better Protect public health and the environment in the City of Libby in Lincoln County;
- Mitigate harm to the public health and the environment in the City of Libby; and
- Are achievable with current technology; and

WHEREAS, The Libby City Council also acknowledges information submitted into the record regarding costs to the City of Libby that are directly attributable to the proposed revisions.

NOW THEREFORE, BE IT HEREBY RESOLVED that the City Council of the City of Libby, Montana approves and adopts the revisions to the Lincoln County Air Pollution Control Program which are attached hereto and made a part of this Resolution and directs the same to be submitted, together with all pertinent evidence as required by 75-2-301, MCA, to the Lincoln County Commission for its consideration.

BE IT FURTHER RESOLVED that the City Council of the City of Libby, Montana submits the revisions to the Lincoln County Air Pollution Control Program for inclusion into the Montana state implementation plan.

Passed and approved this 27th day of February 2006.

Charlene Leckrone, City Council President

ATTEST:

Chris A. Erickson, City Clerk

HEALTH AND ENVIRONMENT REGULATIONS
CHAPTER 1: Control of Air Pollution
Subchapter 1: General Provisions

(Revised 27 February 2006)

75.1.101 **INTENT:** The purpose of this chapter is to achieve and maintain such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property, and facilitate the enjoyment of the natural attractions of Lincoln County.

75.1.102: **SCOPE:** Unless otherwise indicated, the rules of Chapter 1 apply to activities and sources within the Air Pollution Control District.

75.1.103 **DEFINITIONS:** As used in this chapter, unless indicated otherwise, the following definitions apply:

(1) "Air Contaminant" means dust, ash, fumes, gas, mist, smoke, vapor or any particulate matter or a combination thereof present in the outdoor atmosphere.

(2) "Air Pollution Control District" means the geographical area designated on the attached map and as defined by the following Universal Transverse Mercator (UTM) coordinates:

Begin, 600000mE, 5370000mN; east to 620000mE, 5370000mN; south to 620000mE, 5340000mN; west to 600000mE, 5340000mN; north to 600000mE, 5370000mN.

(3) "Department" means the Lincoln County Environmental Health Department.

(4) "DEQ" means the Montana Department of Environmental Quality.

(5) "Emission" means a release into the outdoor atmosphere of an air contaminant.

(6) "EPA" means the US Environmental Protection Agency.

(7) "MAAQS" means Montana Ambient Air Quality Standards.

(8) "NAAQS" means National Ambient Air Quality Standards.

(9) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or private corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the federal government or an agency of the federal government, or any other legal entity and includes persons resident in Canada.

(10) "PM10" means particulate matter with an aerodynamic diameter of less than or equal to a nominal 10 micrometers.

(11) "PM2.5" means particulate matter with an aerodynamic diameter of less than or equal to a nominal 2.5 micrometers.

75.1.104 **SELECTION & IMPLEMENTATION OF CONTINGENCY MEASURE PROGRAMS:**

(1) Upon notification by DEQ or EPA that the Air Pollution Control District has failed to attain NAAQS/MAAQS or make reasonable further progress in reducing emissions, the Department shall determine the source(s) contributing to the violation and designate the associated contingency measure(s) to be implemented. The Department shall identify sources of contribution based upon documented observations of emission sources and corresponding EPA reference method monitoring data.

(2) Unless otherwise prohibited by Section 75.1.104(2)(d), and within 60 days of notification from DEQ or EPA, the Department shall implement the following contingency measure(s) to reduce emissions from a source(s) identified as a contributor.

(a) If residential wood burning is determined to be a contributing source, the Department shall implement Section 75.1.208.

(b) If re-entrained dust is determined to be a contributing source, the Department shall implement Section 75.1.307.

(c) If industrial facility emissions are determined to be a contributing source, DEQ shall initiate contingency measures to reduce emissions.

(d) The Department shall address failure to attain NAAQS or to make reasonable further progress in reducing emissions attributable to natural events or impacts generating activities occurring outside state or local jurisdictional control according to EPA policy while initiating interim contingency measures at the local level.

(e) If no emission source(s) can be identified as a contributor, the Department shall conduct a comprehensive review, including chemical and microscopic filter analysis. Until such time as the review and analyses have been completed, the Department shall implement at least one of the above contingency measures on an interim basis. Any selected interim contingency measure(s) shall remain in effect until the Department completes a comprehensive review and determines whether a permanent contingency measure is necessary.

(3) Early voluntary implementation of a contingency measure shall not result in a requirement to develop additional moderate area contingency measures if the area later fails to attain the NAAQS/MAAQS or make reasonable further progress in reducing emissions. However, redesignation could necessitate additional control measures including Best Available Control Measures (BACM), Best Available Control Technology (BACT) and/or additional contingency measures.

75.1.105 ENFORCEABILITY:

The provisions of the regulations in this ordinance are enforceable by the Lincoln County Environmental Health Department authorities and/or appropriate law enforcement officials.

75.1.106 CONFLICT OF ORDINANCES:

(1) In any case where a provision of these regulations is found to be in conflict with a provision of any zoning, building, fire, safety or health ordinance or code of any City of, Town of, or of the County of Lincoln, the provision which, in the judgment of the Health Officer, established the higher standard for the promotion and protection of the health and safety of the people shall prevail.

(2) If any portion of these regulations should be declared invalid for any reason whatsoever, such decision shall not affect the validity of the remaining portion(s) of the ordinance and such portions shall remain in full force and effect.

SUBCHAPTER 2: SOLID FUEL BURNING DEVICE REGULATIONS

75.1.201 INTENT:

(1) A regulation reducing the levels of particulate air pollutants to or below levels of the NAAQS/MAAQS.

(2) This regulation is necessary to preserve, protect, improve, achieve and maintain such levels of air quality as will protect the health and welfare of the citizens of Lincoln County.

75.1.202 SCOPE AND EFFECTIVE DATE:

(1) This regulation applies to all persons, agencies, institutions, businesses, industries or government entities living in or located within the Air Pollution Control District except for sources exempt from local regulation under 75-2-301(5), MCA.

(2) The effective date of this sub-chapter is January 1, 2007.

75.1.203 DEFINITIONS: As used in this subchapter, unless indicated otherwise, the following definitions apply:

(1) "Opacity" means a measurement of visible emissions defined as the degree expressed in percent to which emissions reduce the transmission of light and obscure the view of an object in the background.
(2) "Operating Permit" means a permit issued by the Department that allows the use of a solid fuel burning device within the boundaries of the Air Pollution Control District.
(3) "Pellet Fuel Burning Device" means a solid fuel burning device that burns only automatically fed biomass, pelletized fuels.
(4) "Solid Fuel Burning Device" means any fireplace, fireplace insert, wood stove, pellet stove, pellet furnace, wood burning heater, wood-fired boiler, wood or coal-fired furnace, coal stove, or similar device burning any solid fuel used for aesthetic, cooking or heating purposes which has a rated capacity of less than 1,000,000 BTU's per hour.
(5) "Standard Catalytic Device" means a solid fuel burning device with a catalytic emissions control system that has been certified by EPA test method as having emissions <4.1 grams/hour.
(6) "Standard Non-Catalytic Device" means a solid fuel burning device with a non-catalytic emissions control system that has been certified by EPA test method as having emissions <7.5 grams/hour.

75.1.204 OPERATING & EMISSION LIMITS:

(1) No person may install or operate any type of solid fuel burning device without a valid Operating Permit issued by the Department.
(2) No person may 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 a solid fuel. Products manufactured or processed for use as solid fuels must conform to any other applicable provisions of this subchapter.
(3) In the absence of an Air Pollution Alert, no person operating a solid fuel burning device may cause or allow the discharge of visible emissions greater than twenty percent opacity. The provisions of this section do not apply to visible emissions during the building of a new fire, for a period or periods aggregating no more than twenty minutes in any four-hour period.
(4) During an Air Pollution Alert, no person operating a solid fuel burning device that is permitted for use during an Alert may cause or allow the discharge of visible emissions greater than ten percent opacity. The provisions of this subsection shall not apply during the building of a new fire, for a period or periods aggregating no more than twenty minutes in any four-hour period. No person may operate a standard catalytic or non-catalytic solid fuel burning device during an Air Pollution Alert.

75.1.205 SOLID FUEL BURNING DEVICE PERMITS:

(1) Prior to installing or operating a solid fuel burning device in any residential or commercial property, a person shall apply to the Department for a permit and provide the following information:
- (a) the owner/operator of the device;
- (b) contact information for the device owner/operator;
- (c) location of the device;
- (d) device manufacturer & model;
- (e) type of device (rating); and
- (f) any other relevant information for the Department to determine whether it satisfies the requirements of this regulation.

(2) The Department may issue Operating Permits for the following types of solid fuel burning devices:
- (a) **Standard catalytic devices**. The Department may issue an Operating Permit for a catalytic solid fuel burning device. Standard catalytic devices may not be operated during an Air Pollution Alert. Implementation

of the contingency measure in 75.1.208 would automatically invalidate the operating permit for this type of device.

(b) **Standard non-catalytic devices**. The Department may issue an Operating Permit for a non-catalytic solid fuel burning device. Standard non-catalytic devices may not be operated during an Air Pollution Alert. Implementation of the contingency measure in 75.1.208 would automatically invalidate the operating permit for this type of device.

(c) **Pellet fuel burning devices**. The Department may issue an operating permit for a biomass pellet fuel burning device. Pellet fuel burning devices may be operated during an Air Pollution Alert. Implementation of the contingency measure in 75.1.208 would not invalidate the operating permit for this type of device.

(3) Unless otherwise invalidated by implementation of a contingency measure or future changes in solid fuel burning device regulations, Operating Permits are valid until the named owner/operator changes or the device is removed or modified in any way. Permits may not be transferred from person to person or from place to place.

(4) An Operating Permit for a solid fuel burning device may be revoked by the Department for non-compliance with these regulations or Operating Permit conditions.

75.1.206 AIR POLLUTION ALERTS:

(1) The Department may declare an Air Pollution Alert to be in effect whenever ambient PM concentrations, as averaged over a four hour period, exceed a level 20 percent below any state or federal ambient 24-hour standard established for particulate matter; and when scientific and meteorological data indicate the average concentrations will remain at or above these levels over the next 24 hours.

(2) The Department may also declare an Air Pollution Alert to be in effect whenever scientific and meteorological data indicate that the ambient PM concentrations over any four-hour period within the next twenty—four hours may reasonably be expected to exceed a level 20 percent below any state or federal ambient 24-hour standard established for particulate matter.

(3) No person shall be subject to any violation of 75.1.204(4) for three hours after the Department declares an Air Pollution Alert and makes that information reasonably available to the public.

75.1.207 PENALTY ASSESSMENTS:

(1) The Department shall issue a "Notice of Violation" for any documented violation. The first notice of violation issued is a warning to the violator and will include educational and compliance information on air pollution regulations.

(2) For a second and any subsequent violations, the Department shall process each notice of violation for a Civil Penalty Assessment of $25.00 per violation.

(3) No person or entity may be cited for a violation more than once in any calendar day. However, the Department may issue a notice of violation for each calendar day of violation and each such notice is considered as a separate violation.

75.1.208 CONTINGENCY MEASURES:

(1) If compliance with NAAQS/MAAQS are not achieved or compliance levels are not maintained, and the Department determines that solid fuel burning device emissions are a contributor to non-compliance, the Department shall implement the following control measure:

(a). No person may operate a solid fuel burning device except a biomass pellet fuel burning device with a valid operating permit issued by the Department.

SUBCHAPTER 3: DUST CONTROL REGULATIONS:
Control Measures For Roads, Parking Lots And Commercial Lots

75.1.301 INTENT: Regulations enacting an emission control plan within the Air Pollution Control District to meet NAAQS for particulate matter by requiring dust abatement and control.

75.1.302 SCOPE & EFFECTIVE DATE:
(1) This regulation applies to all persons, agencies, institutions, businesses, industries or government entities living in or located within the "Regulated Road Sanding and Sweeping District."
(2) The effective date of this subchapter is January 1, 2007.

75.1.303 DEFINITIONS: As used in this subchapter, unless indicated otherwise, the following definitions apply:
(1) "Areas of Public Safety Concern" means specific areas that may include, but are not necessarily limited to: roadways with steep grade hills; roadways around public school facilities; and parking areas for medical, senior or public school facilities.
(2) "Commercial Yard/Lot" means a parcel of land located off the public right-of-way with uses that may include, but are not necessarily limited to, logging yards, bus lots, store and shopping parking areas, construction firms, trucking/transportation firms, and industrial facility sites.
(3) "Emergency Situation" means a situation when:
(a) Liquid de-icing agents and/or de-icing salts become unavailable due to circumstances beyond the control of the person, government or private entity maintaining a roadway, alley, parking lot or commercial yard/lot or;
(b) due to extreme weather conditions, or hazardous roadways, liquid de-icing agents and/or de-icing salts do not provide adequate traction for public safety.
(4) "Parking Lot" means a parcel of land located off of the public right-of-way which is not less than 5,000 square feet in size and which is primarily used for the temporary storage of motor vehicles. A parking lot as used in this regulation does not include lots for the storage of special mobile equipment as defined in 61-1-101(59), MCA.
(5) "Prioritized Street Sweeping and Flushing" means a schedule of street sweeping and/or flushing which cleans streets with the highest traffic volumes first and proceeds in descending order of traffic volume to streets with the lowest traffic volume. When all ice-free streets have been cleaned the cycle is immediately repeated.
(6) "Reasonably Available Control Technology" means
(a) During winter, prioritized street sweeping and flushing of streets with accumulated carry-on or applied materials shall commence on the first working day after the roadbed becomes ice-free and temperatures remain above freezing.
(b) During summer, street sweeping and/or flushing which is accomplished on an as-needed basis to remove any accumulated carry-on or applied materials, with priority given to streets with the highest traffic volumes.
(7) "Regulated Road Sanding and Sweeping District" means the geographical area designated by the attached map, wherein the regulations of this sub-chapter apply, and defined as follows:
Point of beginning: intersection of Pipe Creek Road and Highway 37 North, follow Highway 37 south to Thomas Road then west-northwest along the Kootenai River to the west end of Jay-Effar Road; then west-southwest across Highway 2 to Parsnix

Way; then south-southeast along the base of the foothills, crossing Flower Creek Road and Main Avenue, to Reese court; then south along Cabinet Heights Road and Westgate to Snowshoe Road; then North-northeast on Shaughnessy Road to Highway 2; then east to Libby Creek; then north following the streambank of Libby Creek to the Kootenai River; then west-northwest along the Kootenai River to Highway 37; then north on Highway 37 to the point of beginning.

(8) "Road" means any road or alley which is greater than 50-feet in length and which has or is projected to have an average traffic volume greater than 50 vehicles per day.

(9) "Summer" means the months of May, June, July, August, September and October.

(10) "Winter" means the months of November, December, January, February, March and April.

75.1.304 LIMITATION ON USE AND ON APPLICATION OF MATERIALS:

(1) No person may allow vehicular operation on any road, parking lot or commercial yard/lot that is not paved or otherwise surfaced or treated to prevent vehicular carry-on and wind-borne entrainment of dust.

(a) If an emergency situation arises that requires vehicular operation in/on an untreated area, the Department may authorize utilization of the area during the course of the emergency provided alternative methods are implemented to minimize carry-on or entrainment.

(2) With the exception of "Emergency Situations" and "Areas of Public Safety Concern", sanding materials may not be applied. Only liquid de-icing agents and/or de-icing salts may be used on roads, parking lots and commercial yards/lots.

(3) No person may place any sanding or chip seal material on any road, parking lot or commercial yard/lot which has a durability, as defined by the Montana Modified LA Abrasion Test, of greater than 7, and a fines content of material smaller than 200 mesh, as determined by standard wet sieving methods, that exceeds 3 percent oven dry weight.

(4) A person, prior to application, shall test materials proposed for use as sanding or chip seal material and provide the Department laboratory test data demonstrating that the material meets the specified requirements for durability and fines content.

75.1.305 STREET SWEEPING & FLUSHING:

(1) Any person responsible for the maintenance of a road shall implement and maintain a schedule of prioritized street sweeping and flushing.

(2) Reasonably available control technology shall be utilized to assure timely removal of carry-on or applied accumulations from all roads.

75.1.306 SPECIFIC MEASURES FOR COMMERCIAL YARDS/LOTS:

(1) Operators of all commercial yards/lots shall implement measures to prevent the collection and deposition of dust from equipment wheels and chassis.

(2) Operators of all commercial yards/lots shall implement dust suppression measures (chemical dust suppressants, dust oiling, watering, etc.) in bare, undeveloped areas of the property(ies) to eliminate fugitive air-born dust.

(3) Operators of all commercial yards/lots shall clean carry-on material generated from their facility from adjoining roadways in a timely manner.

75.1.307 CONTINGENCY MEASURES:

(1) If compliance with NAAQS is not achieved or compliance levels are not maintained, and the Department determines that re-entrained dust emissions contribute to non-compliance, the Department shall implement the following control measure:

(a) The Regulated Road Sanding and Sweeping District shall be extended to the boundaries of the Air Pollution Control District.
(b) Control measures in place for the Regulated Road Sanding and Sweeping District shall apply throughout the entire Air Pollution Control District.

75.1.308 MATERIALS APPLICATION OUTSIDE THE DISTRICT:

(1) For all areas of the Air Pollution Control District that lie outside of the Regulated Sanding and Sweeping District, each person or government or private entity is strongly encouraged to reduce the amount of sanding materials applied, taking into consideration public safety and air quality.
(2) Outlying areas and low traffic volume roads should have a low priority.
(3) Residential areas may receive less sanding material because of lower speeds.
(4) Adding salt compounds to conventional sanding materials reduces the total amount of sand applied.
(5) Vehicles used for winter driving should be equipped with winter tires or traction devices.

SUBCHAPTER 4: OUTDOOR BURNING REGULATIONS

75.1.401 INTENT:

(1) Local geographic features and concentrations of populations in Libby and the immediate surrounding area necessitate rules and regulations concerning the outdoor burning of waste materials.
(2) Experience has demonstrated that air quality degradation and public health problems are often associated with the improper burning of waste materials in both urban and suburban areas.
(3) The purpose of this regulation is to improve air quality and meet NAAQS/MAAQS for particulate matter by restricting non-essential outdoor burning, promoting alternative disposal methods and recycling, and setting standards to minimize emissions when outdoor burning is required.

75.1.402: SCOPE AND EFFECTIVE DATE:

(1) This regulation applies to all persons, agencies, institutions, businesses, industries or government entities living in or located within the boundaries of the Air Pollution Control District and Impact Zone L and to all licensed landfills within the boundaries of Lincoln County.
(2) The effective date of this sub-chapter is April 15, 2006.

75.1.403 DEFINITIONS:

(1) "Best Available Control Technology" (BACT) means those techniques and methods of controlling emissions of pollutants from an existing or proposed outdoor burning source which limit those emissions to the maximum degree which the Department determines, on a case-by-case basis, is achievable for that source, taking into account impacts on energy use, the environment, and the economy, and any other costs, including cost to the source.
Such techniques and methods may include the following: scheduling of burning during periods and seasons of good ventilation; applying dispersion forecasts; utilizing predictive modeling results performed by and available from DEQ to minimize smoke impacts; limiting the amount of burning to be performed during any one time; using ignition and burning techniques which minimize smoke production; selecting fuel preparation methods that will minimize dirt and moisture content; promoting fuel configurations which create an adequate air to fuel ratio; prioritizing burns as to air quality impact and assigning control techniques accordingly;

promoting alternative treatments and uses of materials to be burned; and selecting sites that will minimize smoke impacts. BACT for all residential and management outdoor burning includes burning only as authorized by and during the time periods specified by the Department.

(2) "Bonfire" means a ceremonial fire or small recreational fire, in which the materials burned are cordwood or clean untreated dimensional wood and which is conducted by an educational, fraternal or religious organization for the purpose of celebrating a particular organization-related event or for a social gathering, picnic, campout, fireside singalong, etc.

(3) "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.

(4) "Conditional Open Burning Permit" means a permit issued to conduct outdoor burning at a licensed landfill.

(5) "Emergency outdoor burning" means an event beyond individual control that necessitates the use of outdoor burning in order to dispose of a substance that poses an immediate threat to public health and safety, or plant or animal life, and for which no alternative method of disposal is reasonably available.

(6) "Impact Zone L" means all of the land within the following boundaries: Beginning at Kootenai Falls, going southeast to Scenery Mountain, then south to Indian Head, then south to Treasure Mountain, then south to Mount Snowy, then east to Double N Lake, then across Highway 2 going northeast to McMillan Mountain, then north to Swede Mountain, then northeast across Highway 37 to the Vermiculite Mine, then west to Sheldon Mountain, then west-northwest to Flagstaff Mountain, then southwest to Kootenai Falls, the point of beginning.

(7) "Libby Outdoor Burning Control Area" means all of the land included with the boundaries of the Air Pollution Control District and Impact Zone L, including the City of Libby.

(8) "Licensed Landfill" means a solid waste disposal site that is licensed for operation by DEQ.

(9) "Licensed Landfill Outdoor Burning" means burning at a licensed landfill pursuant to a conditional outdoor burning permit.

(10) "Major Open Burning Source" means any person, agency, institution, business or industry conducting any outdoor burning that, on a statewide basis, will emit more than 500 tons per calendar year of carbon monoxide or 50 tons per calendar year of any other pollutant regulated under ARM 17.8.101 et seq., except hydrocarbons.

(11) "Management Burning" means any person, agency, institution, business or industry conducting any outdoor burning for any purpose except residential burning, including forestry/wildlife management, licensed landfill management, firefighter training exercises, commercial film productions, or fuel hazard reduction which is designated as necessary by a fire protection agency.

(12) "Outdoor Burning" means the combustion of any material directly in the open air without a receptacle, or in a receptacle other than a furnace, multiple chambered incinerator, or wood waste burner, with the exception of unexploded ordnance, small recreational fires (including bonfires), construction site heating devices used to warm workers, or safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants or elemental phosphorus plants.

(13) "Residential Burning" means any outdoor burning conducted on a residential, farm or ranch property to dispose of vegetative wastes.

(14) "Salvage operation" means any operation conducted in whole or in part to salvage or reclaim any product or material, except the silvicultural practice commonly referred to as a salvage cut.

(15) "Trade wastes" means solid, liquid or gaseous material resulting from construction or operation of any business, trade, industry or demolition project.

Wood product industry wastes such as sawdust, bark, peelings, chips, shavings, branches, limbs and cull wood are considered trade wastes. Trade wastes do not include Christmas tree waste or wastes generally disposed of by residential outdoor burning or management outdoor burning, as defined in these regulations.

75.1.404 OUTDOOR BURNING CONTROL AREAS:

(1) Outdoor burning regulations shall apply to all outdoor burning activities within the boundaries of the Air Pollution Control District and/or Impact Zone L. The Department may issue restrictions and prohibit outdoor burning activities within these boundaries.

(2) Restrictions and permitting regulations for Licensed landfills shall apply throughout the boundaries of Lincoln County.

75.1.405 PROHIBITED MATERIALS & ACTIVITIES:

(1) 40 Code of Federal Regulations (CFR) Part 261, which identifies and defines hazardous wastes, is hereby incorporated by reference.

(2) Except as specifically provided under ARM 17.8.604 for firefighter training, commercial film production and licensed landfills; the following materials may not be disposed of by outdoor burning:

(a) any waste moved from the premises where it was generated;
(b) food wastes;
(c) styrofoam and other plastics;
(d) wastes generating noxious odors;
(e) wood and wood by-products that have been treated, coated, painted, stained, or contaminated by a foreign material, such as papers, cardboard, or painted or stained wood;
(f) poultry litter;
(g) animal droppings;
(h) dead animals or dead animal parts;
(i) tires;
(j) rubber materials;
(k) asphalt shingles;
(l) tar paper;
(m) automobile or aircraft bodies and interiors;
(n) insulated wire;
(o) oil or petroleum products;
(p) treated lumber and timbers;
(q) pathogenic wastes;
(r) hazardous wastes as defined by 40 CFR Part 261;
(s) trade wastes;
(t) any materials resulting from a salvage operation;
(u) chemicals;
(v) Christmas tree waste;
(w) [removed]
(x) standing or demolished structures; and
(y) paint.

(3) The burning of stumps, the burning of grass clippings and leaves, and overnight smoldering of burns is prohibited.

(4) Burning on any city or county street, road or alley is prohibited.

(5) The use of burn barrels, or other unapproved devices, is prohibited.

75.1.406 OUTDOOR BURNING PERIODS: Various types of outdoor burning activities are limited to the following time periods:

(1) **Residential burning – April 1 through April 30:**

(a) Residential Outdoor Burning may be conducted during the month of April.

(b) In the event of unduly wet or wintry weather conditions during the month of April, the Department may extend the residential burning season into the month of May.

(c) No person may conduct residential outdoor burning at any other time during the year.

(2) **Management Burning – April 1 through October 31:**

(a) Management burns may be conducted throughout the management burning season of April 1 through October 31.

(3) **Closed Burning Periods – November 1 through March 31:**

(a) No person may conduct outdoor burning during the months of November, December, January, February and March.

(b) The Department may authorize exceptions for emergency outdoor burning after receiving the following information:

(i) facts establishing that alternative methods of disposing of the substance are not reasonably available;

(ii) facts establishing that the substance to be burned poses an immediate threat to human health and safety or plant or animal life;

(iii) the legal description or address of the site where the burn will occur;

(iv) the amount of material to be burned;

(v) the date and time of the proposed burn; and

(vi) the date and time that the spill or incident giving rise to the emergency was first noticed.

(c) Management burning in closed burning periods may be conducted based on a written demonstration of need from a fire protection agency and approval from the Department prior to each ignition.

75.1.407 GENERAL COMPLIANCE & PERMITTING REQUIREMENTS:

(1) Outdoor burning is allowed only on days with good ventilation/dispersion forecasts. The Department will make this determination based on available interagency meteorological information and local ambient particulate concentrations.

(2) All residential burners shall apply for and receive an Air Quality Permit from the Department prior to initiating any outdoor burn.

(3) All burners shall apply for and receive any necessary fire permit(s) from the jurisdictional fire protection agency prior to initiating any burn.

(4) All burners shall use alternative disposal methods when reasonably available.

(5) All burners shall utilize BACT.

(6) All residential burners shall call the Air Quality Hotline at 293-5644 prior to ignition and comply with established burning hours and any burning bans or other announced restrictions.

(7) All management burners shall contact the Department and receive approval prior to ignition of a planned burn. The Department may authorize, restrict, or prohibit proposed burns after reviewing meteorological dispersion forecasts and local conditions.

(8) Prior to conducting any outdoor burning, all major open burning sources shall apply for and receive an air quality major open burning permit pursuant to ARM 17.8.610.

75.1.408 SPECIAL COMPLIANCE & PERMITTING REQUIREMENTS:

(1) **Firefighter Training:**

(a) Prior to conducting outdoor burning sessions as part of their training program, Fire Departments shall apply for and receive a Firefighter Training Permit issued by DEQ.

(b) Any person planning Firefighter Training outdoor burning shall contact the Department and receive approval prior to conducting the training

burn. The Department may authorize, restrict, or prohibit proposed burns after reviewing meteorological dispersion forecasts and local conditions.

(c) Any person planning Firefighter training outdoor burning shall provide at least three weeks advance notice to all residents within a 1/4-mile or four-block radius of the proposed training site. The Department and County Health Officer shall evaluate any concerns about environmental or health impacts presented by surrounding residents prior to authorization or denial of the outdoor burning.

(2) **Commercial Film Production Burns:**

(a) Anyone planning to conduct Commercial Film Production outdoor burning shall apply for and receive a Commercial Film Production Permit issued by DEQ.

(b) Anyone planning Commercial Film Production outdoor burning shall contact the Department and receive approval prior to conducting outdoor burning. The Department may authorize, restrict, or prohibit proposed burns after reviewing meteorological dispersion forecasts and local conditions.

(3) **Fuel Hazard Reduction**:

(a) Any proposed burn for fuel hazard reduction must be designated as necessary by a fire protection agency.

(b) Anyone planning Fuel Hazard Reduction outdoor burning shall contact the Department and receive approval prior to conducting outdoor burning. The Department may authorize, restrict, or prohibit proposed burns after reviewing meteorological dispersion forecasts and local conditions.

(4) **Licensed Landfill Burns**

(a) All licensed landfills within the boundaries of Lincoln County must:

(i) Have an approved burn site, as designated in the solid Waste Management System License issued by the DEQ, pursuant to ARM Title 17, chapter 50, subchapter 5, before a Conditional Air Quality Open Burning permit may be issued.

(ii) Obtain a Conditional Air Quality Outdoor Burning Permit from the Department before burning. A new permit must be obtained for each burn.

(iii) Comply with all conditions of the permit.

(b) No licensed landfill within the boundaries of Lincoln County shall cause or allow the burning of untreated wood waste unless they have first applied for and received a permit for such outdoor burning from the Department.

(c) The Department may issue a conditional air quality open burning permit if the Department determines that:

(i) alternative methods of disposal would result in extreme economic hardship to the applicant; and

(ii) emissions from open burning will not endanger public health or welfare or cause or contribute to a violation of any NAAQS/MAAQS.

(d) The Department must be reasonable when determining whether alternative methods of disposal would result in extreme economic hardship to the applicant.

(e) Conditional outdoor burning must conform with BACT.

(f) The Department may issue a conditional air quality outdoor permit to dispose of untreated wood waste at a licensed landfill site, if the Department determines that:

(i) the proposed open burning will occur at an approved burn site as designated in the solid waste management system license issued by DEQ pursuant to ARM title 17, chapter 50, subchapter 5; and

(ii) prior to the issuance of the air quality open burning permit, the wood waste pile is inspected by the Department or its designated representative and no prohibited materials listed in 75.1.405(2), other than wood waste, are present.

(g) A permit issued under this rule is valid for a single burn of untreated wood waste at licensed landfill sites. A new permit must be obtained for each burn.

(h) The Department may place any reasonable requirements in a conditional air quality open burning permit that it determines will reduce emissions of air pollutants or minimize the impact of emissions and the recipient of a permit must adhere to those conditions.

(i) An application for a conditional air quality open burning permit must be made on a form provided by the Department. The applicant shall provide adequate information to enable the Department to determine whether the application satisfies the requirements for a conditional air quality open burning permit contained in this rule. Proof of publication of public notice, as required in section (j) of this rule, must be submitted to the Department before an application will be considered complete.

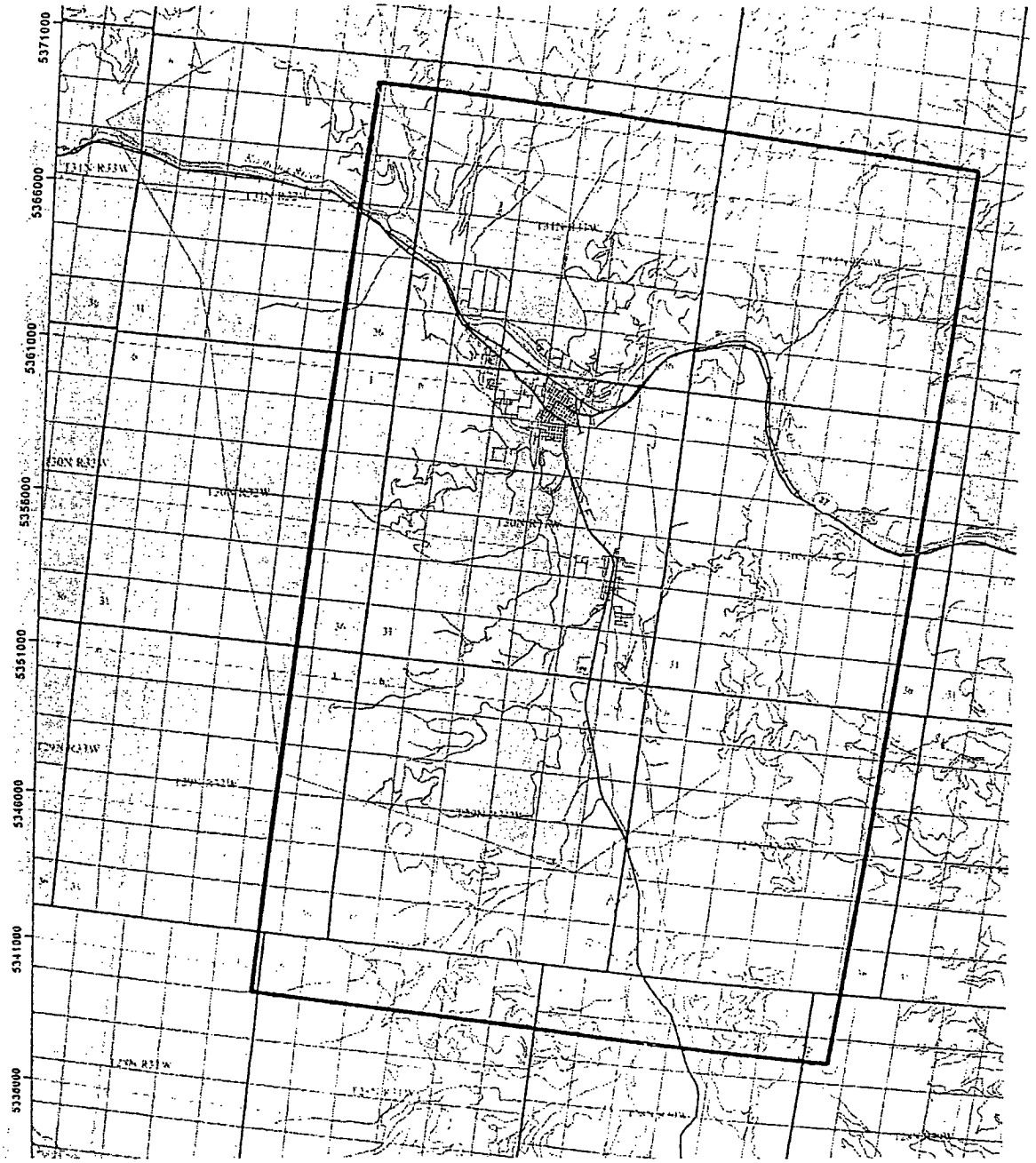
(j) An applicant for a conditional air quality open burning permit shall notify the public of the application by legal publication, at least once, in a newspaper of general circulation in the area affected by the application. The notice must be published no sooner than 10 days prior to submittal of an application and no later than ten days after submittal of an application. Form of the notice must be provided by the Department and must include a statement that public comments may be submitted to the Department concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applications.

(k) When the Department approves or denies the application for a permit under 75.1.408(4), a person who is jointly or severally adversely affected by the decision may request a hearing before the Lincoln County Board of Health. The request for hearing must be filed within 15 days after the Department renders its decision and must include an affidavit setting forth the grounds 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. The filing of a request for a hearing postpones the effective date of the Department's decision until the conclusion of the hearing and issuance of a final decision by the Lincoln County Board of Health.

75.1.409 PENALTY ASSESSMENTS:

(1) Any person who violates any provision of these regulations or any provision of any directive, action, permit, or approval adopted pursuant to the authority granted by these regulations, except for intentional violations of Section 75.1.405(2)(r), shall be, upon conviction, punished by a fine not less than $25 and not more than $200 for each offense. Violations of Section 75.1.405(2)(r), burning hazardous wastes as defined by 40 CFR Part 261, shall be, upon conviction, punished by a fine not to exceed $10,000 per day per violation.

(2) Each day of violation shall be considered a separate offense.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RESOLUTION NO. 725

WHEREAS, the Board of Lincoln County Commissioners feels it necessary to adopt such revisions to the 6 January, 1993, Lincoln County Air Pollution Control Ordinance as are required by the Environmental Protection Agency to approve inclusion of this ordinance in the Libby SIP; and

WHEREAS, the absence of E.P.A. approved local air pollution control regulation would result in the implementation of Federally mandated regulations which could cause severe hardship, economic and otherwise, upon a substantial number of citizens of Lincoln County; and

WHEREAS, the proposed revisions to the Lincoln County Air Pollution Control Program contain certain provisions regarding outdoor burning which are more stringent than comparable state or federal standards, pursuant to 75-2-301 (4), the Lincoln County Commission finds that, based on information, peer-reviewed scientific studies, and other evidence submitted into the record in proceedings deliberating this matter, the proposed revisions:

- protect public health or the environment of affected areas Lincoln County;
- can mitigate harm to the environment to the public health or the environment; and
- are achievable with current technology.

The Lincoln County Commission also acknowledges information submitted into the record regarding costs to the regulated community that are directly attributed to the proposed revisions.

NOW THEREFORE BE IT RESOLVED that the Lincoln County Commission hereby approves and adopts the proposed revisions to the Lincoln County Air Pollution Control Program which are attached to and made a part of this Resolution and directs the same to be submitted, together with all pertinent evidence as required by 75-2-301, MCA, to the Montana Board of Environmental Review, to be effective upon approval by such Board; and

BE IT FURTHER RESOLVED that the Lincoln County Commission recommends the Governor of the state of Montana submit the revisions to the Lincoln County Air Pollution Program for inclusion into the Montana state implementation plan.

DONE IN SESSION this 27th day of February, 2006.

LINCOLN COUNTY BOARD OF COMMISSIONERS

Marianne B. Roose

Marianne B. Roose, Chairman

John C. Konzen

John C. Konzen, Member

Rita R. Windom

Rita R. Windom, Member

ATTEST: Coral M. Cummings

Coral M. Cummings, Clerk of the Board

HEALTH AND ENVIRONMENT REGULATIONS
CHAPTER 1: Control of Air Pollution
Subchapter 1: General Provisions

(Revised 27 February 2006)

75.1.101 **INTENT:** The purpose of this chapter is to achieve and maintain such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property, and facilitate the enjoyment of the natural attractions of Lincoln County.

75.1.102: **SCOPE:** Unless otherwise indicated, the rules of Chapter 1 apply to activities and sources within the Air Pollution Control District.

75.1.103 **DEFINITIONS:** As used in this chapter, unless indicated otherwise, the following definitions apply:

(1) "Air Contaminant" means dust, ash, fumes, gas, mist, smoke, vapor or any particulate matter or a combination thereof present in the outdoor atmosphere.

(2) "Air Pollution Control District" means the geographical area designated on the attached map and as defined by the following Universal Transverse Mercator (UTM) coordinates:

Begin, 600000mE, 5370000mN; east to 620000mE, 5370000mN; south to 620000mE, 5340000mN; west to 600000mE, 5340000mN; north to 600000mE, 5370000mN.

(3) "Department" means the Lincoln County Environmental Health Department.

(4) "DEQ" means the Montana Department of Environmental Quality.

(5) "Emission" means a release into the outdoor atmosphere of an air contaminant.

(6) "EPA" means the US Environmental Protection Agency.

(7) "MAAQS" means Montana Ambient Air Quality Standards.

(8) "NAAQS" means National Ambient Air Quality Standards.

(9) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or private corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the federal government or an agency of the federal government, or any other legal entity and includes persons resident in Canada.

(10) "PM10" means particulate matter with an aerodynamic diameter of less than or equal to a nominal 10 micrometers.

(11) "PM2.5" means particulate matter with an aerodynamic diameter of less than or equal to a nominal 2.5 micrometers.

75.1.104 **SELECTION & IMPLEMENTATION OF CONTINGENCY MEASURE PROGRAMS:**

(1) Upon notification by DEQ or EPA that the Air Pollution Control District has failed to attain NAAQS/MAAQS or make reasonable further progress in reducing emissions, the Department shall determine the source(s) contributing to the violation and designate the associated contingency measure(s) to be implemented. The Department shall identify sources of contribution based upon documented observations of emission sources and corresponding EPA reference method monitoring data.

(2) Unless otherwise prohibited by Section 75.1.104(2)(d), and within 60 days of notification from DEQ or EPA, the Department shall implement the following contingency measure(s) to reduce emissions from a source(s) identified as a contributor.

(a) If residential wood burning is determined to be a contributing source, the Department shall implement Section 75.1.208.

(b) If re-entrained dust is determined to be a contributing source, the Department shall implement Section 75.1.307.
(c) If industrial facility emissions are determined to be a contributing source, DEQ shall initiate contingency measures to reduce emissions.
(d) The Department shall address failure to attain NAAQS or to make reasonable further progress in reducing emissions attributable to natural events or impacts generating activities occurring outside state or local jurisdictional control according to EPA policy while initiating interim contingency measures at the local level.
(e) If no emission source(s) can be identified as a contributor, the Department shall conduct a comprehensive review, including chemical and microscopic filter analysis. Until such time as the review and analyses have been completed, the Department shall implement at least one of the above contingency measures on an interim basis. Any selected interim contingency measure(s) shall remain in effect until the Department completes a comprehensive review and determines whether a permanent contingency measure is necessary.

(3) Early voluntary implementation of a contingency measure shall not result in a requirement to develop additional moderate area contingency measures if the area later fails to attain the NAAQS/MAAQS or make reasonable further progress in reducing emissions. However, redesignation could necessitate additional control measures including Best Available Control Measures (BACM), Best Available Control Technology (BACT) and/or additional contingency measures.

75.1.105 ENFORCEABILITY:
The provisions of the regulations in this ordinance are enforceable by the Lincoln County Environmental Health Department authorities and/or appropriate law enforcement officials.

75.1.106 CONFLICT OF ORDINANCES:
(1) In any case where a provision of these regulations is found to be in conflict with a provision of any zoning, building, fire, safety or health ordinance or code of any City of, Town of, or of the County of Lincoln, the provision which, in the judgment of the Health Officer, established the higher standard for the promotion and protection of the health and safety of the people shall prevail.
(2) If any portion of these regulations should be declared invalid for any reason whatsoever, such decision shall not affect the validity of the remaining portion(s) of the ordinance and such portions shall remain in full force and effect.

SUBCHAPTER 2: SOLID FUEL BURNING DEVICE REGULATIONS

75.1.201 INTENT:
(1) A regulation reducing the levels of particulate air pollutants to or below levels of the NAAQS/MAAQS.
(2) This regulation is necessary to preserve, protect, improve, achieve and maintain such levels of air quality as will protect the health and welfare of the citizens of Lincoln County.

75.1.202 SCOPE AND EFFECTIVE DATE:
(1) This regulation applies to all persons, agencies, institutions, businesses, industries or government entities living in or located within the Air Pollution Control District except for sources exempt from local regulation under 75-2-301(5), MCA.
(2) The effective date of this sub-chapter is January 1, 2007.

75.1.203 DEFINITIONS: As used in this subchapter, unless indicated otherwise, the following definitions apply:

(1) "Opacity" means a measurement of visible emissions defined as the degree expressed in percent to which emissions reduce the transmission of light and obscure the view of an object in the background.
(2) "Operating Permit" means a permit issued by the Department that allows the use of a solid fuel burning device within the boundaries of the Air Pollution Control District.
(3) "Pellet Fuel Burning Device" means a solid fuel burning device that burns only automatically fed biomass, pelletized fuels.
(4) "Solid Fuel Burning Device" means any fireplace, fireplace insert, wood stove, pellet stove, pellet furnace, wood burning heater, wood-fired boiler, wood or coal-fired furnace, coal stove, or similar device burning any solid fuel used for aesthetic, cooking or heating purposes which has a rated capacity of less than 1,000,000 BTU's per hour.
(5) "Standard Catalytic Device" means a solid fuel burning device with a catalytic emissions control system that has been certified by EPA test method as having emissions <4.1 grams/hour.
(6) "Standard Non-Catalytic Device" means a solid fuel burning device with a non-catalytic emissions control system that has been certified by EPA test method as having emissions <7.5 grams/hour.

75.1.204 OPERATING & EMISSION LIMITS:

(1) No person may install or operate any type of solid fuel burning device without a valid Operating Permit issued by the Department.
(2) No person may 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 a solid fuel. Products manufactured or processed for use as solid fuels must conform to any other applicable provisions of this subchapter.
(3) In the absence of an Air Pollution Alert, no person operating a solid fuel burning device may cause or allow the discharge of visible emissions greater than twenty percent opacity. The provisions of this section do not apply to visible emissions during the building of a new fire, for a period or periods aggregating no more than twenty minutes in any four-hour period.
(4) During an Air Pollution Alert, no person operating a solid fuel burning device that is permitted for use during an Alert may cause or allow the discharge of visible emissions greater than ten percent opacity. The provisions of this subsection shall not apply during the building of a new fire, for a period or periods aggregating no more than twenty minutes in any four-hour period. No person may operate a standard catalytic or non-catalytic solid fuel burning device during an Air Pollution Alert.

75.1.205 SOLID FUEL BURNING DEVICE PERMITS:

(1) Prior to installing or operating a solid fuel burning device in any residential or commercial property, a person shall apply to the Department for a permit and provide the following information:
- (a) the owner/operator of the device;
- (b) contact information for the device owner/operator;
- (c) location of the device;
- (d) device manufacturer & model;
- (e) type of device (rating); and
- (f) any other relevant information for the Department to determine whether it satisfies the requirements of this regulation.

(2) The Department may issue Operating Permits for the following types of solid fuel burning devices:
- (a) **Standard catalytic devices**. The Department may issue an Operating Permit for a catalytic solid fuel burning device. Standard catalytic devices may not be operated during an Air Pollution Alert. Implementation

of the contingency measure in 75.1.208 would automatically invalidate the operating permit for this type of device.

(b) **Standard non-catalytic devices**. The Department may issue an Operating Permit for a non-catalytic solid fuel burning device. Standard non-catalytic devices may not be operated during an Air Pollution Alert. Implementation of the contingency measure in 75.1.208 would automatically invalidate the operating permit for this type of device.

(c) **Pellet fuel burning devices**. The Department may issue an operating permit for a biomass pellet fuel burning device. Pellet fuel burning devices may be operated during an Air Pollution Alert. Implementation of the contingency measure in 75.1.208 would not invalidate the operating permit for this type of device.

(3) Unless otherwise invalidated by implementation of a contingency measure or future changes in solid fuel burning device regulations, Operating Permits are valid until the named owner/operator changes or the device is removed or modified in any way. Permits may not be transferred from person to person or from place to place.

(4) An Operating Permit for a solid fuel burning device may be revoked by the Department for non-compliance with these regulations or Operating Permit conditions.

75.1.206 AIR POLLUTION ALERTS:

(1) The Department may declare an Air Pollution Alert to be in effect whenever ambient PM concentrations, as averaged over a four hour period, exceed a level 20 percent below any state or federal ambient 24-hour standard established for particulate matter; and when scientific and meteorological data indicate the average concentrations will remain at or above these levels over the next 24 hours.

(2) The Department may also declare an Air Pollution Alert to be in effect whenever scientific and meteorological data indicate that the ambient PM concentrations over any four-hour period within the next twenty—four hours may reasonably be expected to exceed a level 20 percent below any state or federal ambient 24-hour standard established for particulate matter.

(3) No person shall be subject to any violation of 75.1.204(4) for three hours after the Department declares an Air Pollution Alert and makes that information reasonably available to the public.

75.1.207 PENALTY ASSESSMENTS:

(1) The Department shall issue a "Notice of Violation" for any documented violation. The first notice of violation issued is a warning to the violator and will include educational and compliance information on air pollution regulations.

(2) For a second and any subsequent violations, the Department shall process each notice of violation for a Civil Penalty Assessment of $25.00 per violation.

(3) No person or entity may be cited for a violation more than once in any calendar day. However, the Department may issue a notice of violation for each calendar day of violation and each such notice is considered as a separate violation.

75.1.208 CONTINGENCY MEASURES:

(1) If compliance with NAAQS/MAAQS are not achieved or compliance levels are not maintained, and the Department determines that solid fuel burning device emissions are a contributor to non-compliance, the Department shall implement the following control measure:

(a). No person may operate a solid fuel burning device except a biomass pellet fuel burning device with a valid operating permit issued by the Department.

SUBCHAPTER 3: DUST CONTROL REGULATIONS:
Control Measures For Roads, Parking Lots And Commercial Lots

75.1.301 INTENT: Regulations enacting an emission control plan within the Air Pollution Control District to meet NAAQS for particulate matter by requiring dust abatement and control.

75.1.302 SCOPE & EFFECTIVE DATE:
(1) This regulation applies to all persons, agencies, institutions, businesses, industries or government entities living in or located within the "Regulated Road Sanding and Sweeping District."
(2) The effective date of this subchapter is January 1, 2007.

75.1.303 DEFINITIONS: As used in this subchapter, unless indicated otherwise, the following definitions apply:
(1) "Areas of Public Safety Concern" means specific areas that may include, but are not necessarily limited to: roadways with steep grade hills; roadways around public school facilities; and parking areas for medical, senior or public school facilities.
(2) "Commercial Yard/Lot" means a parcel of land located off the public right-of-way with uses that may include, but are not necessarily limited to, logging yards, bus lots, store and shopping parking areas, construction firms, trucking/transportation firms, and industrial facility sites.
(3) "Emergency Situation" means a situation when:
(a) Liquid de-icing agents and/or de-icing salts become unavailable due to circumstances beyond the control of the person, government or private entity maintaining a roadway, alley, parking lot or commercial yard/lot or;
(b) due to extreme weather conditions, or hazardous roadways, liquid de-icing agents and/or de-icing salts do not provide adequate traction for public safety.
(4) "Parking Lot" means a parcel of land located off of the public right-of-way which is not less than 5,000 square feet in size and which is primarily used for the temporary storage of motor vehicles. A parking lot as used in this regulation does not include lots for the storage of special mobile equipment as defined in 61-1-101(59), MCA.
(5) "Prioritized Street Sweeping and Flushing" means a schedule of street sweeping and/or flushing which cleans streets with the highest traffic volumes first and proceeds in descending order of traffic volume to streets with the lowest traffic volume. When all ice-free streets have been cleaned the cycle is immediately repeated.
(6) "Reasonably Available Control Technology" means
(a) During winter, prioritized street sweeping and flushing of streets with accumulated carry-on or applied materials shall commence on the first working day after the roadbed becomes ice-free and temperatures remain above freezing.
(b) During summer, street sweeping and/or flushing which is accomplished on an as-needed basis to remove any accumulated carry-on or applied materials, with priority given to streets with the highest traffic volumes.
(7) "Regulated Road Sanding and Sweeping District" means the geographical area designated by the attached map, wherein the regulations of this sub-chapter apply, and defined as follows:
Point of beginning: intersection of Pipe Creek Road and Highway 37 North, follow Highway 37 south to Thomas Road then west-northwest along the Kootenai River to the west end of Jay-Effar Road; then west-southwest across Highway 2 to Parsnix

Way; then south-southeast along the base of the foothills, crossing Flower Creek Road and Main Avenue, to Reese court; then south along Cabinet Heights Road and Westgate to Snowshoe Road; then North-northeast on Shaughnessy Road to Highway 2; then east to Libby Creek; then north following the streambank of Libby Creek to the Kootenai River; then west-northwest along the Kootenai River to Highway 37; then north on Highway 37 to the point of beginning.

(8) "Road" means any road or alley which is greater than 50-feet in length and which has or is projected to have an average traffic volume greater than 50 vehicles per day.

(9) "Summer" means the months of May, June, July, August, September and October.

(10) "Winter" means the months of November, December, January, February, March and April.

75.1.304 LIMITATION ON USE AND ON APPLICATION OF MATERIALS:

(1) No person may allow vehicular operation on any road, parking lot or commercial yard/lot that is not paved or otherwise surfaced or treated to prevent vehicular carry-on and wind-borne entrainment of dust.

(a) If an emergency situation arises that requires vehicular operation in/on an untreated area, the Department may authorize utilization of the area during the course of the emergency provided alternative methods are implemented to minimize carry-on or entrainment.

(2) With the exception of "Emergency Situations" and "Areas of Public Safety Concern", sanding materials may not be applied. Only liquid de-icing agents and/or de-icing salts may be used on roads, parking lots and commercial yards/lots.

(3) No person may place any sanding or chip seal material on any road, parking lot or commercial yard/lot which has a durability, as defined by the Montana Modified LA Abrasion Test, of greater than 7, and a fines content of material smaller than 200 mesh, as determined by standard wet sieving methods, that exceeds 3 percent oven dry weight.

(4) A person, prior to application, shall test materials proposed for use as sanding or chip seal material and provide the Department laboratory test data demonstrating that the material meets the specified requirements for durability and fines content.

75.1.305 STREET SWEEPING & FLUSHING:

(1) Any person responsible for the maintenance of a road shall implement and maintain a schedule of prioritized street sweeping and flushing.

(2) Reasonably available control technology shall be utilized to assure timely removal of carry-on or applied accumulations from all roads.

75.1.306 SPECIFIC MEASURES FOR COMMERCIAL YARDS/LOTS:

(1) Operators of all commercial yards/lots shall implement measures to prevent the collection and deposition of dust from equipment wheels and chassis.

(2) Operators of all commercial yards/lots shall implement dust suppression measures (chemical dust suppressants, dust oiling, watering, etc.) in bare, undeveloped areas of the property(ies) to eliminate fugitive air-born dust.

(3) Operators of all commercial yards/lots shall clean carry-on material generated from their facility from adjoining roadways in a timely manner.

75.1.307 CONTINGENCY MEASURES:

(1) If compliance with NAAQS is not achieved or compliance levels are not maintained, and the Department determines that re-entrained dust emissions contribute to non-compliance, the Department shall implement the following control measure:

(a) The Regulated Road Sanding and Sweeping District shall be extended to the boundaries of the Air Pollution Control District.
(b) Control measures in place for the Regulated Road Sanding and Sweeping District shall apply throughout the entire Air Pollution Control District.

75.1.308 MATERIALS APPLICATION OUTSIDE THE DISTRICT:

(1) For all areas of the Air Pollution Control District that lie outside of the Regulated Sanding and Sweeping District, each person or government or private entity is strongly encouraged to reduce the amount of sanding materials applied, taking into consideration public safety and air quality.
(2) Outlying areas and low traffic volume roads should have a low priority.
(3) Residential areas may receive less sanding material because of lower speeds.
(4) Adding salt compounds to conventional sanding materials reduces the total amount of sand applied.
(5) Vehicles used for winter driving should be equipped with winter tires or traction devices.

SUBCHAPTER 4: OUTDOOR BURNING REGULATIONS

75.1.401 INTENT:

(1) Local geographic features and concentrations of populations in Libby and the immediate surrounding area necessitate rules and regulations concerning the outdoor burning of waste materials.
(2) Experience has demonstrated that air quality degradation and public health problems are often associated with the improper burning of waste materials in both urban and suburban areas.
(3) The purpose of this regulation is to improve air quality and meet NAAQS/MAAQS for particulate matter by restricting non-essential outdoor burning, promoting alternative disposal methods and recycling, and setting standards to minimize emissions when outdoor burning is required.

75.1.402: SCOPE AND EFFECTIVE DATE:

(1) This regulation applies to all persons, agencies, institutions, businesses, industries or government entities living in or located within the boundaries of the Air Pollution Control District and Impact Zone L and to all licensed landfills within the boundaries of Lincoln County.
(2) The effective date of this sub-chapter is April 15, 2006.

75.1.403 DEFINITIONS:

(1) "Best Available Control Technology" (BACT) means those techniques and methods of controlling emissions of pollutants from an existing or proposed outdoor burning source which limit those emissions to the maximum degree which the Department determines, on a case-by-case basis, is achievable for that source, taking into account impacts on energy use, the environment, and the economy, and any other costs, including cost to the source.
Such techniques and methods may include the following: scheduling of burning during periods and seasons of good ventilation; applying dispersion forecasts; utilizing predictive modeling results performed by and available from DEQ to minimize smoke impacts; limiting the amount of burning to be performed during any one time; using ignition and burning techniques which minimize smoke production; selecting fuel preparation methods that will minimize dirt and moisture content; promoting fuel configurations which create an adequate air to fuel ratio; prioritizing burns as to air quality impact and assigning control techniques accordingly;

promoting alternative treatments and uses of materials to be burned; and selecting sites that will minimize smoke impacts. BACT for all residential and management outdoor burning includes burning only as authorized by and during the time periods specified by the Department.

(2) "Bonfire" means a ceremonial fire or small recreational fire, in which the materials burned are cordwood or clean untreated dimensional wood and which is conducted by an educational, fraternal or religious organization for the purpose of celebrating a particular organization-related event or for a social gathering, picnic, campout, fireside singalong, etc.

(3) "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.

(4) "Conditional Open Burning Permit" means a permit issued to conduct outdoor burning at a licensed landfill.

(5) "Emergency outdoor burning" means an event beyond individual control that necessitates the use of outdoor burning in order to dispose of a substance that poses an immediate threat to public health and safety, or plant or animal life, and for which no alternative method of disposal is reasonably available.

(6) "Impact Zone L" means all of the land within the following boundaries: Beginning at Kootenai Falls, going southeast to Scenery Mountain, then south to Indian Head, then south to Treasure Mountain, then south to Mount Snowy, then east to Double N Lake, then across Highway 2 going northeast to McMillan Mountain, then north to Swede Mountain, then northeast across Highway 37 to the Vermiculite Mine, then west to Sheldon Mountain, then west-northwest to Flagstaff Mountain, then southwest to Kootenai Falls, the point of beginning.

(7) "Libby Outdoor Burning Control Area" means all of the land included with the boundaries of the Air Pollution Control District and Impact Zone L, including the City of Libby.

(8) "Licensed Landfill" means a solid waste disposal site that is licensed for operation by DEQ.

(9) "Licensed Landfill Outdoor Burning" means burning at a licensed landfill pursuant to a conditional outdoor burning permit.

(10) "Major Open Burning Source" means any person, agency, institution, business or industry conducting any outdoor burning that, on a statewide basis, will emit more than 500 tons per calendar year of carbon monoxide or 50 tons per calendar year of any other pollutant regulated under ARM 17.8.101 et seq., except hydrocarbons.

(11) "Management Burning" means any person, agency, institution, business or industry conducting any outdoor burning for any purpose except residential burning, including forestry/wildlife management, licensed landfill management, firefighter training exercises, commercial film productions, or fuel hazard reduction which is designated as necessary by a fire protection agency.

(12) "Outdoor Burning" means the combustion of any material directly in the open air without a receptacle, or in a receptacle other than a furnace, multiple chambered incinerator, or wood waste burner, with the exception of unexploded ordnance, small recreational fires (including bonfires), construction site heating devices used to warm workers, or safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants or elemental phosphorus plants.

(13) "Residential Burning" means any outdoor burning conducted on a residential, farm or ranch property to dispose of vegetative wastes.

(14) "Salvage operation" means any operation conducted in whole or in part to salvage or reclaim any product or material, except the silvicultural practice commonly referred to as a salvage cut.

(15) "Trade wastes" means solid, liquid or gaseous material resulting from construction or operation of any business, trade, industry or demolition project.

Wood product industry wastes such as sawdust, bark, peelings, chips, shavings, branches, limbs and cull wood are considered trade wastes. Trade wastes do not include Christmas tree waste or wastes generally disposed of by residential outdoor burning or management outdoor burning, as defined in these regulations.

75.1.404 OUTDOOR BURNING CONTROL AREAS:

(1) Outdoor burning regulations shall apply to all outdoor burning activities within the boundaries of the Air Pollution Control District and/or Impact Zone L. The Department may issue restrictions and prohibit outdoor burning activities within these boundaries.

(2) Restrictions and permitting regulations for Licensed landfills shall apply throughout the boundaries of Lincoln County.

75.1.405 PROHIBITED MATERIALS & ACTIVITIES:

(1) 40 Code of Federal Regulations (CFR) Part 261, which identifies and defines hazardous wastes, is hereby incorporated by reference.

(2) Except as specifically provided under ARM 17.8.604 for firefighter training, commercial film production and licensed landfills; the following materials may not be disposed of by outdoor burning:

(a) any waste moved from the premises where it was generated;
(b) food wastes;
(c) styrofoam and other plastics;
(d) wastes generating noxious odors;
(e) wood and wood by-products that have been treated, coated, painted, stained, or contaminated by a foreign material, such as papers, cardboard, or painted or stained wood;
(f) poultry litter;
(g) animal droppings;
(h) dead animals or dead animal parts;
(i) tires;
(j) rubber materials;
(k) asphalt shingles;
(l) tar paper;
(m) automobile or aircraft bodies and interiors;
(n) insulated wire;
(o) oil or petroleum products;
(p) treated lumber and timbers;
(q) pathogenic wastes;
(r) hazardous wastes as defined by 40 CFR Part 261;
(s) trade wastes;
(t) any materials resulting from a salvage operation;
(u) chemicals;
(v) Christmas tree waste;
(w) asbestos or asbestos-containing materials;
(x) standing or demolished structures; and
(y) paint.

(3) The burning of stumps, the burning of grass clippings and leaves, and overnight smoldering of burns is prohibited.

(4) Burning on any city or county street, road or alley is prohibited.

(5) The use of burn barrels, or other unapproved devices, is prohibited.

75.1.406 OUTDOOR BURNING PERIODS: Various types of outdoor burning activities are limited to the following time periods:

(1) **Residential burning – April 1 through April 30:**

(a) Residential Outdoor Burning may be conducted during the month of April.

(b) In the event of unduly wet or wintry weather conditions during the month of April, the Department may extend the residential burning season into the month of May.

(c) No person may conduct residential outdoor burning at any other time during the year.

(2) **Management Burning – April 1 through October 31:**

(a) Management burns may be conducted throughout the management burning season of April 1 through October 31.

(3) **Closed Burning Periods – November 1 through March 31:**

(a) No person may conduct outdoor burning during the months of November, December, January, February and March.

(b) The Department may authorize exceptions for emergency outdoor burning after receiving the following information:

(i) facts establishing that alternative methods of disposing of the substance are not reasonably available;

(ii) facts establishing that the substance to be burned poses an immediate threat to human health and safety or plant or animal life;

(iii) the legal description or address of the site where the burn will occur;

(iv) the amount of material to be burned;

(v) the date and time of the proposed burn; and

(vi) the date and time that the spill or incident giving rise to the emergency was first noticed.

(c) Management burning in closed burning periods may be conducted based on a written demonstration of need from a fire protection agency and approval from the Department prior to each ignition.

75.1.407 GENERAL COMPLIANCE & PERMITTING REQUIREMENTS:

(1) Outdoor burning is allowed only on days with good ventilation/dispersion forecasts. The Department will make this determination based on available interagency meteorological information and local ambient particulate concentrations.

(2) All residential burners shall apply for and receive an Air Quality Permit from the Department prior to initiating any outdoor burn.

(3) All burners shall apply for and receive any necessary fire permit(s) from the jurisdictional fire protection agency prior to initiating any burn.

(4) All burners shall use alternative disposal methods when reasonably available.

(5) All burners shall utilize BACT.

(6) All residential burners shall call the Air Quality Hotline at 293-5644 prior to ignition and comply with established burning hours and any burning bans or other announced restrictions.

(7) All management burners shall contact the Department and receive approval prior to ignition of a planned burn. The Department may authorize, restrict, or prohibit proposed burns after reviewing meteorological dispersion forecasts and local conditions.

(8) Prior to conducting any outdoor burning, all major open burning sources shall apply for and receive an air quality major open burning permit pursuant to ARM 17.8.610.

75.1.408 SPECIAL COMPLIANCE & PERMITTING REQUIREMENTS:

(1) **Firefighter Training:**

(a) Prior to conducting outdoor burning sessions as part of their training program, Fire Departments shall apply for and receive a Firefighter Training Permit issued by DEQ.

(b) Any person planning Firefighter Training outdoor burning shall contact the Department and receive approval prior to conducting the training

burn. The Department may authorize, restrict, or prohibit proposed burns after reviewing meteorological dispersion forecasts and local conditions.

(c) Any person planning Firefighter training outdoor burning shall provide at least three weeks advance notice to all residents within a 1/4-mile or four-block radius of the proposed training site. The Department and County Health Officer shall evaluate any concerns about environmental or health impacts presented by surrounding residents prior to authorization or denial of the outdoor burning.

(2) **Commercial Film Production Burns:**

(a) Anyone planning to conduct Commercial Film Production outdoor burning shall apply for and receive a Commercial Film Production Permit issued by DEQ.

(b) Anyone planning Commercial Film Production outdoor burning shall contact the Department and receive approval prior to conducting outdoor burning. The Department may authorize, restrict, or prohibit proposed burns after reviewing meteorological dispersion forecasts and local conditions.

(3) **Fuel Hazard Reduction**:

(a) Any proposed burn for fuel hazard reduction must be designated as necessary by a fire protection agency.

(b) Anyone planning Fuel Hazard Reduction outdoor burning shall contact the Department and receive approval prior to conducting outdoor burning. The Department may authorize, restrict, or prohibit proposed burns after reviewing meteorological dispersion forecasts and local conditions.

(4) **Licensed Landfill Burns**

(a) All licensed landfills within the boundaries of Lincoln County must:

(i) Have an approved burn site, as designated in the solid Waste Management System License issued by the DEQ, pursuant to ARM Title 17, chapter 50, subchapter 5, before a Conditional Air Quality Open Burning permit may be issued.

(ii) Obtain a Conditional Air Quality Outdoor Burning Permit from the Department before burning. A new permit must be obtained for each burn.

(iii) Comply with all conditions of the permit.

(b) No licensed landfill within the boundaries of Lincoln County shall cause or allow the burning of untreated wood waste unless they have first applied for and received a permit for such outdoor burning from the Department.

(c) The Department may issue a conditional air quality open burning permit if the Department determines that:

(i) alternative methods of disposal would result in extreme economic hardship to the applicant; and

(ii) emissions from open burning will not endanger public health or welfare or cause or contribute to a violation of any NAAQS/MAAQS.

(d) The Department must be reasonable when determining whether alternative methods of disposal would result in extreme economic hardship to the applicant.

(e) Conditional outdoor burning must conform with BACT.

(f) The Department may issue a conditional air quality outdoor permit to dispose of untreated wood waste at a licensed landfill site, if the Department determines that:

(i) the proposed open burning will occur at an approved burn site as designated in the solid waste management system license issued by DEQ pursuant to ARM title 17, chapter 50, subchapter 5; and

(ii) prior to the issuance of the air quality open burning permit, the wood waste pile is inspected by the Department or its designated representative and no prohibited materials listed in 75.1.405(2), other than wood waste, are present.

(g) A permit issued under this rule is valid for a single burn of untreated wood waste at licensed landfill sites. A new permit must be obtained for each burn.

(h) The Department may place any reasonable requirements in a conditional air quality open burning permit that it determines will reduce emissions of air pollutants or minimize the impact of emissions and the recipient of a permit must adhere to those conditions.

(i) An application for a conditional air quality open burning permit must be made on a form provided by the Department. The applicant shall provide adequate information to enable the Department to determine whether the application satisfies the requirements for a conditional air quality open burning permit contained in this rule. Proof of publication of public notice, as required in section (j) of this rule, must be submitted to the Department before an application will be considered complete.

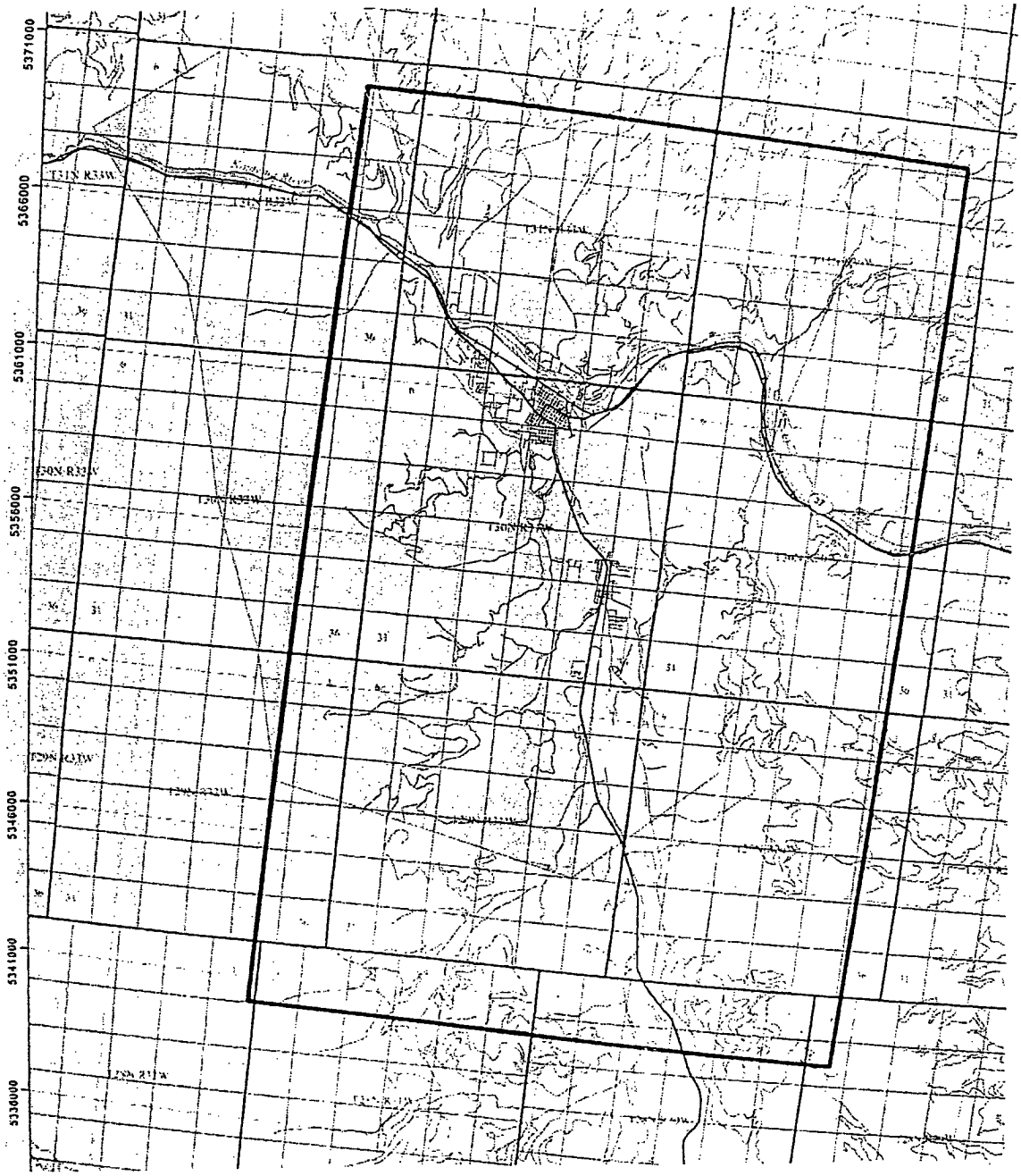
(j) An applicant for a conditional air quality open burning permit shall notify the public of the application by legal publication, at least once, in a newspaper of general circulation in the area affected by the application. The notice must be published no sooner than 10 days prior to submittal of an application and no later than ten days after submittal of an application. Form of the notice must be provided by the Department and must include a statement that public comments may be submitted to the Department concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applications.

(k) When the Department approves or denies the application for a permit under 75.1.408(4), a person who is jointly or severally adversely affected by the decision may request a hearing before the Lincoln County Board of Health. The request for hearing must be filed within 15 days after the Department renders its decision and must include an affidavit setting forth the grounds 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. The filing of a request for a hearing postpones the effective date of the Department's decision until the conclusion of the hearing and issuance of a final decision by the Lincoln County Board of Health.

75.1.409 PENALTY ASSESSMENTS:

(1) Any person who violates any provision of these regulations or any provision of any directive, action, permit, or approval adopted pursuant to the authority granted by these regulations, except for intentional violations of Section 75.1.405(2)(r), shall be, upon conviction, punished by a fine not less than $25 and not more than $200 for each offense. Violations of Section 75.1.405(2)(r), burning hazardous wastes as defined by 40 CFR Part 261, shall be, upon conviction, punished by a fine not to exceed $10,000 per day per violation.

(2) Each day of violation shall be considered a separate offense.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75.1.101 INTENT: The purpose of this chapter is to achieve and maintain such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property, and facilitate the enjoyment of the natural attractions of Lincoln County.75.1.101 INTENT: The purpose of this chapter is to achieve and maintain such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property, and facilitate the enjoyment of the natural attractions of Lincoln County.

75.1.102 DEFINITIONS: As used in this chapter, unless indicated otherwise, the following definitions apply:

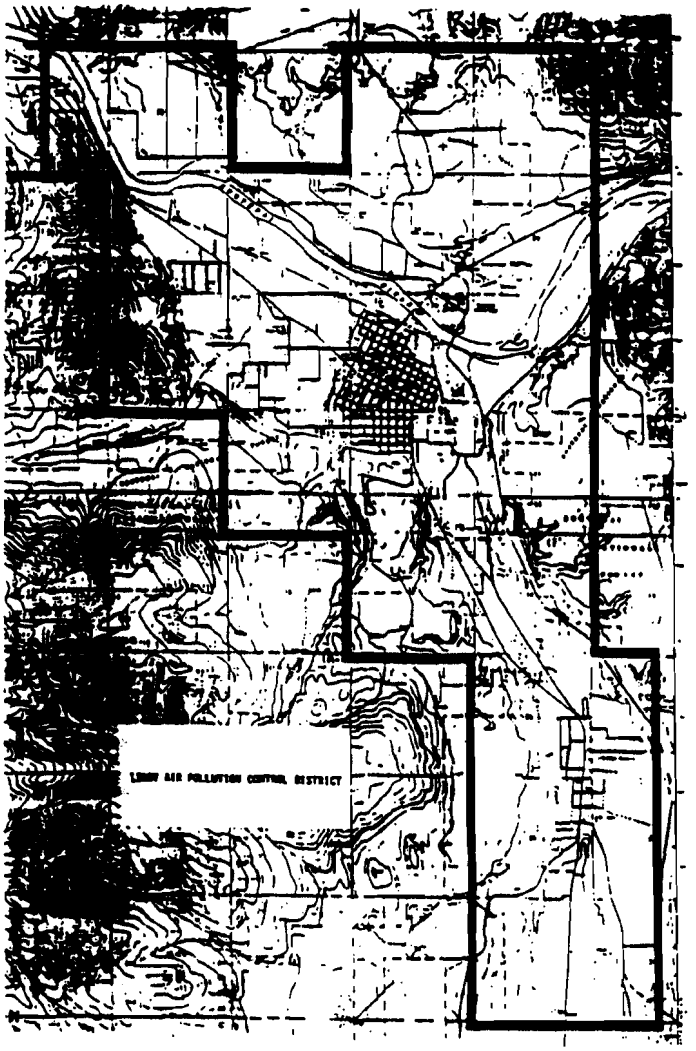
(1) "Air Contaminant" means dust, ash, fumes, gas, mist, smoke, vapor, odor or any particulate matter or a combination thereof present in the outdoor atmosphere.

(2) "Air Pollution Control District" means the geographical area designated as such by the map attached hereto.

(3) "Emission" means a release into the outdoor atmosphere of an air contaminant.

(4) "Department" means the Lincoln County Health Department.

LIBBY AIR POLLUTION CONTROL DISTRICT



75.1.103 SELECTION & IMPLEMENTATION OF CONTINGENCY MEASURE PROGRAMS:

(1) Upon notification by the Montana Department of Environmental Quality (DEQ) or the U.S. Environmental Protection Agency (EPA) that the Libby Air Pollution Control District has failed to attain NAAQS for PM-10 or to make reasonable further progress in reducing emissions, the Department shall determine the significant contributor(s) to the PM-10 violation and designate the associated contingency measure(s) to be implemented. Identification of sources of significant contribution shall be made by the Department based on their documented observations of emission sources, correlated with corresponding TEOM PM-10 data. (Ruprecht & Patashnick TEOM® Series 1400a Ambient Particulate Monitor operated with an RP PM-10 inlet, flow rate of 16.7 liters/minute, teflon-coated glass fiber filter cartridges, total mass averaging time set at 300 seconds and mass rate/mass concentration averaging time set at 300 seconds. E.P.A. designated as an equivalent method for the determination of 24-hour average PM-10 concentrations in ambient air. E.P.A. Designation No. EQPM-1090-079.)

(2) Unless contraindicated by Section 75.1.103(2)(d), the following contingency measure(s) to reduce PM-10 emissions from the source(s) identified as the significant contributor shall be implemented within sixty (60) days of notification from DEQ or EPA:

(a) If residential wood burning is determined to be the significant source, 75.1.206(3) shall be implemented by the Department.

(b) If re-entrained road dust is determined to be the significant source, 75.1.303(3) shall be implemented by the Department.

(c) If industrial facility emissions are determined to be the significant source, contingency measures reducing the identified industrial sources' emissions shall be initiated by DEQ.

(d) Failure to attain NAAQS for PM-10 or to make reasonable further progress in reducing emissions that is attributable to natural disasters or impacts generated by activities occurring outside State or Local jurisdictional control shall be addressed according to E.P.A. policy while interim contingency measures are initiated at the local level.

(e) If no emission source(s) can be identified as significant contributors, a comprehensive review, including chemical and microscopic analysis of exposed PM-10 filters, shall be conducted by the Department and DEQ. Until such time as the review and analyses have been completed, at least one of the above contingency measures shall be implemented on an interim basis by the Department and/or DEQ. This contingency measure(s) shall remain in effect until the significant source is identified and a permanent contingency measure has been implemented.

(3) Early voluntary implementation of a contingency measure shall not result in a requirement to develop additional moderate area contingency measures if the area later fails to attain the NAAQS for PM-10 or make reasonable further progress in reducing PM-10 emissions. However, redesignation as a serious non-attainment area could necessitate additional control measures including Best Available Control Measures (BACM), Best Available Control Technology (BACT) and serious area contingency measures.

75.1.201 INTENT:

(1) A regulation reducing the level of air pollutants at or below those standards found in Administrative Rules of Montana, Title 16, Chapter 8 Sub-Chapter 8 and 9, and in effect as of October 1, 1990.

(2) This regulation is necessary to preserve, protect, improve, achieve and maintain such levels of air quality as will protect the health and welfare of the citizens of Lincoln County.

(3) This regulation applies to all persons, agencies, institutions, businesses, industries or government entities living in or located within the area defined in the attached District Map. Stationary sources with the potential to emit more than 25 tons per year of any pollutant, with the exception of 5 tons per year of lead, must comply with this rule unless the affected emission point is specifically regulated by DEQ under the Montana Clean Air Act or administrative rules adopted pursuant to the Montana Clean Air Act.

75.1.202 DEFINITIONS: As used in this regulation, unless indicated otherwise, the following definitions apply:

(1) "Class I Permit" means an emission permit issued by the Department to operate a solid fuel burning device during an Air Pollution Alert.

(2) "Class II Permit" means an emission permit issued for new solid fuel burning devices or existing solid fuel burning devices upon resale or re-rental of a home.

(3) "Department" means the Lincoln County Department of Environmental Health Air Quality Control.

(4) "Emergency Heating Situation" means events beyond individual control that necessitate the use of an otherwise unauthorized solid fuel burning device in order to heat a structure to temperatures required for habitation and/or property protection.

(5) "EPA Method" means 40 CFR Part 60, Subpart AAA, Sections 60.53l, 60.534, and 60.535.

(6) "Exempted Solid Fuel Burning Device" means EPA NSPS exempt solid fuel burning boilers, furnaces, and cookstoves per 40 CFR Ch. 1, Subpart AAA, 60.530 as defined in Subpart AAA, 60.531.

(7) "Low Income Exemption Permit" means an emission permit issued by the Department for a solid fuel burning device in use by a Low Income Energy Assistance Program (LIEAP) recipient whose primary source of heat is wood.

(8) "Opacity" means a measurement of visible emissions defined as the degree expressed in percent to which emissions reduce the transmission of light and obscure the view of an object in the background. Opacity shall be determined only by Department personnel who have successfully completed the DEQ Visible Emissions Evaluation Course or equivalent course, and who hold a current qualification.

(9) "Particulate Matter Ten (PM-10)" means particulate matter with an aerodynamic diameter of less than or equal to a nominal 10 micrometers.

(10) "Restricted Usage Permit" means an emissions permit issued by the Department for solid fuel burning devices in use prior to November 1, 1990, that do not qualify for Class I, Class II, or

Sole Source of Heat Permits. Restricted Usage Permits shall not be valid for operation of the device during an Air Pollution Alert.

(11) "Sole Source of Heat" means one or more solid fuel burning devices which constitute the only source of heat in a structure, for the purpose of space heating. No solid fuel burning device shall be considered to be the sole source of heat if the structure is equipped with a permanently installed furnace or heating system, designed to heat the structure utilizing oil, natural gas, electricity or propane; whether the system is connected or disconnected from its energy source. A sole source permit may be issued by the Department when the heating system is only minimally sufficient to keep the plumbing from freezing.

(12) "Sole Source of Heat Permit" means an emission permit issued by the Department to operate a solid fuel burning device as a sole source of heat during an Air Pollution Alert. Only structures equipped with a solid fuel burning device which qualifies for a Class I Permit or which qualifies as an Exempted Solid Fuel Burning Device may obtain a new Sole Source of Heat Permit after October 1, 1992.

(13) "Solid Fuel Burning Device" means any fireplace, fireplace insert, wood stove, wood burning heater, wood-fired boiler, wood or coal-fired furnace, coal stove, or similar device burning any solid fuel used for aesthetic, cooking or heating purposes which has a rated capacity of less than 1,000,000 B.T.U.s per hour.

(14) "Temporary Emergency Heating Authorization Permit" means an emission permit issued by the Department to operate a solid fuel burning device, not otherwise permitted to operate, as a temporary source of heat during an emergency heating situation.

75.1.204 EMISSION LIMITS:

(1) Within the air pollution control district, no person owning or operating a solid fuel burning device shall cause, allow, or discharge emissions from such device which are of an opacity greater than twenty-five percent. The provisions of this subsection shall not apply to emissions during the building of a new fire, for a period or periods aggregating no more than thirty minutes in any four hour period.

(2) Within the air pollution control district, no person in control of a solid fuel burning device shall emit any visible emission from such device during an Air Pollution Alert declared by the Department unless a Sole Source of Heat Permit, a Low Income Exemption Permit, or a Class I Permit has been issued for such device; or the device is operating on a validated Temporary Emergency Heating Authorization Permit.

(3) Within the Air Pollution Control District, no person in control of a solid fuel burning device for which a Sole Source of Heat Permit, a Low Income Exemption Permit, or a Class I Permit, or for which a Temporary Emergency Heating Authorization Permit has been validated, shall cause, allow or discharge any emissions from such device which are of an opacity greater than ten percent during an Air Pollution Alert declared by the Department. The provisions of this subsection shall not apply to emissions during the building of a new fire or for refueling for a period or periods aggregating no more than thirty minutes in any four hour period.

(4) The Department has a duty, when declaring an Air Pollution Alert to be in effect, to take reasonable steps to publicize that information and to make it reasonably available to the public at least three hours before initiating any enforcement action for a violation of subsections 2 and 3.

(5) Every person operating or in control of a solid fuel burning device within the Air Pollution Control District has a duty to know when an air pollution alert has been declared by the Department.

(6) Effective March 1, 1993, warning letters will be replaced with Notices of Violation. Notices will be issued to people in violation of this regulation. Notices of Violation will include educational material on Air Pollution Control District Regulations and clean burning techniques. All Notices of

Violation will be documented and processed into a Department Database Program for use in implementation of Civil Penalties.

(7) Effective March 1, 1993, a system of Civil Penalty Assessment for violation of Solid Fuel Burning Device regulations will be implemented. The formula for penalties shall be that the first two (2) violations will receive only Notices of Violation and be considered warnings. Any subsequent violation will automatically be processed for Civil Penalty Assessment. All Notices of Violation issued on or after February 1, 1993, will accrue toward the penalty assessment formula. The Civil Penalty Assessment schedule for noncompliance shall be:

For third and subsequent violations, each violation will be subject to a Civil Penalty Assessment of Twenty-five dollars ($25.00)

(8) No person or entity shall be cited for a violation of this regulation more than once in any calendar day. However, each calendar day of violation may be considered a separate offense.

(9) Only those violations of the regulation by a person or entity which have occurred within one year of a present offense shall be considered as prior violations.

(10) Civil Penalty Assessments will be credited to an Air Quality Control Account and used for costs associated with the administration of the Air Quality Control Program.

75.1.205 ISSUANCE OF AIR POLLUTION ALERT: For the purpose of this section, the Department may declare an Air Pollution Alert to be in effect whenever the ambient concentration of PM-10 within the Air Pollution Control District equals or exceeds 100 micrograms per cubic meter (ug/m^3) averaged over any four hour period and when scientific and meteorological data indicate the average PM-10 concentrations will remain at 100 ug/m^3 if an Air Pollution Alert is not called. The Department may call an Air Pollution Alert whenever available scientific and meteorological data indicate that the ambient concentration of PM-10 within the Air Pollution Control District can reasonably be expected to equal or exceed 100 ug/m^3 averaged over a four hour period within the next twenty-four hours. As a surrogate method for PM-10 measurement, the Department may use nephelometer readings correlated to ambient PM-10 concentrations or a reference-equivalent continuous PM-10 monitor.75.1.205

75.1.206 PERMITS:

(1) Effective October 1, 1993, all solid fuel burning devices within the Libby Air Pollution Control District shall be permitted by the Department and no person or entity will operate such a device without a permit. Permits will indicate the type of permit issued and any restrictions on the use of the permitted device. Permits will be valid for a period of two (2) years from date of issue. Permits are not transferable from person to person or from place to place.

(2) Any permit for solid fuel burning devices can be denied, suspended, or revoked by the Department for non-compliance with conditions of permit issuance.

(3) If compliance with NAAQ standards for PM-10 are not demonstrated by December 31, 1993, or PM-10 compliance levels are not maintained after that date; and solid fuel burning device emissions are determined to be a significant contributor to the non-compliance problem by:

(a) visual, microscopic, or chemical analyses of exposed PM-10 filters, or

(b) seasonal patterns of PM-10 concentrations, or

(c) visual observations of emission sources by the Lincoln County Environmental Health Department or DEQ

the following changes in this regulation will become effective: "No solid fuel burning device shall be operated within the Libby Air Pollution Control District between October 1 and March 31 unless it has been permitted by the Department as a Class I, Class II, Low Income Exemption or Sole Source device or is operating on a validated Temporary Emergency Heating Authorization Permit."

(4) Types of Permits:

(a) Class I Permit

The Department shall issue a Class I Permit for solid fuel burning devices if the emissions do not exceed 4.1 grams per hour weighted average when tested using the EPA Method. Pellet stoves, which are exempted from EPA emission testing due to their air-to-fuel ratio, shall be considered Class I solid fuel burning devices.

(b) Sole Source of Heat Permit

The Department may issue a sole source of heat permit for a solid fuel burning device that is a sole source of heat. After October 1, 1992, new Sole Source of Heat Permits shall be issued only for solid fuel burning devices which qualify for a Class I Permit or qualify as an Exempted Solid Fuel Burning Device. The expiration date of Sole Source of Heat Permits written prior to October 1, 1992, will be extended to September 30, 1993. After that date, the new Sole Source of Heat Permit requirements must be met for reissuance of the permit.

(c) Temporary Emergency Heating Authorization Permit

Temporary Emergency Heating Authorization Permits may be issued to any solid fuel burning devices that do not qualify for Class I or Sole Source of Heat Permits. Temporary Emergency Heating Authorization Permits allow the use of an otherwise unauthorized solid fuel burning device during an emergency situation only when the permit has been validated by authorization of the Department. An emergency situation shall include, but is not limited to, a situation where a person demonstrates that his furnace or central heating system is inoperable other than through his own actions; or a situation where the furnace or central heating system is involuntarily disconnected from its energy source by a public utility or other fuel supplier; or a situation where a neighborhood or community power or fuel supply is interrupted. The validation of a Temporary Emergency Heating Authorization Permit is at the discretion of the Department based on need.

(d) Class II Permit

(1) The Department shall issue a Class II permit for the installation of a new solid fuel burning device or use of an existing solid fuel burning device inside the Air Quality Control District if the emissions do not exceed 7.5 grams per hour weighted average for non-catalytic solid fuel burning devices and 4.1 grams per hour weighted average for catalytic solid fuel burning devices when tested using the EPA Method. A Class II Permit shall expire 100 days after issuance unless a final inspection is conducted or unless the Department receives documentation which is adequate to insure the type of device and installation are in compliance with the provisions of this program.

(2) After November 1, 1990 no person or persons shall install or use any new solid fuel burning device in any existing or new structure within the Air Pollution Control District, without having a Class II permit. On the resale or re-rental of an existing structure within the Air Pollution Control District no person shall operate an existing solid fuel burning device without a Class II permit. If a Class II permit cannot be obtained, the existing stove shall be replaced or eliminated.

(3) Fireplaces which have not been tested in conformance with 75.1.202(5) may be issued a Class II permit when installed with a propane fuel source or electric fire log and upon the stipulation that only propane or electricity may be used in the fireplace. No person shall cause or allow any visible emissions whatsoever from a fireplace which has been issued a Class II permit pursuant to this subsection.

(4) Catalyst equipped solid fuel burning devices must be equipped with a permanent provision to accommodate a commercially available temperature sensor which can monitor combustor gas stream temperature within or immediately downstream of a combustor surface.

(5) New solid fuel burning devices may not be installed or used with a flu damper unless the device was so equipped when tested in accordance with 75.1.202(5).

(6) New solid fuel burning devices installed within the air pollution control district must meet the requirements of section 75.1.206(4)(d)(1). The installation must be inspected and approved by the department.

(e) Low Income Exemption Permit

(1) Unless permitting is otherwise prohibited by 75.1.206(d), Low Income Exemption Permits may be issued to LIEAP recipients under the following conditions:

(i) the device was installed and in use prior to November 1, 1990;

(ii) the device is not permittable under Class I or Sole Source of Heat definitions;

(iii) wood is the recipients primary source of heat; and

(iv) verification of receipt of LIEAP benefits is provided by the issuing agency.

(2) Solid fuel burning devices with Low Income Exemption Permits may be used during Air Pollution Alerts.

(3) Low Income Exemption permits shall be valid only for the heating season in which they are issued.

(f) Restricted Usage Permit

Unless permitting is otherwise prohibited by 75.1.206(d), Restricted Usage Permits shall be issued to solid fuel burning devices in use prior to November 1, 1990, that do not qualify for Class I, Class II, or Sole Source of Heat Permits. Solid fuel burning devices with Restricted Usage Permits may not be used during Air Pollution Alerts.

75.1.207 PROHIBITED MATERIALS: Within the Air Pollution Control District no person shall burn any material in a solid fuel burning device except black and white newspaper, untreated wood and lumber, and products manufactured for the sole purpose of use as fuel. Products manufactured or processed for use as fuel must conform to other applicable sections of this program.75.1.207

5.1.209 ENFORCEABILITY: The provisions of this regulation shall be enforced by the Lincoln County Health Department authorities or the appropriate law enforcement officials.

75.1.301 INTENT: Regulations enacting an emission control plan for the Air Quality Control District to meet National Ambient Air Quality (NAAQ) standards for PM-10 by requiring dust abatement and control in the Air Quality Control District.75.1.301 INTENT: Regulations enacting an emission control plan for the Air Quality Control District to meet National Ambient Air Quality (NAAQ) standards for PM-10 by requiring dust abatement and control in the Air Quality Control District.

75.1.302 DEFINITIONS: As used in this regulation, unless indicated otherwise, the following definitions apply:

(1) "Area of Regulated Road Sanding and Sweeping" means the geographical area designated by the map attached hereto in which the regulations pertaining to materials to be used on roads and parking lots and street sweeping and flushing apply.

(2) "Parking Lot" means a parcel of land located off of the public right-of-way not less than 5,000 square feet in size which is primarily used for the temporary storage of motor vehicles; a parking lot as used in this regulation does not include lots for the storage of special mobile equipment as defined in the Montana Codes Annotated.

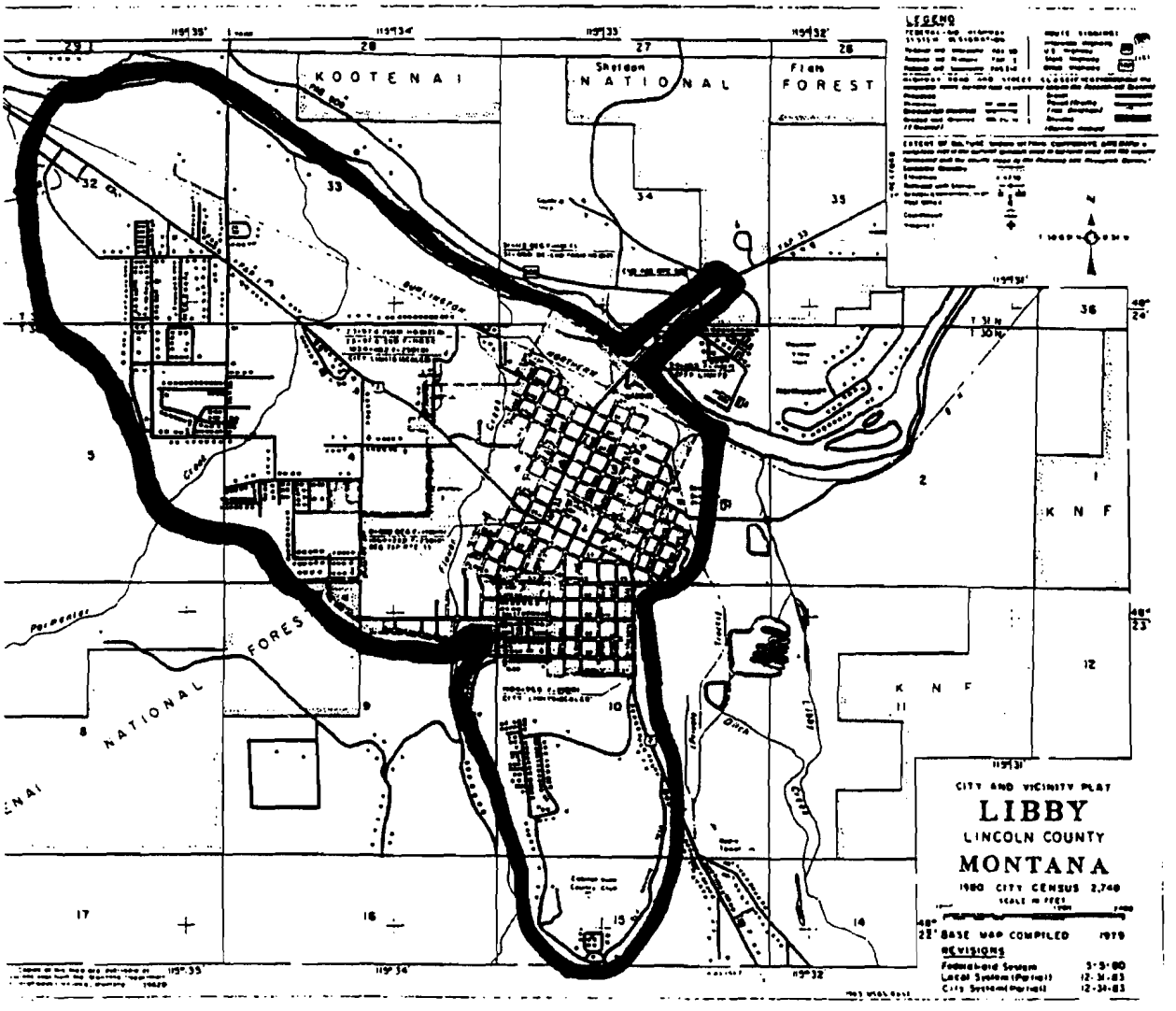
(3) "Road" means any road or alley which is greater than 50 feet in length, and has or is projected to have an average traffic volume greater than 50 vehicles per day.

(4) "Emergency Situation" means a situation when:

(a) Liquid de-icing agents become unavailable due to circumstances beyond the control of the person, government or private entity maintaining a road or parking lot; or

(b) due to extreme weather conditions, or hazardous roadways, liquid de-icing agents do not adequately provide for public safety.

AREA OF REGULATED SANDING AND SWEEPING



75.1.303 EMISSION LIMITS:

(1) Within the Area of Regulated Road Sanding and Sweeping, no person or government or private entity shall place any sanding or chip seal material upon any road or parking lot which has a durability, as defined by the Montana Modified LA Abrasion Test, of more than or equal to 7 and has a content of material smaller than 200 mesh, as determined by standard wet sieving methods, which exceeds 3.0% oven dry weight.

(2) It shall be the responsibility of the person or government or private entity applying the sanding or chip seal material to test the material and provide to the Department data demonstrating that the material meets the specifications listed above prior to application. Such data shall be obtained by gathering a representative sample from the supply stockpile or the material as it is produced and analyzing the material in accordance with the methods identified in 75.1.303(1).

(3) If compliance with the NAAQ standards for PM-10 are not demonstrated by December 31, 1993, or PM-10 compliance levels are not maintained after that date; and if re-entrained road dust is determined a significant contributor to the non-compliance problem by:

(i) visual, microscopic or chemical analyses of exposed PM-10 filters, or

(ii) seasonal patterns of PM-10 concentrations, or

(iii) visual observations of emission sources by the Lincoln County Health Department or DEQ

the following changes in this regulation will become effective:

(a) The Area of Road Sanding and Sweeping will be extended to the boundaries of the Air Pollution Control District.

(b) The use of liquid de-icing agents will be mandatory on all roads and parking lots within the Road Sweeping and Sanding District. Use of sanding materials will be prohibited except in emergency situations.

(c) Any sanding materials used in an emergency situation must meet the specifications identified in subsection 1 of this regulation.

5.1.401 DEFINITIONS: As used in this regulation, unless indicated otherwise, the following definitions apply:

(1) "Area of Regulated Road Sanding and Sweeping" means the geographical area designated by the map attached hereto wherein the regulations pertaining to materials to be used on roads and parking lots and street sweeping and flushing apply.

(2) "Winter" means the months of November, December, January, February, March and April.

(3) "Summer" means the months of May, June, July, August, September and October.

(4) "Prioritized Street Sweeping and Flushing" means a schedule of street sweeping and/or flushing which cleans streets with the highest traffic volumes first and proceeds in descending order of traffic volume to streets with the lowest traffic volume. When all ice-free streets have been cleaned, the cycle is immediately repeated.

(5) "Reasonably Available Control Technology" means:

(a) During winter, prioritized street sweeping and flushing shall commence on the first working day after any streets become either temporarily or permanently ice-free and temperatures are above freezing;

(b) During summer, street sweeping and/or flushing shall be accomplished on an as-needed basis with priority given to streets with the highest traffic volumes.

75.1.402 EMISSION LIMITS:

(1) Within the Area of Regulated Road Sanding and Sweeping no person or government or private entity shall allow the operation, use or maintenance of any paved road or street unless reasonably available control technology is utilized, or unless an agreement is secured from the department for the alternative operation, use or maintenance of any paved road or street, or unless an emergency exists that requires alternative methods to be used.

(2) If compliance with the NAAQ standards for PM-10 are not demonstrated by December 31, 1993, and PM-10 compliance levels are not maintained after that date; and if re-entrained road dust is determined a significant contributor to the non-compliance problem by:

(i) visual, microscopic or chemical analyses of exposed PM-10 filters, or

(ii) seasonal patterns of PM-10 concentrations, or

(iii) visual observations of emission sources by the Lincoln County Health Department or DEQ.

The following changes in this regulation will become effective:

(a) The Area of Road Sanding and Sweeping will be extended to the boundaries of the Air Pollution Control District.

(b) The prioritized street sweeping and flushing schedule will apply to all public roadways within the boundaries of the Air Pollution Control District.

75.1.501 EMISSION LIMITS:

(1) All log yards in the air pollution control district will install, maintain and operate automatic wheel and chassis washers or comply with another approved plan to minimize carry-on road dust.

(2) Within the air pollution control district, all log yards will use chemical dust suppressants, road oiling or watering as required to reduce fugitive dust from this source.

75.1.601 INTENT: Unless otherwise prohibited or nullified by implementation of Subchapter 3, subsection 75.1.303(3), all sections of this regulation will be in effect within the boundaries of the Air Pollution Control District.75.1.601

75.1.602 APPLICATION LIMITS: Within the Air Pollution Control District each person or government or private entity is strongly encouraged to reduce the amount of sanding material applied taking into consideration public safety and air quality. Outlying areas and low traffic volume roads have a low priority. Residential areas may receive less sanding material because of lower speeds. It is strongly encouraged that vehicles used in winter driving should be equipped with winter tires or traction devices.

(1) During storms snow may be allowed to accumulate up to 6 inches, or wait until the next scheduled shift, before plowing and sanding begins. Major hills have first priority; then main roads and intersections. Only major hills and intersections should be sanded. Salt can be applied to the major hills and intersections to form a sand/salt mix to aid traction.

(2) After storms sand may be applied to hills and curves of all roads and intersections on an as needed basis during normal work shifts. Weather forecasts should be monitored and if unsettled weather is forecast the sanding should be kept to a minimum.

(3) During freezing rain, extra sanding may be applied on all roads.

75.1.603 RESOLUTION:

(1) The department will discourage unnecessary log truck traffic through the Air Pollution Control District.

(2) The department will promote the design and construction of bicycle pathways through the Air Pollution Control District.

75.1.701 INTENT: On November 15, 1990, Libby was designated under federal regulations as a moderate PM-10 non-attainment area. As a result of this designation the Libby area is required to develop a regulatory program to reduce air pollution and attain the Montana and federal ambient air quality standards for PM-10. Air quality studies conducted in the Libby area identified emissions from open burning as a contributor to the air pollution problem.

(1) Pursuant to federal regulations, and because of local geographic features and concentrations of populations in Libby and the immediate surrounding area; the Lincoln County Commissioners and Libby City Council find it necessary to enact rules and regulations concerning open burning of waste materials, pursuant to 75-2-301, M.C.A. Experience has demonstrated that air quality degradation and public health problems are often associated with the improper burning of waste materials in urban and suburban areas.

(2) The following regulation is adopted to improve air quality and meet National Ambient Air Quality standards for PM-10 by restricting unnecessary open burning, promoting alternative disposal methods and recycling, and setting standards to minimize emissions when open burning is required.

75.1.702 DEFINITIONS: As used in this regulation and unless indicated otherwise, the following definitions apply:

(1) "Air Quality Control" means the Air Quality Control division of the Lincoln County Department of Environmental Health.

(2) For the purpose of open burning "Best Available Control Technology" (BACT) means those techniques and methods of controlling emission of pollutants from an existing or proposed open burning source which limit those emissions to the maximum degree which Air Quality Control determines, on a case-by-case basis, is achievable for that source, taking into account impacts on energy use, the environment, and the economy, and any other costs, including cost to the source. Such techniques and methods may include the following: scheduling of burning during periods and seasons of good ventilation, applying dispersion forecasts, utilizing predictive modeling results performed by and available from DEQ to minimize smoke impacts, limiting the amount of burning to be performed during any one time, using ignition and burning techniques which minimize smoke production, selecting fuel preparation methods that will minimize dirt and moisture content, promoting fuel configurations which create an adequate air to fuel ratio, prioritizing burns as to air quality impact and assigning control techniques accordingly and promoting alternative treatments and uses of materials to be burned. During the period of March 1 through October 31, BACT includes burning only during the periods specified by Air Quality Control, which may be determined by calling the Open Burning Hotline 293-5644. BACT for any permitted open burn outside these periods includes burning only during time periods specified by Air Quality Control, which may be determined by calling 293-7781.

(3) "Bonfire" means a ceremonial fire, in which the materials burned are cordwood or clean untreated dimensional wood and which is conducted by an educational, fraternal 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) "DEQ" means the Montana Department of Environmental Quality.

(6) "Essential agricultural open burning" means any open 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; or

(b) eliminate excess vegetative matter from cultivated fields after harvest has been completed when no reasonable alternative method is available; or

(c) improve range conditions when no reasonable alternative method is available; or

(d) improve wildlife habitat when no reasonable alternative method is available.

(7) "Impact Zone L" means all of the land within the following boundaries:

Beginning at Kootenai Falls, going southeast to Scenery Mountain, then south to Indian Head, then south to Treasure Mountain, then south to Mount Snowy, then east to Double N Lake, then Across Highway 2 going northeast to McMillan Mountain, then north to Swede Mountain, then northeast across Highway 37 to the Vermiculite Mine, then west to Sheldon Mountain, then west northwest to Flagstaff Mountain, then southwest to Kootenai Falls, the point of beginning.

(8) "Libby Open Burning Control Area" means all of the land included within the boundaries of the Libby Rural Fire District including the City of Libby.

(9) "Licensed Landfill" means a solid waste disposal site that is licensed for operation by DEQ.

(10) "Major open burning source" means any person, agency, institution, business or industry conducting any open burning which on a statewide basis will emit more that 500 tons per calendar year of carbon monoxide or 50 tons per calendar year of any other regulated pollutant, except hydrocarbons.

(11) "Minor open burning source" means any person, agency, institution, business or industry conducting any open burning which is not a major open burning source.

(12) "Open burning" means combustion of any material directly in the open air without a receptacle, or in a receptacle other than a furnace, multiple chambered incinerator, or wood waste burner, with the exception of small recreational fires, construction site heating devices used to warm workers, or safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants or elemental phosphorus plants.

(13) "Prescribed wildland open burning" means any planned open 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.

(14) "Salvage operation" means any operation conducted in whole or in part to salvage or reclaim any product or material, except the silvicultural practice commonly referred to as a salvage cut.

(15) "Trade wastes" means solid, liquid or gaseous material resulting from construction or operation of any business, trade, industry or demolition project. Wood product industry wastes such as sawdust, bark, peelings, chips, shavings and cull wood are considered trade wastes. Trade wastes do not include wastes generally disposed of by essential agricultural open burning and prescribed wildland open burning or Christmas tree waste, as defined in this rule.

75.1.703 OPEN BURNING CONTROL AREAS:

(1) General open burning requirements shall be in effect for all areas within the boundaries of Impact Zone L. Air Quality Control restrictions and bans on open burning shall be observed by all open burners.

(2) Minor Open Burning Source restrictions and permitting regulations shall be in effect for all areas with the boundaries of the Libby Open Burning Control Area.

(3) Restrictions and permitting regulations for Major Open Burning Sources, and Tradewaste Burners, shall be in effect for all areas within the boundaries of Impact Zone L.

(4) Restrictions and permitting regulations for Licensed Landfills shall be in effect for all areas within the boundaries of Lincoln County.

(5) The remainder of Lincoln County and its municipalities shall continue to be regulated by the State of Montana Open Burning Regulation and any other local ordinances in effect at the time of burning activity.

75.1.704 MATERIALS PROHIBITED:

(1) The Lincoln County Commissioners and Libby City Council hereby adopt and incorporate by reference 40 Code of Federal Regulations (CFR) Part 261, which identifies and defines hazardous wastes.

(2) The following material may not be disposed of by open burning:

(a) any waste moved from the premises where it was generated, including that moved to a solid waste disposal site, except as provided for in 75.1.709 and 75.1.713 or 75.1.714;

(b) food wastes;

(c) styrofoam and other plastics;

(d) wastes generating noxious odors;

(e) wood and wood by-products other than trade wastes that have been treated, coated, painted, stained, or contaminated by a foreign material, such as papers, cardboard, or painted or stained wood, unless a public or private garbage hauler or rural container system is unavailable, or unless open burning is allowed under ARM 16.8.1310 and 75.1.716;

(f) poultry litter;

(g) animal droppings;

(h) dead animals or dead animal parts;

(I) tires, except as provided in ARM 16.8.1306 and 75.1.710;

(j) rubber materials;

(k) asphalt shingles, except as provided in ARM 16.8.1306 or ARM 16.8.1310 and 75.1.710 or 75.1.716;

(l) tar paper, except as provided in ARM 16.8.1306 or ARM 16.8.1310 and 75.1.710 or 75.1.716;

(m) automobile or aircraft bodies and interiors, except as provided in ARM 16.8.1306 or ARM 16.8.1310 and 75.1.710 or 75.1.716;

(n) insulated wire, except as provided in ARM 16.8.1306 or ARM 16.8.1310 and 75.1.710 or 75.1.716;

(o) oil or petroleum products, except as provided in ARM 16.8.1306 or ARM 16.8.1310 and 75.1.710 or 75.1.716;

(p) treated lumber and timbers;

(q) pathogenic wastes;

(r) hazardous wastes as defined by 40 CFR Part 261.

(s) trade wastes, except as provided in 75.1.708 and 75.1.713 or 75.1.714;

(t) any materials resulting from a salvage operation;

(u) chemicals, except as provided in ARM 16.8.1306 or 16.8.1310 and 75.1.710 or 75.1.716;

(v) Christmas tree waste as defined in 75.1.702, except as provided in ARM 16.8.1309 and 75.1.715;

(w) asbestos or asbestos-containing materials; and

(x) standing or demolished structures except as provided in ARM 16.9.1306 or 16.8.1310 and 75.1.710 or 75.1.716;

(3) Except as provided in 75.1.703, no person may open burn any non-prohibited material without first obtaining an open burning permit from Air Quality Control.

75.1.705 GENERAL OPEN BURNING REGULATIONS:

(1) Within the boundaries of Impact Zone L all open burners must:

(a) Use alternative disposal methods when reasonably available.

(b) Utilize best available control technology.

(c) Burn only during periods designated by applicable special burning periods or permit parameters.

(d) Call the Open Burning Hotline before initiating a burn.

(e) Comply with any burning restrictions or bans in effect.

75.1.706 MINOR OPEN BURNING SOURCE REQUIREMENTS:

(1) All minor open burning sources with the Libby Open Burning Control Area must:

(a) Obtain an open burning permit from Air Quality Control prior to burning.

(b) Comply with all conditions of their open burning permit.

75.1.707 MAJOR OPEN BURNING SOURCE REQUIREMENTS:

(1) All major open burning sources within the boundaries of Impact Zone L must:

(a) Hold an Air Quality Major Open Burning Permit from the DEQ pursuant to A.R.M. 16.8.1304.

(b) Obtain an Impact Zone L Smoke Management Permit from Air Quality Control for each open burn conducted with the boundaries of Impact Zone L.

(c) Comply with all condition of their DEQ and Impact Zone L permits.

75.1.708 TRADE WASTE BURNING REQUIREMENTS:

(1) All Trade Waste Burning Sources within the boundaries of Impact Zone L must:

(a) Obtain a Conditional Air Quality Open Burning Permit from Air Quality Control.

(b) Comply with all conditions of the permit.

75.1.709 LICENSED LANDFILL REQUIREMENTS:

(1) All licensed landfills within the boundaries of Lincoln County must:

(a) Have an approved burn site, as designated in the Solid Waste Management System License issued by the DEQ, pursuant to A.R.M. Title 16, Chapter 14, Subchapter 5, before a Conditional Air Quality Open Burning Permit may be issued.

(b) Obtain a Conditional Air Quality Open Burning Permit from Air Quality Control before burning. A new permit must be obtained for each burn.

(c) Comply with all conditions of the permit.

75.1.710 FIRE FIGHTER TRAINING:

(1) All Firefighter Training open burns within the boundaries of Impact Zone L must:

(a) Hold an air quality open burning permit from DEQ for Firefighter Training pursuant to A.R.M. 16.8.1306.

(b) Obtain an Impact Zone L Firefighter Training Permit from Air Quality Control for each training burn conducted with the boundaries of Impact Zone L.

(c) Comply with all conditions of their DEQ and Impact Zone L permits.

75.1.711 SPECIAL BURNING PERIODS:

(1) Essential agricultural open burning and prescribed wildland open burning may be conducted only during the months of March through October.

(2) Open burning performed to train fire fighters pursuant to ARM 16.8.1306 and 75.1.710, and open burning authorized under the emergency open burning permit provisions set forth in 75.1.714 may be conducted during the entire year.

(3) Unless exempted elsewhere in this regulation, or by approval and permitting of a request for exception, no open burning shall be conducted with the Libby Open Burning Control Area during the months of November through February.

(4) Open burning by Major Open Burning Sources, Trade Waste Burners, Licensed Landfills, Christmas tree waste burners, and commercial film productions may be conducted only during the periods designated by their permit from Air Quality Control.

(5) Open burning other than those categories listed in the preceding subsections may be conducted only during the months of March through October, except for bonfires, which can be conducted during the entire year.

75.1.712 OPEN BURNING PERMIT REQUIREMENTS & LOCAL RESTRICTIONS:

(1) No person, agency, institution, business or industry shall cause or allow minor open burning within the Libby Open Burning Control Area unless he has first applied for and received a permit from Air Quality Control. Prescribed wildlife open burns and salvage operations within the Libby Open Burning Control Area shall be considered minor open burning sources and shall comply with minor open burning source regulations.

(2) No person, agency, institution, business or industry shall cause or allow major open burning, trade waste burning, firefighter training burns, Christmas tree waste burns, or commercial film production burns within the boundaries of Impact Zone L unless he has first applied for and received a permit for such open burning from Air Quality Control.

(3) No Licensed Landfill within the boundaries of Lincoln County shall cause or allow the burning of untreated wood waste unless they have first applied for and received a permit for such open burning from Air Quality Control.

(4) Air Quality Control may place any reasonable requirements in an open burning permit that it determines will reduce emissions of air pollutants, or will minimize the impact of said emissions, or will protect the public health or safety. The person or agency conducting the burn must adhere to those conditions.

(5) Air Quality Control may impose restrictions or bans on all open burning sources within the boundaries of Impact Zone L:

(a) During periods of poor air quality.

(b) When conditions indicate that open burning activities will adversely impact air quality.

(c) During periods when fire danger indicates the need for restrictions on burning activities. Fire danger burning restrictions are determined by the U.S.F.S. employees of the Libby District and Kootenai National Forest sections, who will coordinate with Air Quality Control.

75.1.713 CONDITIONAL AIR QUALITY OPEN BURNING PERMITS:

(1) Air Quality Control may issue a conditional air quality open burning permit if Air Quality Control determines that:

(a) alternative methods of disposal would result in extreme economic hardship to the applicant; and

(b) emissions from open 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) Air Quality Control must be reasonable when determining whether alternative methods of disposal would result in extreme economic hardship to the applicant.

(3) Conditional open burning must conform with BACT

(4) Air Quality Control may issue a conditional air quality open burning permit to dispose of:

(a) Wood and wood by-product trade wastes by any business, trade, industry, or demolition project; or

(b) untreated wood waste at a licensed landfill site, if Air Quality Control determines that:

(i) the proposed open burning will occur at an approved burn site, as designated in the solid waste management system license issued by DEQ pursuant to A.R.M. Title 16, Chapter 14, Subchapter 5; and

(ii) prior to the issuance of the air quality open burning permit, the wood waste pile is inspected by Air Quality Control or its designated representative and no prohibited materials listed in 75.1.704, other than wood waste, are present.

(5) A permit issued under this rule is valid for the following period:

(a) wood and wood by-products trade waste -- one year, applicants may reapply for a permit annually and

(b) untreated wood waste at licensed landfill sites -- single burn. A new permit must be obtained for each burn.

(6) Air Quality Control may place any reasonable requirements in a conditional air quality open burning permit that it determines will reduce emissions of air pollutants or minimize the impact of emissions, and the recipient of a permit must adhere to those conditions. For a permit granted under 75.1.713(4)(a) above, BACT for the year covered by the permit will be specified the permit; however, the source may be required, prior to each burn, to receive approval from Air Quality Control of the date of the proposed burn to ensure that good ventilation 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 Air Quality Control at 293-7781.

(7) An application for a conditional air quality open burning permit must be made on a form provided by Air Quality Control. The applicant shall provide adequate information to enable Air Quality Control to determine whether the application satisfies the requirements for a conditional air quality open burning permit contained in this rule. Proof of publication of public notice, as required in 75.1.713(8) of this rule, must be submitted to Air Quality Control before an application will be considered complete.

(8) An application for a conditional air quality open burning permit applications shall notify the public of the application by legal publication, at least once, in a newspaper of general circulation in the area affected by the application. The notice must be published no sooner than 10 days prior to submittal of an application and no later ten 10 days after submittal of an application. Form of the notice must be provided by Air Quality Control and must include a statement that public comments may be submitted to Air Quality Control concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

(9) A conditional air quality open burning permit granted pursuant to 75.1.713(4)(a) is a temporary measure to allow time for the entity generating the trade wastes to develop alternative means of disposal.

(10) When Air Quality Control approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the decision may request a hearing before the Lincoln County Board of Health. The request for hearing must be filed within 15 days after Air Quality Control renders its decision and must include an

affidavit setting forth the grounds for the request. Air Quality Control'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. The filing of a request for a hearing postpones the effective date of Air Quality Control's decision until the conclusion of the hearing and issuance of a final decision by the Lincoln County Board of Health.

75.1.714 EMERGENCY OPEN BURNING PERMITS:

(1) Air Quality Control may issue an emergency air quality open burning permit to allow burning of a substance not otherwise approved for burning under this regulation of the applicant demonstrates that the substance sought 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) Application for such a permit may be made to Air Quality Control by telephone or in writing and must include:

(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; and

(e) the date and time of the proposed burn;

(3) Within 10 days of receiving an oral authorization to conduct emergency open burning under (2) above, the applicant must submit to Air Quality Control a written application for an emergency open burning permit containing the information required under (2)(a) through (f).

(4) The holder of an Emergency Open Burning Permit must:

(a) Notify Air Quality Control before initiating the proposed burn, and

(b) coordinate with Air Quality Control to minimize impact on air quality by conducting the burn, if feasible, during a period of good dispersion.

75.1.715 CHRISTMAS TREE WASTE OPEN BURNING PERMITS

(1) All Christmas tree waste open burns within the boundaries of Impact Zone L must:

(a) Hold an air quality open burning permit from DEQ for Christmas tree waste open burning pursuant to A.R.M. 16.8.1309.

(b) Obtain a Impact Zone L Christmas Tree Waste Permit from Air Quality Control for each waste burn conducted within the boundaries of Impact Zone L.

(c) Comply with all conditions of their DEQ and Impact Zone L permits.

75.1.716 COMMERCIAL FILM PRODUCTION OPEN BURNING PERMITS

(1) All Commercial film production open burns within the boundaries of Impact Zone L must:

(a) Hold an air quality open burning permit from DEQ for commercial film production open burning pursuant to A.R.M. 16.8.1310.

(b) Obtain a Impact Zone L Commercial Film Production Open Burning Permit from Air Quality Control for each production conducted with the boundaries of Impact Zone L.

(c) Comply with all conditions of their DEQ and Impact Zone L permits.

75.1.717 PROHIBITED ACTS:

(1) No burning activity shall occur on any surfaced city or county road or alley.

(2) No burning shall occur in any barrel or other unapproved device.

75.1.718 PENALTIES:

(1) Any person who violates any provision of this regulation or any provision of any regulation adopted pursuant to authority granted by this regulation, excepting intentional violations of 75.1.704(2)(r); shall, upon conviction, be punished by a fine not less than $10.00 and not more than $200.00 for each offense. Violations of 75.1.704(2)(r), burning hazardous wastes as defined by 40 CFR Part 261, shall, upon conviction, be punished by a fine not to exceed $10,000 for each offense. Each day of violation shall be considered a separate offense.

(2) Fines levied for open burning violations will be credited to an Air Quality Control Account and used for costs associated with the administration of the Air Quality Control Program.

75.1.719 CONFLICT OF ORDINANCES, EFFECT OF PARTIAL INVALIDITY:

(1) In any case where a provision of this rule is found to be in conflict with a provision of any zoning, building, fire, safety or health ordinance or code of any City of, Town of, or of the County of Lincoln, the provision which in the judgement of the Health Officer, established the higher standard for the promotion and protection of the health and safety of the people shall prevail.

(2) If any section, subsection, paragraphs, sentence, clause or phrase of this regulation should be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this regulation which shall remain in full force and effect; and, to this end, the provisions of this regulation are hereby declared to be serviceable.

32.9.1 Local Regulations

MISSOULA CITY COUNTY

AIR POLLUTION CONTROL PROGRAM

(FEDERALLY ENFORCEABLE RULES)

Adopted by the Board of Environmental Review

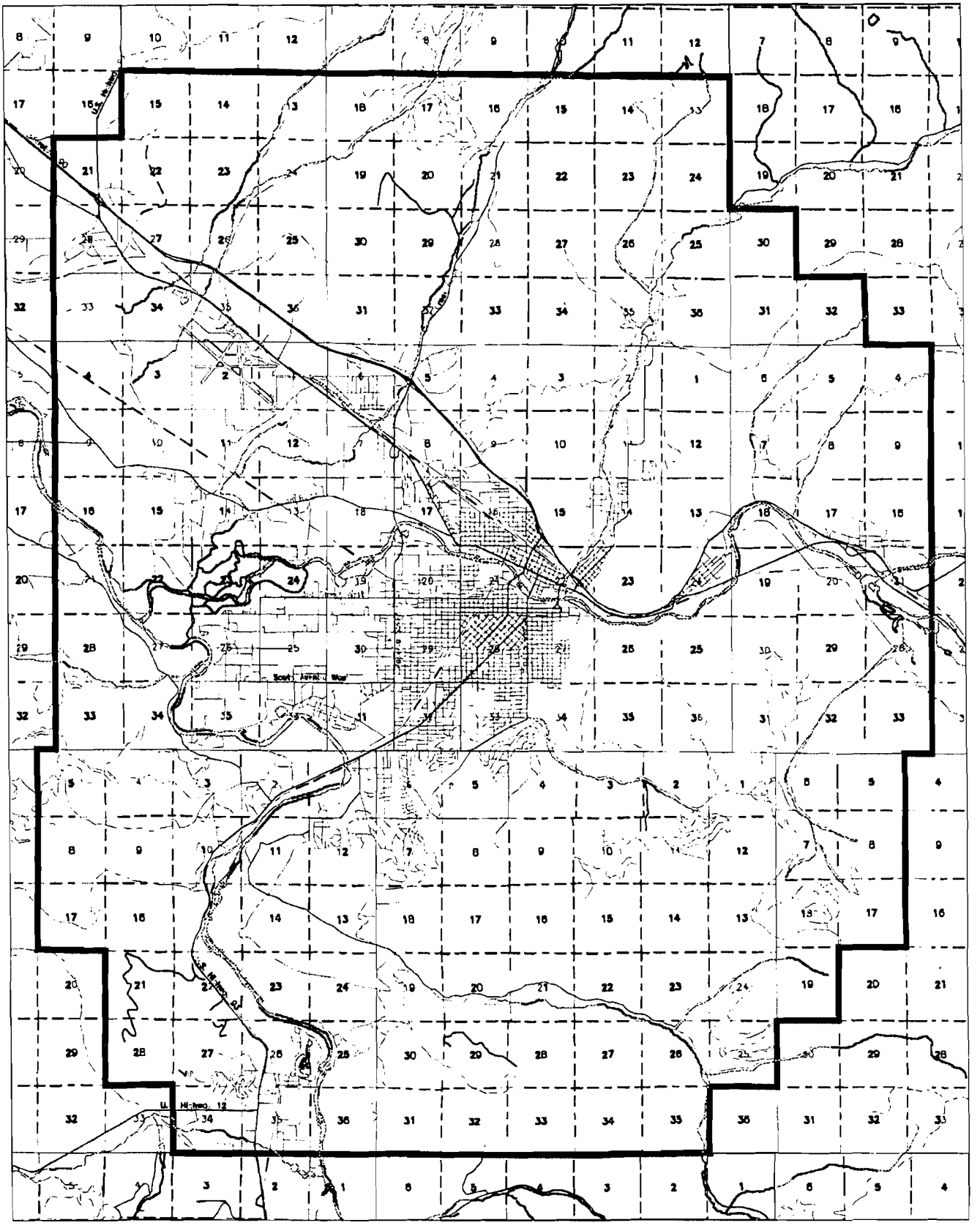
November 17, 2000

TABLE OF CONTENTS

List of Appendices

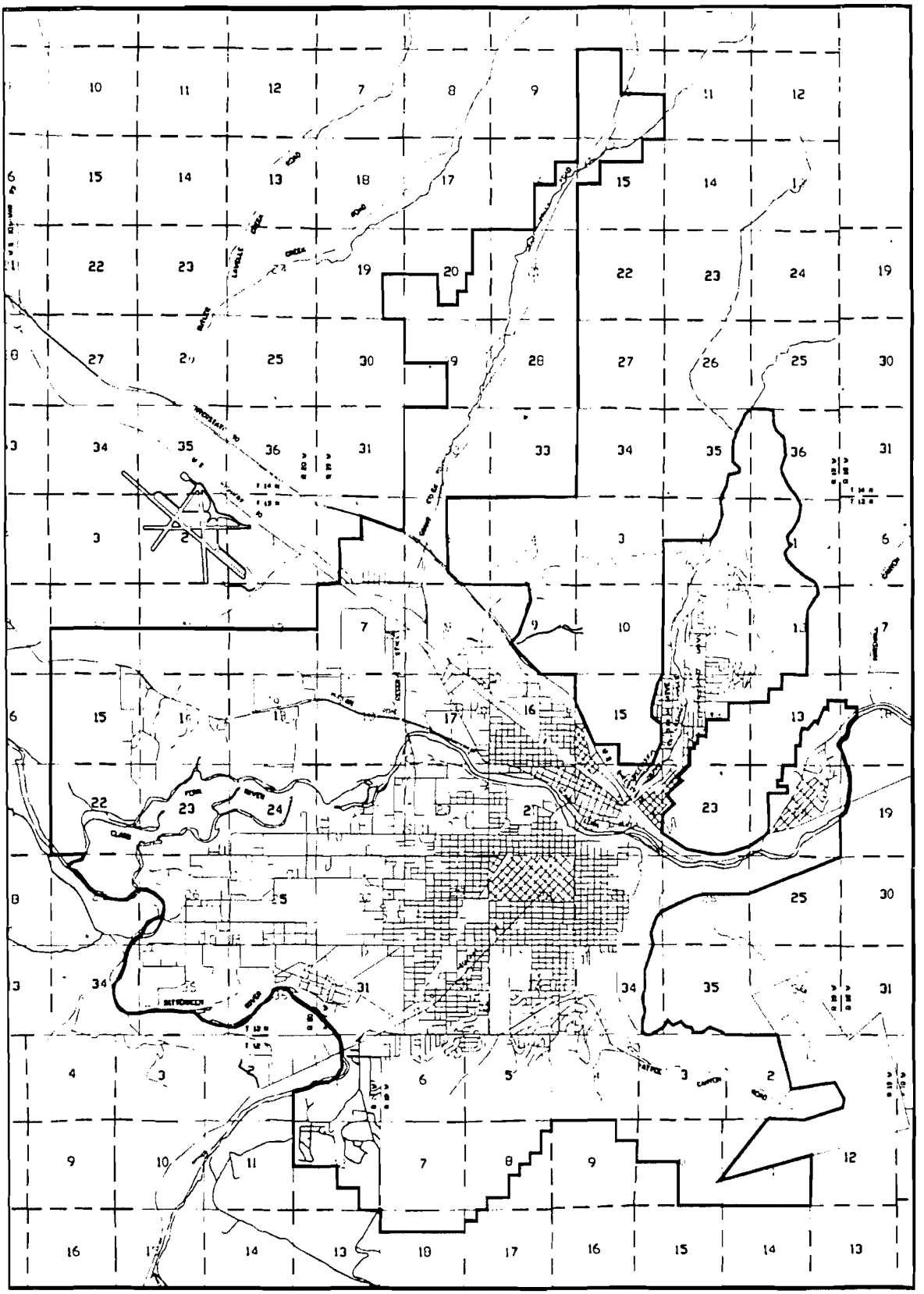
List of Attachments

Air Stagnation Zone



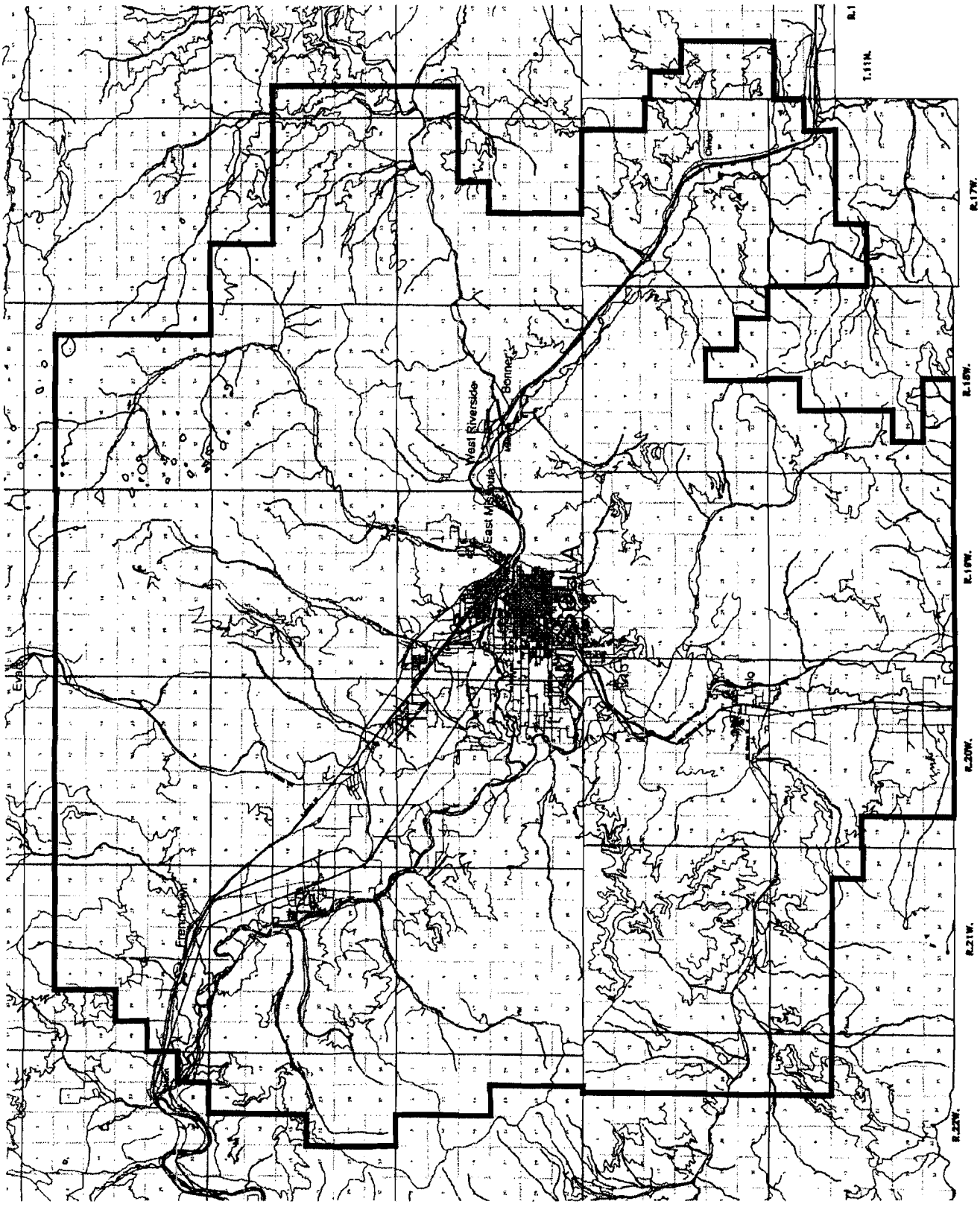
A-1

High Impact Zone



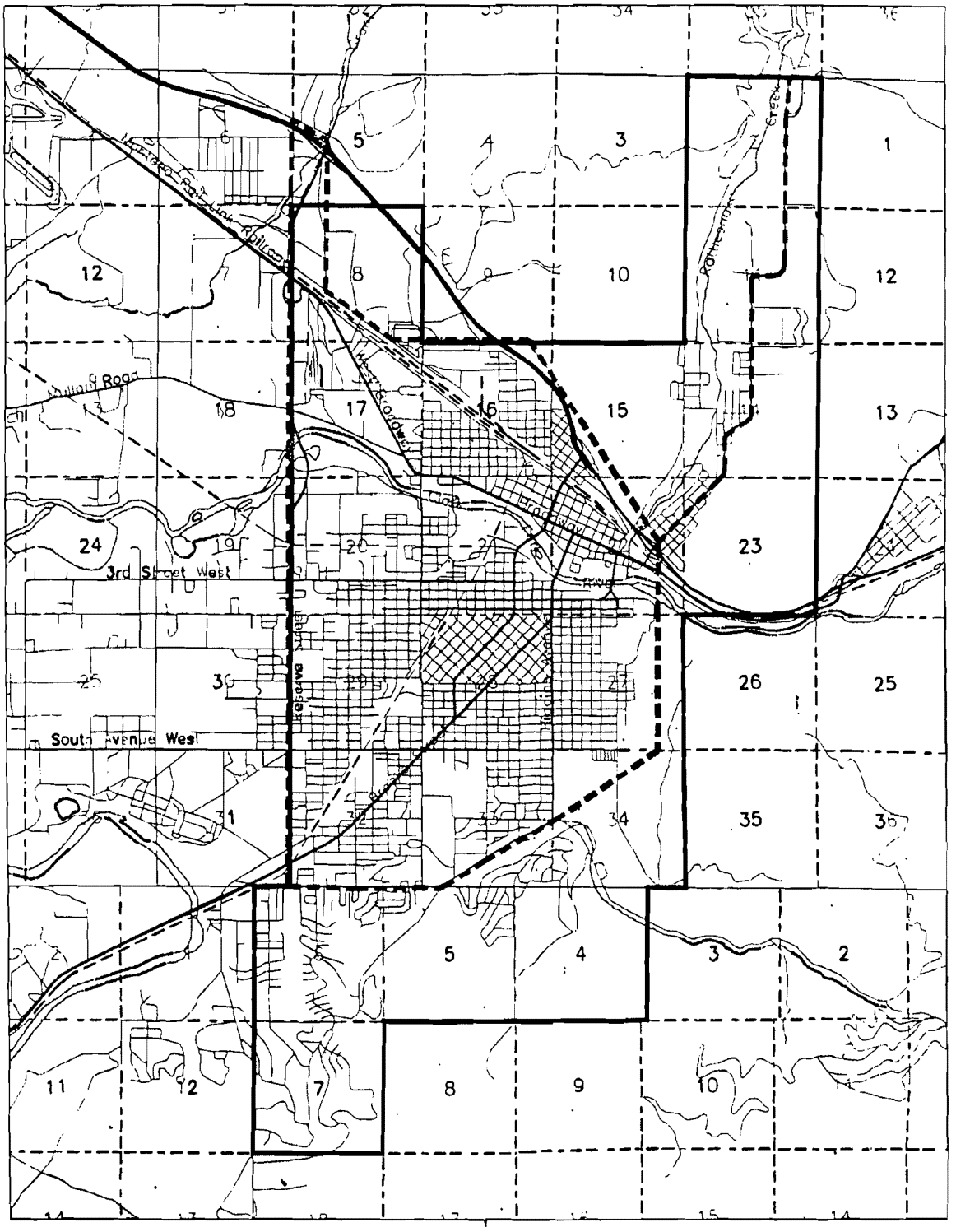
A-2

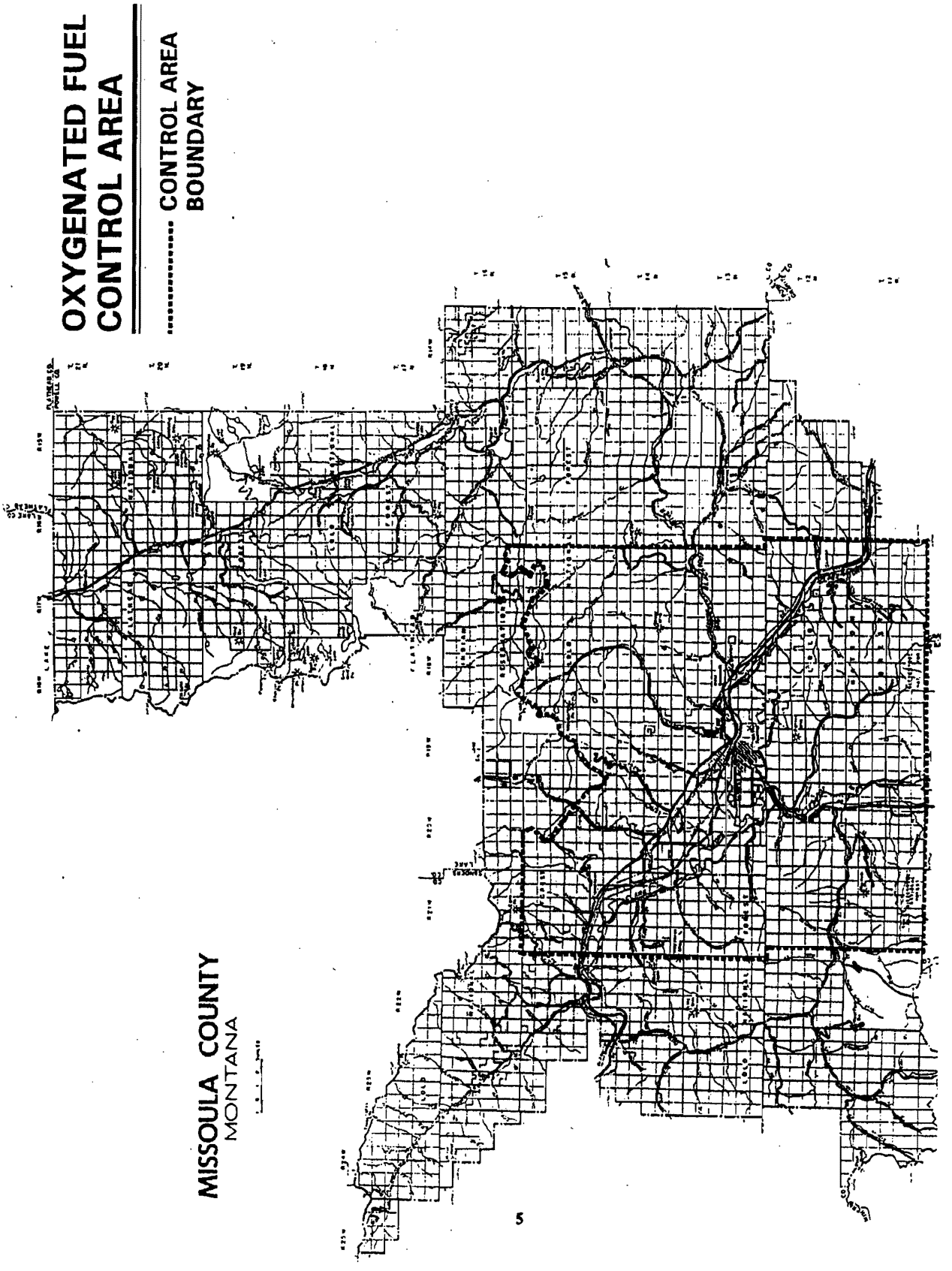
Impact Zone M



A-3

Area of Regulated Sanding Materials and Deicer Application




OXYGENATED FUEL
CONTROL AREA
CONTROL AREA
BOUNDARY
MISSOULA COUNTY
MONTANA
5

A-5

Missoula's Emergency Episode Avoidance Plan

Surveillance.
The department monitors air quality in Missoula throughout the year. It operates several monitoring sites, which are part of Montana's emergency episode surveillance network. The department checks and records particulate data from the continuous analyzer regularly in the air pollution season of November through February and has the ability to obtain CO and particulate data during the rest of the year on an as-needed basis.

Meteorological forecasting.
During the air pollution season, the department predicts particulate dispersion using forecasts by the Missoula office of the National Weather Service. When the smoke management group monitoring unit is operating, the department may also use the dispersion forecasts of the unit's meteorologist to predict air pollution levels. During an emergency episode, the department obtains needed meteorological information from the National Weather Service and, when appropriate, from the DEQ meteorologist and has the ability to collect t-sonde data on an as-needed basis.

Monitoring.
During air pollution episodes, the department may increase the frequency of monitoring, may monitor for additional air pollutants and may increase the number of sites it monitors for air pollutants.

Staffing.
During air pollution episodes, air quality staff focuses on activities required by this Chapter 4 of this Program. If additional staffing is needed, environmental health staff may be assigned air pollution control duties. During emergency and crisis episodes, the department coordinates with the Missoula County Disaster and Emergency Services interagency team.

Communications.
The department updates the Missoula Air Quality Hotline twice a day during the air pollution season and on an as-needed basis during the rest of the year. During an emergency episode, the department contacts the media and sources with abatement plans via fax and phone. The department also contacts Mountain Line buses. During Warning, Emergency and Crisis stages, the department appoints a staff member as the lead for communications. That person is responsible for coordinating

with the media, DEQ, public officials, and specific sections of the affected public (e.g., schools, businesses, etc.) At least one member of the staff is responsible for participating and coordinating with the Missoula County Disaster and Emergency Services interagency team.

Oxygenated fuels program sampling requirements for blending facilities

The purpose of this document is to determine the number of fuel samples necessary for self-monitoring by oxygenate blending facilities. The determination of the number of samples necessary to characterize the oxygen content of the fuel is dependent on:

1) the number of vessels filled by the blender;

2) the variability of the blending procedure used to measure and mix gasoline with oxygenate; and

3) the variability of the concentration as a result of analytical procedures.

The variance caused by the procedures used by the blender cannot be identified without a set of data from the facility. As a result the Department will use the following table to determine the number of samples required for the oxygenated fuels program:

Vessels Filled Per Month	Samples Required Per Month
1 - 5	1
6 - 25	2
26 - 50	3
51 - 150	4
151 - 250	5
> 250	6

Approved: July 16, 1992

This sampling schedule has been adopted by, and is subject to change by the Air Pollution Control Board.

Phil Schweber
Chairman, Air Pollution Control Board

List of Acronyms

AASHTO – American Association of State and Highway Transportation Officials

ARM – Administrative Rules of Montana

BACT – Best Available Control Technology

BTU – British Thermal Unit

CFR – Code of Federal Regulations

CO – Carbon monoxide

DEQ – Montana Department of Environmental Quality

EPA - United States Environmental Protection Agency

FCAA – Federal Clean Air Act

HAP – Hazardous Air Pollutants

LAER – Lowest Achievable Emissions Rate

MACT – Maximum Achievable Control Technology

MCA – Montana Code Annotated

NAAQS – National Ambient Air Quality Standard

NO_2 – Nitrogen dioxide

O_3 – Ozone

OAR – Oregon Administrative Rules

PM_{10} – Particulate Matter under 10 microns in diameter

RACT – Reasonably Available Control Technology

RSID – Rural Special Improvement District

RV – Recreational vehicle

SID – Special Improvement District

SIP – State Implementation Plan

SO_2 – Sulfur dioxide

TEOM – Tapered Element Oscillating Microbalance

USC – United States Code

VOC – Volatile organic compound

Rule 1.101 - Title
These regulations shall be known and may be cited as the Missoula City-County Air Pollution Control Program.

Rule 1.102 - Declaration of Policy and Purpose
The public policy of the City and County of Missoula (hereafter "City and County"), and the purpose of this Program, is to preserve, protect, improve, achieve and maintain such levels of air quality, as will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the inhabitants, and facilitate the enjoyment of the natural attractions of the City and County, and to promote the economic and social development of the City and County. To this end, it is the purpose of this Program to require the use of all available practicable methods to reduce, prevent and control air pollution in the City and County. The regulations contained herein are hereby established and approved by the Missoula City-County Air Pollution Control Board, the Missoula City Council and the Missoula Board of County Commissioners to prevent, abate or control air pollution.

Rule 1.103 - Authorities for Program
(1) The authority to promulgate this Program and these regulations contained herein is provided in the MCA 75-2-301, 75-2-402, 7-1-2101, 7-5-2101(2) and 7-5-2104.

Rule 1.104 - Area of Jurisdiction
(1) Unless specific rules state otherwise, the provisions of this Program apply to all air pollution sources within the City and County, except

(a) sources that require the preparation of an environmental impact statement pursuant to Title 75, chapter 1, part 2;

(b) sources that are subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75, chapter 20; and

(c) sources that have the potential to emit 250 tons or more a year of any pollutant, including fugitive emissions, subject to regulation under Title 75, Chapter 2 and were not regulated by the County before January 1, 1991.

(d) sources that the Montana Board of Environmental Review has retained exclusive jurisdiction and control under the Clean Air

Act of Montana under their findings and determination of 11/21/69, or subsequent order and determination.

(2) Notwithstanding (1) above, the provisions of Chapter 4 of this Program apply to all air pollution sources within the City and County, including those regulated and permitted by DEQ.

Rule 1.105 - Air Pollution Control Board

(1) There is created a Missoula City-County Air Pollution Control Board, hereafter referred to as the Control Board, which is responsible for the administration of this Program. The Missoula City-County Board of Health is the Control Board.

(2) The Control Board must have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under this Program.

(3) Any potential conflicts of interest by members of the Control Board must be adequately disclosed.

(4) The Chair of the Board of Health is the Chair of the Control Board.

(5) The Control Board shall hold at least one meeting per month and keep minutes of its proceedings,

(a) provided however, a regular monthly meeting need not be held if the Chair of the Control Board determines there is no business necessary to be brought before the Control Board at that meeting and this determination is concurred in by the Health Officer and two other Control Board members. Such concurrence may be oral, or written. If a meeting is canceled under this provision, the Health Officer shall send a notice to all Control Board members stating the Chair of the Control Board’s determination canceling the meeting and identifying the concurring Control Board members; and

(b) the Chair of the Control Board may call special meetings on his own motion and shall call them upon the request of two Control Board members.

(6) The Control Board may:

(a) recommend to the Missoula City Council and the Missoula Board of County Commissioners the adoption, the amendment, or

the repeal of any regulations necessary to implement the provisions of this Program;

(b) hold hearings related to any aspect of the Program, and compel the attendance of witnesses and the production of evidence at such hearings;

(c) issue orders necessary to accomplish the purposes of this Program, and enforce them by appropriate judicial or administrative proceedings;

(d) instruct the department to measure pollution levels and take samples of air pollution at designated sites;

(e) instruct the department to conduct surveys, investigations, and research related to air pollution in Missoula County;

(f) instruct the department to collect and disseminate information and conduct educational and training programs related to prevention of air pollution;

(g) adopt a schedule of fees required for permits and administrative penalties under this Program;

(h) hear and decide appeals of decisions from the department issuing, denying, transferring, suspending, revoking, amending, or modifying any permits required by this Program;

(i) establish policy to be followed by the department in implementing this Program;

(j) perform any and all acts necessary for the successful implementation of this Program; and

(k) grant variances as provided in this Program.

Rule 1.106 - Air Quality Staff

(1) There is an air quality staff within the Missoula City-County Health Department. This staff consists of such employees as deemed necessary by the Control Board.

(2) The department shall employ personnel who possess training and qualifications commensurate with the financial budget and the technical and administrative requirements of the Control Board.

(3) The department's air quality staff shall:

(a) issue, deny, modify, transfer, revoke, and suspend permits provided for or required under this Program;

(b) issue written notices of violation, orders to take corrective action, and by any other appropriate administrative and judicial proceedings, enforce the provisions of this Program;

(c) measure pollution levels and take samples of air pollution at designated sites in Missoula County; conduct investigative surveys, and research related to air pollutants in Missoula County;

(d) collect and disseminate information and conduct educational and training Programs related to the prevention of air pollution;

(e) accept, receive and administer grants or other funds from public or private agencies for the purpose of carrying out any provisions of the Program;

(f) operate a laboratory for the study and control of air pollution; provide necessary scientific, technical, administrative, and operational services to the Control Board;

(g) establish an inventory of sources of air pollution in the County;

(h) perform such other acts and functions designated by the Control Board for the successful implementation of this Program;

(i) investigate complaints; and

(j) administer this Program.

Rule 1.107 - Air Quality Advisory Council

(1) There is created an Air Quality Advisory Council composed of nine (9) members. The Chair of the Control Board shall appoint them from among the general public residents within the County for terms of three (3) years, with three members appointed each year. The Advisory Council shall elect a chair from among its members.

(2) The Advisory Council shall hold at least two (2) regular meetings each calendar year and shall keep a summary record of its proceedings, which are open to the public for inspection.

The Chair may call special meetings and shall call them upon receipt of a written request signed by two (2) or more members of the Advisory Council. The secretary shall notify each member of the time and place for all meetings. A majority of the members of the Advisory Council constitutes a quorum.

(3) A member of the air quality staff may serve as the secretary of the Advisory Council. The secretary shall keep records of meetings of, and actions taken by, the Council.

(4) The Advisory Council may consider any matter related to the purpose of this Program submitted to it by the Control Board. It may make recommendations to the Control Board on its own initiative concerning the administration of this Program.

CHAPTER 2
DEFINITIONS

Rule 2.101 - Definitions

The following definitions apply in this Program:

(1) "Advisory Council" means the Missoula City-County Air Quality Advisory Council created by this Program.

(2) "Air pollutant" or "pollutant" means dust, ash, fumes, gas, mist, smoke, vapor, odor, or any particulate matter or combination thereof present in the outdoor atmosphere.

(3) "Air pollution" means the presence in the outdoor atmosphere of one or more air pollutants, or any combination thereof in sufficient quantities, and of such character and duration as is or is likely to be injurious to the health or welfare of human, plant, animal life, or property, or that will unreasonably interfere with the enjoyment of life or property or the conduct of business.

(4) "Air Stagnation Zone" means the area defined by:
T12N R18W Sections 5 through 8, 17 through 19;
T12N R19W Sections 1through 35;
T12N R20W Sections 1 through 5, 8 through 17, 21 through 28, 34 through 36;
T13N R18W Sections 4 through 9, 16 through 21, 28 through 33;
T13N R19W Sections 1 through 36;
T13N R20W Sections 1 through 4, 9 through 16, 21 through 28, 33 through 36;
T14N R18W Sections 30, 31, 32;
T14N R19W Sections 13 through 36;
T14N R20W Sections 13 through 15, 21 through 28, 33 through 36 and all as shown on the attached map, (see Appendix A).

(5) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(6) "Animal matter" means any product or derivative of animal life.

(7) "Board of Health" means the Missoula City-County Board of Health.

(8) "BTU" means the British Thermal Unit, which is the heat required to raise the temperature of one pound of water through one degree Fahrenheit.

(9) "Chair" means the Chair of the Board of Health and the Missoula City-County Air Pollution Control Board.

(10) "Clean Air Act of Montana" means MCA Title 75, Chapter 2.

(11) "Control Board" means the Missoula City-County Air Pollution Control Board.

(12) "Control equipment" means any device or contrivance that prevents or reduces emissions.

(13) "Control Officer" means the Health Officer for the Missoula City-County Health Department, or any employee of the department designated by the Health Officer.

(14) "Department" means the Missoula City-County Health Department.

(15) "DEQ" means the Montana Department of Environmental Quality.

(16) "Emission" means a release of an air pollutant into the outdoor atmosphere.

(17) "EPA" means the United States Environmental Protection Agency.

(18) "FCAA" means 42 USC 7401 to 7671q, the Federal Clean Air Act, as amended.

(19) "Federally enforceable" means all limitations and conditions that are enforceable by the Administrator of the EPA, including but not limited to those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the Montana State Implementation Plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State Implementation Plan and expressly requires adherence to any permit issued under such program.

(20) "Fuel burning equipment" means any furnace, boiler, apparatus, stack or appurtenances thereto used in the process of burning fuel or other combustible material for the primary purpose of producing heat or power by indirect heat transfer.

(21) "Hazardous air pollutant" or "HAP" means any air pollutant listed in or pursuant 2 USC 7412(b).

(22) "Hazardous waste" means a substance defined as hazardous waste under either 75-10-403, MCA or administrative rules in ARM Title 17, chapter 54, subchapter 3 or a waste containing 2 parts or more per million of polychlorinated biphenyl.

(23) "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

(24) "Incinerator" means any equipment, device or contrivance used for the destruction of garbage, rubbish or other wastes by burning, but does not include devices commonly called tepee burners, silos, truncated cones, wigwam burners, or other such burners used commonly by the wood products industries when only woodwastes are burned.

(25) "Lowest achievable emission rate (LAER)" means for any source, that rate of emissions that reflects:

(i) The most stringent emission limitation contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or

(ii) The most stringent emission limitation achieved in practice by such class or category of source, whichever is more stringent. In no event may the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowed by applicable new source performance standards under Rule 6.506 or the amount allowed for hazardous air pollutants under Rule 6.507.

This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source.

(26) "Malfunction" means a sudden and unavoidable failure of air pollution control equipment or process equipment, or a process when it affects emissions, to operate in a normal manner. A failure caused entirely or in part by poor maintenance, careless operation, poor design, or other preventable upset condition or preventable equipment breakdown is not a malfunction.

(27) "Modification" means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.

(28) "Multiple chamber incinerator" means a device used to dispose of combustible refuse by burning, consisting of three or more refractory material lined combustion furnaces, arranged in series and physically separated by refractory walls, interconnected by gas passage ports or ducts and designed and operated for maximum combustion of the material to be burned.

(29) "NAAQS" means national ambient air quality standard.

(30) "Odor" means that property of an emission that stimulates the sense of smell.

(31) "Opacity" means the degree, expressed in percent, to which emissions reduce the transmission of light and obscure the view of an object in the background. Where the presence of uncombined water is the only reason for failure of an emission to meet an applicable opacity limitation contained in this chapter, that limitation does not apply. For the purpose of this chapter, opacity determination must follow all requirements, procedures, specifications, and guidelines contained in 40 CFR Part 60, Appendix A, method 9 (July 1, 1987 ed.), or by an in-stack transmissometer that complies with all requirements, procedures, specifications and guidelines contained in 40 CFR Part 60, Appendix B, performance specification 1 (July 1, 1987 ed.).

(32) "Particulate Matter" or "particulate" means any material, except water in uncombined form, that is or has been airborne, and exists as a liquid or a solid at standard conditions.

(33) "Person" means an~~y~~ individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state or federal government, industry, institution, business, trust, estate or other entity.

(34) "$PM_{2.5}$" means particulate matter with an aerodynamic diameter of less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR Part 50, Appendix L, and designated in accordance with 40 CFR Part 53, or by an equivalent method designated in accordance with 40 CFR Part 53.

(35) "PM_{10}" means particulate matter with an aerodynamic diameter of less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50, Appendix J, (52 FR 24664, July 1, 1987) and designated in accordance with 40 CFR Part 53 (52 FR 24727, July 1, 1987), or by an equivalent method designated in accordance with 40 CFR Part 53 (52 FR 24727, July 1, 1987).

(36) "Premises" means a property, piece of land, real estate or building.

(37) "Process weight" means the total weight of all materials introduced into any specific process that may cause emissions. Solid fuels charged will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not.

(38) "Process weight rate" means the rate established as follows:
(a) For continuous or long run steady-state operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.

(b) For cyclical or batch operations, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during such a period. Where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for allowable emission applies.

(39) "Public nuisance" means any condition of the atmosphere beyond the property line of the offending person that:
(a) affects, at the same time, an entire community or neighborhood, or any considerable number of persons although the extent of the annoyance or damage inflicted upon individuals may be unequal), and
(b) endangers safety or health, or is offensive to the senses, or which causes or constitutes an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property.

(40) "Reasonably available control technology (RACT)" means devices, systems, process modifications or other apparatus or techniques determined on a case-by-case basis to be reasonably available, taking into account the necessity of imposing such controls in order to attain and maintain a national or Montana ambient air quality standard, the social, energy, environmental, and economic impacts of such controls and alternative means of providing for attainment and maintenance of such standard.

(41) "Reduction" means any heated process, including rendering, cooking, drying, dehydrating, digesting, evaporating and protein concentrating.

(42) "Regulated air pollutant" means the following:
(a) any air pollutant for which the State of Montana has adopted an ambient standard as listed in ARM Title 17, subchapter 8;
(b) nitrogen oxides or any volatile organic compound;
(c) any pollutant that is subject to any standard promulgated under section 111 of the FCAA (New Source Performance Standards);
(d) any class I or II substance subject to a standard under the Acid Rain Program, Title VI of the FCAA; and
(e) any pollutant that is subject to any standard or requirements promulgated under section 112 of the FCAA (Hazardous Air Pollutants).

(43) "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.

(44) (a) "Solid waste" means all putrescible and non-putrescible solid, semi-solid, liquid or gaseous wastes, including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or industrial wastes; medical waste; sludge from sewage treatment plants, water supply treatment plants or air pollution control facilities; animal parts, offal, animal droppings or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts thereof; wood products or wood byproducts and inert materials; Styrofoam and other plastics; rubber materials; asphalt shingles; tarpaper; electrical equipment; transformers; insulated wire; oil or petroleum products; treated lumber and timbers; and pathogenic or infectious waste.

(b) Solid waste does not mean municipal sewage, industrial wastewater effluent, mining wastes regulated under the mining and reclamation laws administered by the DEQ, or slash and forest debris regulated under laws administered by the Department of Natural Resources.

(45) "Source" means any property, real or personal, or person contributing to air pollution.

(46) "Stack or chimney" means any flue, conduit or duct arranged to conduct emissions.

(47) "Standard conditions" means a temperature of 68^{o} Fahrenheit and a pressure of 29.92 inches of mercury.

(48) "Stationary source" means any property, real or personal, including but not limited to a building, structure, facility, or equipment located on one or more contiguous or adjacent properties under the control of the same owner or operator that emits or may emit any regulated air pollutant, including associated control equipment that affects or would affect the nature, character, composition, amount or environmental impacts of air pollution.

(49) "Volatile organic compound" or "VOC" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. VOC does not include the following compounds, which have been determined to have negligible photochemical reactivity:

(i) methane;
(ii) ethane;
(iii) methyl acetate;
(iv) methylene chloride (dichloromethane);
(v) 1,1,1-trichloroethane (methyl chloroform);
(vi) 1,1,2-trichloro-1,2,2-trifluoroethane (CFC 113);
(vii) trichlorofluoromethane (CFC 11);
(viii) dichlorodifluoromethane (CFC-12);
(ix) chlorodifluoromethane (HCFC-22);
(x) trifluoromethane (HFC-23);
(xi) 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114);
(xii) chloropentafluoroethane (CFC-115);
(xiii) 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123);
(xiv) difluoromethane (HFC-32);
(xv) ethylfluoride (HFC-161);
(xvi) 1,1,1,3,3,3-hexafluoropropane (HFC-236fa);
(xvii) 1,1,2,2,3- pentafluoropropane (HFC-245ca);
(xviii) 1,1,2,3,3- pentafluoropropane (HFC-245ea);
(xix) 1,1,1,2,3- pentafluoropropane (HFC-245eb);
(xx) 1,1,1,3,3- pentafluoropropane (HFC-245fa);
(xxi) 1,1,1,2,3,3- hexafluoropropane (HFC-236ea);
(xxii) 1,1,1,3,3- pentafluorobutane (HFC-365mfc);
(xxiii) chlorofluoromethane (HCFC-31);
(xxiv) 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);
(xxv) 1 chloro-1-fluoroethane (HCFC-151a);
(xxvi) 1,1,1,2,2,3,3,4,4-nonafluoro-4-methyoxy-butane ($C_4F_9OCH_3$);
(xxvii) 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2$ $CFCF_2OCH_3$);

(xxviii) 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$);
(xxix) 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2$ $CFCF_2OC_2H_5$);
(xxx) 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC43-10mee);
(xxxi) 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca);
(xxxii) 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);
(xxxiii) 1,1,1,2-tetrafluoroethane (HFC-134a);
(xxxiv) 1,1-dichloro-1-fluoroethane (HCFC-141b);
(xxxv) 1-chloro-1,1-difluoroethane (HCFC-142b);
(xxxvi) 2-chloro-1,1,1,2-tetra-fluoroethane (HCFC-124);
(xxxvii) pentafluoroethane (HFC-125);
(xxxviii) 1,1,2,2-tetrafluoroethane (HFC-134);
(xxxix) 1,1,1-trifluoroethane (HFC-143a);
(xl) 1,1-difluoroethane (HFC-152a);
(xli) parachlorobenzotrifluoride (PCBTF);
(xlii) cyclic, branched or linear completely methylated siloxanes;
(xliii) acetone;
(xliv) perchloroethylene (tetrachloroethylene); and
(xlv) perfluorocarbon compounds that fall into these classes:

(A) cyclic, branched or linear completely fluorinated alkanes;
(B) cyclic, branched or linear completely fluorinated ethers with no unsaturations;
(C) cyclic, branched or linear completely fluorinated tertiary amines with no unsaturations; and
(D) sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(b) To determine compliance with emission limits, VOCs will be measured by the test methods in 40 CFR Part 60, Appendix A, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligible-reactive compounds may be excluded as VOCs if the amount of such compounds is accurately quantified, and such exclusion is approved by the department and the EPA. As a precondition to excluding these compounds as VOCs or at any time thereafter, the department may require an owner or operator to provide monitoring or testing methods and results, demonstrating to the satisfaction of the department, the amount of negligibly-reactive compounds in the source's emissions.

(50) "Wood-waste burners" means tepee burners, silos, truncated cones, wigwam burners, and other devices commonly used by the wood product industry for the disposal or burning of wood wastes.

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 Rule~~s~~ 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 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 ~~(State and County Only) 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) (State and County Only) 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 meteorological 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) (State and County Only) whenever the ambient concentration of $PM_{2.5}$ meets or exceeds 28 ug/m^3 averaged over an eight hour average; or~~
~~(ii) (State and County Only) 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 meteorological data, that any of the following conditions occurs unless dispersion conditions are expected to improve rapidly:

~~(i) (State and County Only) whenever the ambient concentration of $PM_{2.5}$ meets or exceeds 35 ug/m^3 for an eight hour average; or~~
~~(ii) (State and County Only) whenever scientific and meteorological 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:

~~(State and County Only) $PM_{2.5}$ 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:

~~(State and County Only) $PM_{2.5}$ 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 – (State and County Only) Wildfire Smoke Episodes

(1) A Wildfire Smoke Episode is defined as a period of time in which the department determines, using available scientific and meteorological data, that wildfire smoke is the primary source of PM2.5 in the airshed.

(2) During a Wildfire Smoke Episode, the department may waive the PM2.5 requirements in 4.104 if the department determines, using available scientific and meteorological data, that instituting the Missoula County Air Stagnation and Emergency Episode Avoidance Plan would have negligible impacts on PM2.5 levels.

(3) During a Wildfire Smoke Episode, the department shall advise citizens via public media and the department's Air Pollution Hotline of current air pollution levels and health advisories.

(4) The department shall only waive the PM2.5 requirements in 4.104 for the duration of the Wildfire Smoke Episode. At any time, the department may reinstate all or parts of 4.104 as conditions change or as deemed necessary to protect human health.

(5) The department shall evaluate the impact of wildfire smoke on PM2.5 levels, using scientific and meteorological data, at a minimum of once a day during the Wildfire Smoke Episode.

(6) All other Missoula City-County Air Pollution Control Program Rules remain in effect during a Wildfire Smoke Episode.

Rule 4.113 - Contingency Measure

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 5.101 - Inspections

(1) A duly authorized officer, employee, or representative of the Control Board or the department, upon the showing of identifying credentials, may enter and inspect any property except for a private residence, at any reasonable time, investigating or testing any actual or suspected source of air pollution or ascertaining the state of compliance with this Program and regulations in force pursuant thereto.

(2) A person may not refuse entry or access to any authorized member or representative of the Control Board or department who requests entry for the purposes mentioned in Section (1), or obstruct, hamper, or interfere in any manner with any such inspection.

(3) Any person subject to inspection under this Program shall provide a proper testing port, with reasonable access, on all stacks and chimneys.

(4) A person may not refuse entry or access to any authorized member or representative of the Control Board or department who requests entry for the purposes of inspecting a stationary source that is required by Rule 4.106(2) to have an emergency episode abatement plan and is operating within Missoula County during a Warning, Emergency or Crisis episode.

Rule 5.102 - Testing Requirements

(1) Any person or persons responsible for the emission of any air pollutant into the outdoor atmosphere shall upon written request of the department provide the facilities and necessary equipment including instruments and sensing devices and shall conduct tests, emission or ambient, for such periods of time as may be necessary using methods approved by the department. Such emission or ambient tests must include, but are not limited to, a determination of the nature, extent, and quantity of air pollutants that are emitted as a result of such operation at all sampling points designated by the department. The source shall maintain this data for at least one year and shall have it available for review by the department. Such testing and sampling facilities may be either permanent or temporary at the discretion of the person responsible for their provision, and must conform to all applicable laws and regulations concerning safe construction or safe practice.

(2) All sources subject to the requirements of 40 CFR Part 51 Appendix P shall install, calibrate, maintain, and operate

equipment for continuously monitoring and recording emissions. All subject sources shall have installed all necessary equipment and begun monitoring and recording emissions data in accordance with Appendix P by January 31, 1988. A copy of 40 CFR Part 51 Appendix P may be obtained from the DEQ, P O Box 200901, Helena, MT 59620.

Rule 5.103 - Malfunctions

(1) The Control Officer or his designated representative must be notified promptly by phone whenever a malfunction occurs that can be expected to create emissions in excess of any applicable emission limitation, or to continue for a period greater than 4 hours. If telephone notification is not immediately possible, notification at the beginning of the next working day is acceptable. The notification must include the following information:

(a) identification of the emission points and equipment causing the excess emissions;

(b) magnitude, nature, and cause of the excess emissions;

(c) time and duration of the excess emissions;

(d) description of the corrective actions taken to remedy the malfunction and to limit excess emissions;

(e) information sufficient to assure the department that the failure to operate in a normal manner by the air pollution control equipment, process equipment or processes was not caused entirely or in part by poor
maintenance, careless operation, poor design, or any other preventable upset condition or preventable equipment breakdown; and

(f) readings from any continuous emission monitor on the emission point and readings from any ambient monitors near the emission point.

(2) Upon receipt of notification, the department shall investigate and determine whether a malfunction has occurred.

(3) If a malfunction occurs and creates emissions in excess of any applicable emission limitation, the department may elect to take no enforcement action if:

(a) the owner or operator of the source submits the notification as required by Section (1) above;

(b) the malfunction does not interfere with the attainment and maintenance of any state or federal ambient air quality standards; and

(c) the owner or operator of the source immediately undertakes appropriate corrective measures.

(4) Within one week after a malfunction has been corrected, the owner or operator shall submit a written report to the department which includes:

(a) a statement that the malfunction has been corrected, the date of correction, and proof of compliance with all applicable air quality standards contained in this chapter or a statement that the source is planning to install or has installed temporary replacement equipment in accordance with the requirements of (7) and (8) of this rule;

(b) a specific statement of the causes of the malfunction;

(c) a description of the preventive measures undertaken and/or to be undertaken to avoid such a malfunction in the future;

(d) a statement affirming that the failure to operate in a normal manner by the air pollution control equipment, process equipment, or processes was not caused entirely or in part by poor maintenance, careless operation, poor design, or any other preventable upset condition or preventable equipment breakdown; and

(e) any information required by Section (1) not previously given to the department.

(5) The burden of proof is on the owner or operator of the source to provide sufficient information to demonstrate that a malfunction did occur.

(6) A person may not falsely claim a malfunction has occurred or submit to the department information, pursuant to this rule, that is false.

(7) Malfunctioning process or emission control equipment may be temporarily replaced without obtaining an air quality permit as required in Chapter 6, subchapter 1, if the department has been

notified of the malfunction in compliance with this rule and if continued operation or non-operation of the malfunctioning equipment would:

(a) create a health or safety hazard for the public;

(b) cause a violation of any applicable air quality rule;

(c) damage other process or control equipment; or

(d) cause a source to lay-off or suspend a substantial portion of its workforce for an extended period.

(8) Any source that constructs, installs or uses temporary replacement equipment under (7) above shall comply with the following conditions:

(a) Prior to operation of the temporary replacement equipment, the source shall notify the department in writing of its intent to construct, install or use such equipment;

(b) Prior to operation of the temporary replacement equipment, the source shall demonstrate to the department that the estimated actual emissions from the equipment, operating at its maximum expected operating rate, are not greater than the potential to emit of the malfunctioning process or control equipment prior to the malfunction;

(c) The source shall record and at the department's request submit operating information sufficient to demonstrate that the temporary replacement equipment operated within the maximum expected operating rate;

(d) The temporary replacement equipment and the malfunctioning process or emission control equipment may not be operated simultaneously, except during a brief shakedown period or as otherwise approved in writing by the department; and

(e) The temporary replacement equipment must be removed or rendered inoperable within 180 days after initial startup of the temporary replacement equipment, or within 30 days after startup of the repaired malfunctioning equipment, whichever is earlier, unless the source has submitted to the department an application for an air quality permit for the temporary equipment or the department has approved a plan for removing the equipment or rendering it inoperable by a specific date.

Rule 5.105 - Circumvention

(1) A person may not cause or permit the installation or use of any device or any means that, without resulting in reduction in the total amount of air pollutant emitted, conceals or dilutes an emission of air pollutant that would otherwise violate an air pollution control regulation.

(2) A person may not divide or partition a property or properties used for a single activity, either by time or areas, in order to avoid regulation by this Program.

(3) A person may not knowingly:

(a) make false statements, representation, or certification in, or omit information from, or knowingly alter, conceal, or fail to file or maintain any notice, application, record, report, plan or other document required pursuant to this Program to be either filed or maintained;

(b) fail to notify or report as required under this Program; or

(c) falsify, tamper with, render inaccurate, or fail to install any monitoring device or method required to be maintained or followed under this Program.

Rule 5.106 – Public Nuisance

A person may not cause, suffer or allow any emissions of air pollutants beyond his property line in such a manner as to create a public nuisance.

Rule 5.112 - Compliance With Other Statutes And Rules

Nothing in the provisions of this Program relieves any permittee of the responsibility for complying with any applicable City, County, federal or Montana statute, rule, or standard except as specifically provided in this Program.

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

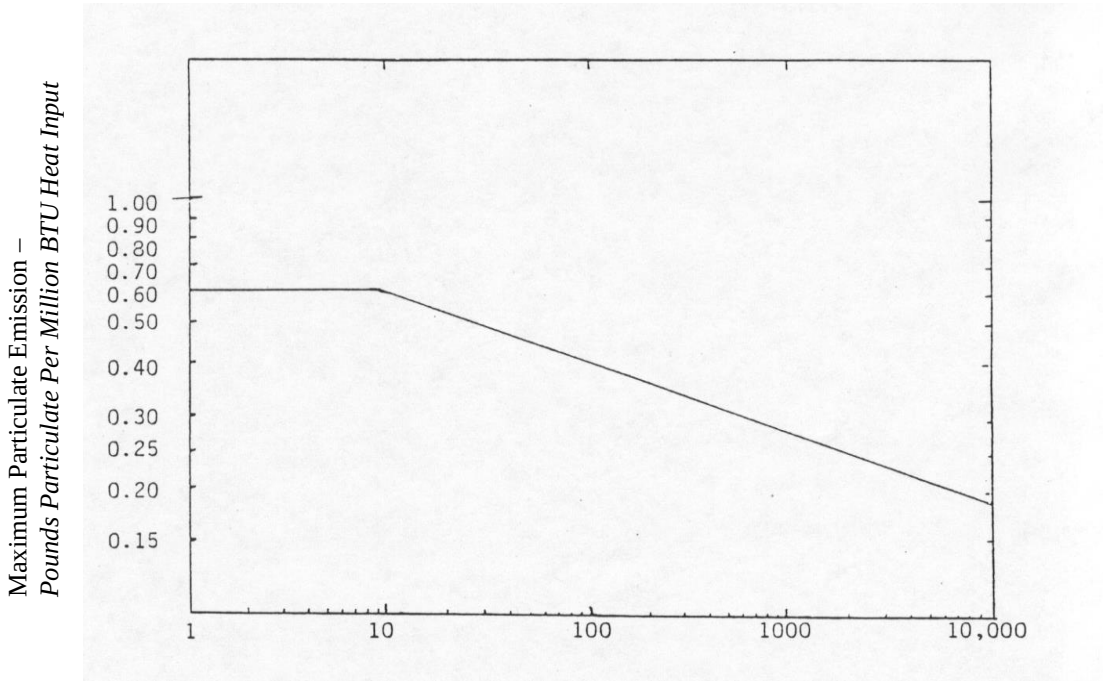
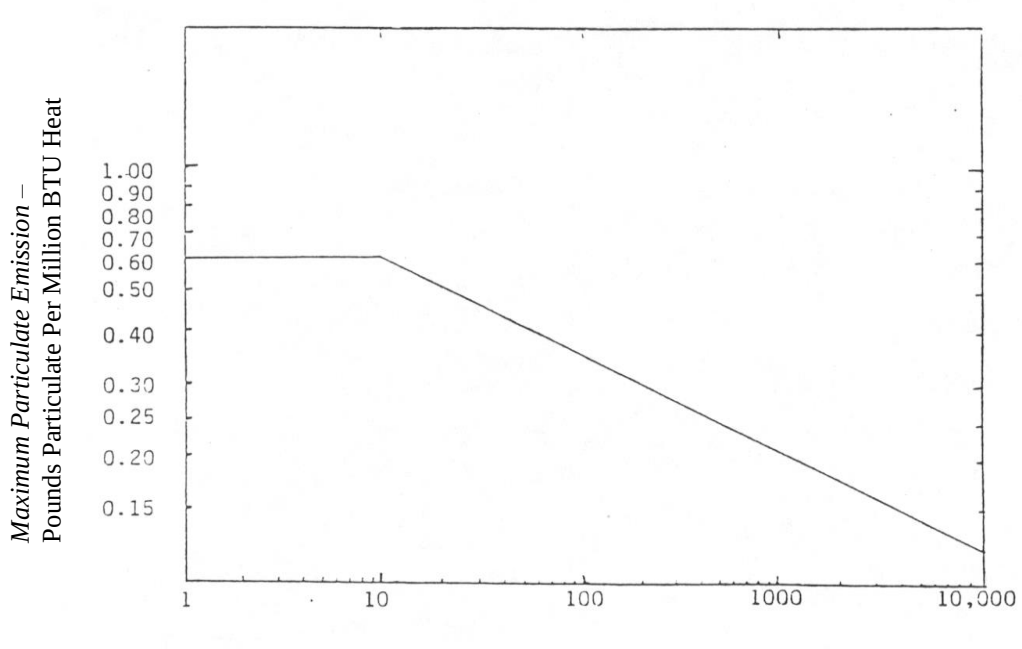


FIGURE 2
Maximum Emission of Particulate Matter from New Fuel Burning Installations



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.

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.

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 permit system

(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;
(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 contacting the department.

(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.

(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^{o}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^{o}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 l 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) 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**~~

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 9.203 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 9.203**,** 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 9.203**,** 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:

(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.

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.

Rule 10.101 - Intent
The purpose of this regulation is to reduce carbon monoxide emissions from gasoline powered motor vehicles in the control area through the wintertime use of oxygenated gasoline. The use of oxygenated fuel in the Missoula area is mandated by the 1990 Federal Clean Air Act.

Rule 10.102 - Definitions
The following definitions apply in this subchapter:
(1) “Control Area” means those portions of Missoula County, excluding the Salish/Kootenai Indian Reservation, located within: township 11 north, range 17 through 21, and; township 12 north, range 17 through 21, and township 13 north, range 17 through 21, and; township 14 north, range 17 through 421, and; township 15 north, range 17 through 21. (see Appendix A)

(2) “Control Area Terminal” means a terminal capable of receiving gasoline in bulk (i.e., by pipeline or rail), and where gasoline intended for use in the control area is sold or dispensed into trucks or where gasoline is altered either in quantity or quality, excluding the addition of deposit control additives.

(3) “Control period” means November 1st through the last day of February, during which oxygenated gasoline must be sold and dispensed in the control area.

(4) “Distributor” means any person who transports or stores or causes the transportation or storage of gasoline at any point between any oxygenate blending facility, gasoline refinery or control area terminal and any fueling facility.

(5) “Fueling facility operator” means any person who owns, leases, operates, controls or supervises a fueling facility.

(6) “Fueling facility” means any establishment where gasoline is sold, offered for sale, or dispensed to the ultimate consumer for use in motor vehicles, including facilities that dispense gasoline to any motor vehicle.

(7) "Gasoline” means any fuel sold for use in motor vehicles and motor vehicle engines, and commonly or commercially known or sold as gasoline.

(8) “Motor Vehicle” means any self-propelled vehicle that is designed primarily for travel on public highways, streets, and roads and that is generally and commonly used to transport

persons and property. For the purpose of this regulation, motor vehicles refers to spark ignition motor vehicles that use, on a part or full time basis, gasoline or gasoline-type products.

(9) "Oxygenate" means any substance that, when added to gasoline, increases the amount of oxygen in that gasoline blend. Lawful use of any combination of these substances requires that they be "Substantially Similar" under Section 211 (f)(1) of the FCAA or be permitted under a waiver granted by the EPA Administrator under the authority of Section 211(f)(4) of the FCAA.

(10) "Oxygenate Blending Facility" means any facility where gasoline, intended for use in the control area, is altered through the addition of oxygenate to gasoline and where the quality or quantity of gasoline is not otherwise altered, except through the addition of deposit-control additives.

(11) "Oxygenated fuel" means gasoline uniformly blended with an oxygenate and having a minimum oxygen content of 2.7% by weight, as determined using the test methods in Appendix F "Test for Determining the Quantity of Alcohol in Gasoline", 40 CFR Part 80.

Rule 10.103 - Oxygenated Fuel Required

During the control period, gasoline intended as a final product for fueling of motor vehicles within the control area may not be supplied or sold by any person, or sold at retail, or sold to a private fleet for consumption, or introduced into a motor vehicle by any person unless the gasoline is oxygenated fuel. The definition of person in this requirement includes, but is not limited to, a control area terminal, oxygenate blending facility, distributor, or fueling facility operator. This section does not apply to the sale of gasoline from a refinery to a control area terminal, from a control area terminal to an oxygenate blending facility, or from any person to a fueling facility located outside the control area.

Rule 10.104 - Labeling Gasoline Pumps

(1) During the control period, each gasoline pump stand from which oxygenated gasoline is dispensed at a fueling facility in the control area must be have a legible and conspicuous label that contains the following statement:

"The gasoline dispensed from this pump is oxygenated with (fill in blank with ethanol or other SIP-approved oxygenate name)

which will reduce carbon monoxide pollution from motor vehicles."

(2) The posting of the above statement must be in block letters of no less than 20-point bold type; in a color contrasting the intended background.

(3) The label must be placed in the vertical surface of the pump on each side with gallonage and dollar amount meters and must be on the upper one-third of the pump, clearly readable to the public.

Rule 10.105 - Oxygenate Blending Facility Requirements

(1) All oxygenate blending facilities operating during the control period shall provide facilities, operational procedures, and record keeping that insure that gasoline to be delivered into the control area during the control period is uniformly blended to an oxygen content of not less than 2.7% by weight.

(2) All oxygenate blending facilities shall register with the department on forms provided by the department no less than thirty (30) days before commencing operation. The department shall require that oxygenate blending facilities provide information to the department that indicates that the facility will comply with Rule 10.105(1). Any changes in the information required on the registration must be reported by the blending facility to the department in writing within thirty (30) days of occurrence.

(3) From September 1st through the end of February of each year, all oxygenate blending facilities shall maintain records of gasoline loaded onto trucks or into on-site fueling facilities indicating: date of loading, the grade of gasoline loaded, the quantity of gasoline loaded, type of oxygenate, and the percent oxygen content. A copy of these records must be provided to the distributor. These records must be maintained for a period of at least two years and must be available for inspection by the department or its designee.

(4) Oxygenate blending facilities shall provide adequate facilities and oxygenate to make oxygenated fuel available for purchase from September 1 through the end of February.

(5) Each oxygenate blending facility shall collect samples and conduct oxygen content analysis of oxygenated fuel distributed in the control area. The number of samples analyzed must be adequate to characterize the oxygen content of the gasoline

leaving the facility. The oxygen content of all samples analyzed must be reported to the department on a monthly basis. The department shall maintain written procedures to determine the number of samples required for analysis by each facility. (See Appendix D for current sampling schedule.)

Rule 10.106 - Distributor Requirements

(1) A distributor may not deliver gasoline to any fueling facility inside the control area during the control period unless the gasoline is oxygenated fuel.

(2) From September 1st through the end of February, all distributors shall maintain the following records:

(a) from the blending facility that show date of receipt from the blending facility, the grade of gasoline, the oxygenate blending facility source, the quantity of gasoline received, type of oxygenate, and the percent oxygen content; and

(b) records indicating the date on which oxygenated fuels are ordered by a fueling facility, and delivered, including records that show the name of the fueling facility, date of delivery, the grade of gasoline delivered, the oxygenate blending facility source, the quantity of gasoline delivered, the storage tank that the gasoline is unloaded to, type of oxygenate, and the percent oxygen content.

(3) These records must be maintained for at least two years and must be available for inspection by the department or its designee.

Rule 10.107 - Fueling Facility Operator Requirements

(1) All fueling facility operators in the control area shall plan bulk gasoline purchases in such a manner as to insure that all gasoline dispensed is oxygenated fuel by no later than November 1st and for the entire control period.

(2) All fueling facilities in operation in the control area during the control period must be registered with the department on forms provided by the department no later than September 1, 1992, or, in the case of new facilities, thirty (30) days before commencing operation. Any changes in the information required on the registration form must be reported by the fueling facility to the department in writing within thirty (30) days of occurrence.

(3) All fueling facilities dispensing gasoline in the control area during the control period shall obtain all oxygenated fuel from a registered oxygenate blending facility.

(4) All fueling facilities in the control area shall maintain records indicating the date on which oxygenated fuels are ordered, and delivered, including receipts of delivery from the distributor showing date of delivery, the grade of gasoline, the oxygenate blending facility source, the quantity of gasoline delivered, the storage tank that the gasoline is unloaded to, type of oxygenate, and the percent oxygen content. These records must be maintained for a period of at least two years and must be available for inspection by the department or its designee.

Rule 10.108 - Inability to Produce Oxygenated Fuel in Extraordinary Circumstances

(1) In appropriate extreme and unusual circumstances (e.g., natural disaster or Act of God) that are clearly outside the control of the oxygenate blending facility, distributor, or fueling facility and that could not have been avoided by the exercise of prudence, diligence and due care, the department may permit an oxygenate blending facility, distributor, or fueling facility, for a brief period, to distribute gasoline that does not meet the requirements for oxygenated fuel if:

(a) It is in the public interest to do so (e.g., distribution of the nonconforming gasoline is necessary to meet projected shortfalls that cannot otherwise be compensated for), and;

(b) The oxygenate blending facility, distributor, or fueling facility exercised prudent planning and was not able to avoid the violation and has taken all reasonable steps to minimize the extent of the nonconformity, and;

(c) The oxygenate blending facility, distributor, or fueling facility can show how the requirements for oxygenated fuel will be expeditiously achieved, and;

(d) The blending facility agrees to make up the air quality detriment associated with the nonconforming gasoline, where practicable, and;

(e) The oxygenate blending facility, distributor, or fueling facility pays the department an amount equal to the economic benefit of the nonconformity minus the amount expended pursuant to (d) above, in making up the air quality detriment.

Rule 10.109 - Registration Fees
(1) The Control Board shall set a fee schedule for the registration of affected facilities. The total amount of fees collected per budget period must be sufficient to defray all costs of assuring compliance with this rule, including but not limited to the costs of collection and analysis of samples from 20% of all regulated gasoline storage tanks and the costs of collection and analysis of samples from blending facilities. (See Attachment A for current registration fee schedule.)

Rule 10.110 - Contingency Measure
(1) Upon notification by the DEQ and the EPA that a violation of the 8 hour NAAQS for carbon monoxide has occurred, and with departmental determination that motor vehicles are greater than 40 percent of the cause, the control period must be extended to include the month of the violation and any intervening months.

Rule 10.201 - Regulation of Sulfur in Fuel
(1) A person may not burn liquid or solid fuels containing sulfur in excess of one pound of sulfur per million BTU fired.

(2) A person may not burn any gaseous fuel containing sulfur compounds in excess of 50 grains per 100 cubic feet of gaseous fuel, calculated as hydrogen sulfide at standard conditions, except this provision does not apply to:

(a) The burning of sulfur, hydrogen sulfide, acid sludge or other sulfur compounds in the manufacturing of sulfur or sulfur compounds.

(b) The incinerating of waste gases provided that the gross heating value of such gases is less than 300 BTU’s per cubic foot at standard conditions and the fuel used to incinerate such waste gases does not contain sulfur or sulfur compounds in excess of the amount specified in this rule.

(c) The use of fuels where the gaseous products of combustion are used as raw materials for other processes.

(d) Small refineries (under 10,000 barrels per day crude oil charge) provided that they meet other provisions of this rule.

(3) The following are exceptions to this rule:

(a) A permit may be granted by the department to burn fuels containing sulfur in excess of the sulfur contents indicated in Sections (1) and (2) provided it can be shown that the facility

burning the fuel is fired at a rate of one million BTU per hour or less.

(b) For purpose of this rule, a higher sulfur containing fuel may, upon application to the department, be used if such fuel is mixed with one or more lower sulfur containing fuels that results in a mixture, the equivalent sulfur content of which is not in excess of the stated values when fired.

(c) The requirements of Section (1) are deemed to be satisfied if, upon application to the department, a sulfur dioxide control process is applied to remove the sulfur dioxide from the gases emitted by burning of fuel of any sulfur content that results in an emission of sulfur in pounds per hour not in excess of the pounds per hour of sulfur that would have been emitted by burning fuel of the sulfur content indicated without such a cleaning device.

Rule 10.202 - Regulation of Sulfur in Fuel Burned Within the Air Stagnation Zone

(1) A person may not burn solid or liquid fuels containing sulfur in excess of .28 pounds of sulfur per million BTU fired within the Air Stagnation Zone.

(2) The provisions of Section (1) do not apply to:

(a) The incinerating of waste gases provided that the gross heating value of such gases is less than 300 BTU’s per cubic foot at standard conditions and the fuel used to incinerate such waste gases does not contain sulfur or sulfur compounds in excess of the amount specified in Section (1) of this rule.

(b) The use of fuels where the gaseous products of combustion are used as raw materials for other processes.

(3) Exceptions

(a) With department approval, higher sulfur containing fuel may be used in the Air Stagnation Zone, if such fuel is mixed with one or more lower sulfur containing fuels and results in a mixture, the equivalent sulfur content of which, when fired, is not in excess of the limit set forth in Section (1).

(b) The requirements of Section (1) shall also be satisfied, if a sulfur dioxide control process approved by the department is applied or installed to remove the sulfur dioxide from the gases emitted by burning of fuel of any sulfur content that results in

an emission of sulfur in pounds per million BTU fired not in excess of that which would have been emitted by burning fuel of the sulfur content allowed under Section (1).

Rule 10.203 - Labeling Requirements
Within Missoula County, a person may not sell solid or liquid fuel exceeding the sulfur content allowed in Rule 10.202 Section (1) without first informing the customer in writing, which may include but is not limited to printed notices, labeling, and clearly visible signs that state, “The sulfur content of this fuel exceeds the legal maximum for fuels used within the Missoula County Air Stagnation Zone. Combustion of this fuel within the Air Stagnation Zone is illegal”.

Rule 10.301 - Containers with More Than 65,000 Gallon Capacity
(1) A person may not place, store or hold in any stationary tank, reservoir or other container of more than 65,000 gallons capacity any crude oil, gasoline or petroleum distillate having a vapor pressure of 2.5 pounds per square inch absolute or greater under actual storage conditions, unless such tank, reservoir or other container is a pressure tank maintaining working pressures sufficient at all times to prevent hydrocarbon vapor or gas loss to the atmosphere, or is designed and equipped with one of the following vapor loss control devices, properly installed, in good working order and in operation:

(a) A floating roof, consisting of a pontoon-type or double deck type roof, resting on the surface of the liquid contents and equipped with a closure seal, or seals to close space between the roof edge and tank wall. The control equipment provided for in this paragraph may not be used if the gasoline or petroleum distillate has a vapor pressure of 13.0 pounds per square inch absolute or greater under actual storage conditions. All tank gauging and sampling devices must be gas-tight except when gauging or sampling is taking place.

(b) A vapor recovery system, consisting of a vapor gathering system capable of collecting the hydrocarbon vapors and gases discharged and a vapor disposal system capable of processing such hydrocarbon vapors and gases so as to prevent their emission to the atmosphere and with all tank gauging and sampling devices gas-tight except when gauging or sampling is taking place.

(c) Other equipment of equal efficiency provided such equipment has been approved by the Control Officer.

Rule 10.302 - Oil-Effluent Water Separators

(1) A person may not use any compartment of any single or multiple compartment oil-effluent water separator that receives effluent water containing 200 gallons a day or more of any petroleum product from any equipment processing, refining, treating, storing or handling kerosene or other petroleum product of equal or greater volatility than kerosene, unless such compartment is equipped with one of the following vapor loss control devices, constructed so as to prevent any emission of hydrocarbon vapors to the atmosphere, properly installed, in good working order and in operation:

(a) A solid cover with all openings sealed and totally enclosing the liquid contents. All gauging and sampling devices must be gas-tight except when gauging or sampling is taking place.

(b) A floating roof, consisting of a pontoon type or double-deck type roof, resting on the surface of the liquid contents and equipped with a closure seal, or seals, to close the space between the roof edge and containment wall. All gauging and sampling devices must be gas-tight except when gauging or sampling is taking place.

(c) A vapor recovery system, consisting of a vapor gathering system capable of collecting the hydrocarbon vapors and gases discharged and a vapor disposal system capable of processing such hydrocarbon vapors and gases so as to prevent their emission to the atmosphere and with all tank gauging and sampling devices gas-tight except when gauging or sampling is taking place.

(d) Other equipment of equal efficiency provided such equipment has been approved by the Control Officer.

(2) This rule does not apply to any oil-effluent water separator used exclusively in conjunction with the production of crude oil.

Rule 10.303 - Loading Gasoline

(1) A person may not load or permit the loading of gasoline into any stationary tank with a capacity of 250 gallons or more from any tank truck or trailer, except through a permanent submerged fill pipe, unless such tank is equipped with a vapor loss control device or is a pressure tank as described in Rule 10.301.

(2) The provisions of Section (1) do not apply to loading gasoline into any tank with a capacity of 2,000 gallons or less, that was installed prior to June 30, 1971 nor any underground tank installed prior to June 30, 1971 where the fill line between the fill connection and tank is offset.

(3) A person may not install any gasoline tank with a capacity of 250 gallons or more unless such tank is equipped as described in Section (1).

Rule 10.304 - Exemptions

(1) The provisions of this subchapter do not apply to any stationary tank used primarily for fueling implements of husbandry.

(2) Facilities used exclusively for the production of crude oil are exempt from this subchapter.

Rule 11.101 - Removal of Control Devices
A person may not intentionally remove, alter or otherwise render inoperative, exhaust emission control, crank case ventilation or any other air pollution control device that has been installed as a requirement of Federal law or regulation.

Rule 11.102 - Operation of Motor Vehicles
A person may not operate a motor vehicle originally equipped with air pollution control devices as required by Federal law or regulation unless such devices are in place and in operating condition.

Rule 11.103 - Four-Cycle Gasoline Powered Vehicles
A person may not emit or cause to be emitted any visible air pollutant into the atmosphere for a period greater than five (5) consecutive seconds from any four-cycle gasoline-powered vehicle.

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 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 request for an administrative review does not suspend or delay the department's notice or order except as otherwise provided for in this Program.

(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.

(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.

(5) The Hearing Officer may continue the administrative review for a reasonable period following the hearing to obtain information necessary to make a decision.

(6) The Hearing Officer shall affirm, modify, or revoke the Notice of Violation, Order to Take Corrective 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 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.

(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.

(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.

(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.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

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.

A. Definitions
For the purpose of this rule, the following definitions apply:

1. “Best available control technology (BACT)” means those techniques and methods of controlling emission of pollutants from an existing or proposed open burning source which limit those emissions to the maximum degree which the Agency determines, on a case-by-case basis, is achievable for that source, taking into account impacts on energy use, the environment and the economy and any other costs, including cost to the source. Such techniques and methods may include the following: scheduling of burning during periods and seasons of good ventilation, applying dispersion forecasts, utilizing predictive modeling results performed by the Agency or other public agency to minimize smoke impacts, limiting the amount of burning to be performed during any one time, using ignition and burning techniques which minimize smoke production, selecting fuel preparation methods that will minimize dirt and moisture content, promoting fuel configurations which create an adequate air-to-fuel ratio, prioritizing burns as to air quality impact and assigning control techniques accordingly, and promoting alternative treatments and uses of materials to be burned. For essential agricultural open burning or prescribed wildland open burning during September, October, or November, BACT includes burning only during the time periods specified by the Agency. Call (406) 256-6841 for the specified time periods. For prescribed wildland open burning during December, January or February, BACT includes burning only during the time periods specified by the Agency. Call (406) 256-6841 for the specified time periods.

2. “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.

3. “Essential agricultural open burning” means any open burning conducted on a farm or ranch for the purpose of:

a. Eliminating excess vegetative matter from an irrigation ditch when no reasonable alternative method of disposal is available.

b. Eliminating excess vegetative matter from cultivated fields after harvest has been completed when no reasonable alternative method of disposal is available.

c. Improving range conditions when no reasonable alternative method is available.

d. Improving wildlife habitat when no reasonable alternative method is available.

4. “Major open burning source” means any person, agency, institution, business, or industry conducting any open burning that, on a statewide basis, 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 regulation, except hydrocarbons.

5. “Minor open burning source” means any person, agency, institution, business, or industry conducting any open burning that is not a major open burning source.

6. “Open burning” means combustion of any material directly in the open air without a receptacle or in a receptacle other than a furnace, multiple chambered incinerator, or wood waste burner, with the exception of small recreational fires, construction site heating devices used to warm workers, or safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants or elemental phosphorus plants.

7. “Prescribed wildland open burning” means any planned open burning, either deliberately or naturally ignited, that is conducted on forest land or relatively undeveloped rangeland for the purpose of:

a. Improving wildlife habitat;

b. Improving range conditions;

c. Promoting forest regeneration;

d. Reducing fire hazards resulting from forestry practices, including reduction of log deck debris when the log deck is close to a timber harvest site;

e. Controlling forest pests and diseases; or

f. Promoting any other accepted silvicultural practices.

8. “Salvage operation” means any operation conducted in whole or in part to salvage or reclaim any product or material, except

the silvicultural practice commonly referred to as a salvage cut.

9. “Trade wastes” means solid, liquid, or gaseous material resulting from construction or operation of any business, trade, industry, or demolition project. Wood product industry wastes such as sawdust, bark, peelings, chips, shavings, and cull wood are considered trade wastes. Trade wastes do not include wastes generally disposed of by essential agricultural open burning and prescribed wildland open burning or Christmas tree waste, as defined in this regulation.

10. “Wood waste burner” means a device commonly called a teepee burner, silo, truncated cone, wigwam burner, or other similar burner commonly used by the wood products industry to dispose of wood.

B. Incorporation by Reference

The Control Board hereby adopts and incorporates by reference 40 CFR Part 261, identifying and defining hazardous wastes.

C. Prohibited Open Burning--When Permit Required

1. The following material may not be disposed of by open burning:

a. Any waste which is moved from the premises where it was generated, including waste moved to a solid waste disposal site, except as provided in subsection H or subsection I;

b. Food wastes;

c. Styrofoam and other plastics;

d. Wastes generating noxious odors;

e. Wood and wood by-products other than trade wastes that have been coated, painted, stained, or contaminated by a foreign material, such as papers, cardboard, or painted or stained wood, unless a public or private garbage hauler or rural container system is unavailable, or unless open burning is allowed under subsection J;

f. Poultry litter;

g. Animal droppings;

h. Dead animals or dead animal parts;

i. Tires, except as provided in subsection G;

j. Rubber materials;

k. Asphalt shingles, except as provided in subsection G or subsection J;

l. Tar paper, except as provided in subsection G or subsection J;

m. Automobile or aircraft bodies and interiors except as provided in subsection G or subsection J;

n. Insulated wire, except as provided in section G or subsection J;

o. Oil or petroleum products, except as provided in subsection G or subsection J;

p. Treated lumber and timbers;

q. Pathogenic wastes;

r. Hazardous wastes as defined by 40 CFR Part 261, incorporated by reference in subsection B;

s. Trade wastes, except as provided in subsection H or subsection I;

t. Any materials resulting from a salvage operation;

u. Chemicals except as provided in subsection G or subsection J;

v. Christmas tree waste as defined in subsection A;

w. asbestos or asbestos-containing materials; and

x. standing or demolished structures except as provided in subsections G, H & J.

2. Except as provided in subsection D, no person, agency, institution, business, or industry may open burn any non-prohibited material without first obtaining an open burning permit from the Agency.

D. Minor Open Burning Source Restrictions

1. Prior to open burning, a minor open burning source must submit to the Agency an application for an air quality open burning permit. The application must contain the following information:

a. address or legal description of open burning; and

b. materials to be burned.

2. A minor open burning source must:

a. conform with BACT;

b. comply with all rules of this program with the exception of subsection E; and

c. comply with any requirements or regulations relating to open burning established by any public agency responsible for protecting public health and welfare.

3. During September, October or November, to conduct essential agricultural open burning or prescribed wildland open burning, a minor open burning source must adhere to the time periods set for burning by the Montana Department of Environmental Quality that are available by calling 800-225-6779;

4. During December, January, or February, burning is allowed when ventilation conditions are good or excellent. Forecasts of ventilation conditions may be obtained by calling the Agency at (406) 256-6841.

5. During March through August, subject to subsection D.2, a minor open burning source may conduct open burning not prohibited under subsection D.

E. Major Open Burning Source Restrictions

1. Prior to open burning, a major open burning source must submit to the Agency an application for an air quality open burning permit. The application must contain the following information:

a. A legal description of each planned site of open burning or a detailed map showing the location of each planned site of open burning;

b. The elevation of each planned site of open burning;

c. The method of burning to be utilized at each planned site of open burning; and

d. The average fuel loading or total fuel loading at each site to be burned.

2. Proof of publication of public notice, consistent with this regulation, must be submitted to the Agency before an application will be considered complete. An applicant for an air quality open burning permit shall notify the public of the application for permit by legal publication, at least once, in a newspaper of general circulation in the area affected by the application. The notice must be published no sooner than 10 days prior to submittal of an application and no later than 10 days after submittal of an application. The form of the notice must be provided by the Agency and must include a statement that public comments may be submitted to the Agency concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

3. When the Agency approves or denies the application for a permit under this regulation, a person who is jointly or severally adversely affected by the Agency’s decision may request a hearing before the Control Board. The request for hearing must be filed within 15 days after the Agency renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the Control Board under this rule. The Agency’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. The filing of a request for a hearing postpones the effective date of the Agency’s decision until the conclusion of the hearing and issuance of a final decision by the Control Board.

4. A major open burning source must:

a. conform to BACT; and

b. comply with the conditions in any air quality open burning permit issued to it by the Agency, which will be in effect for

one year from its date of issuance or another time frame as specified in the permit by the Agency; and

c. To open burn in a manner other than that described in the application for an air quality open burning permit the source must submit to the Agency, in writing or by telephone, a request for a change in the permit, including the information required by subsection E.1, and must receive approval from the Agency.

F. Special Burning Periods

1. The following categories of open burning may be conducted during the entire year:

a. prescribed wildland open burning;

b. open burning to train firefighters under subsection G;

c. open burning authorized under the emergency open burning permit provisions in subsection I; and

d. essential agricultural open burning.

2. Open burning other than those categories listed in (1.) of this rule may be conducted only during the months of March through November.

G. Fire Fighter Training

1. The Agency may issue an air quality open burning permit for open burning of asphalt shingles, tar paper, or insulated wire which is part of a building or standing structure, oil or petroleum products and automobile or aircraft bodies and interiors, for training fire fighters, if

a. the fire will be restricted to a building or structure, a permanent training facility, or other appropriate training site, in a site other than a solid waste disposal site;

b. the material to be burned will not be allowed to smolder after the training session has terminated, and no public nuisance will be created;

c. all asbestos-containing material has been removed;

d. asphalt shingles, flooring material, siding, and insulation which might contain asbestos have been removed, unless samples

have been analyzed by a certified laboratory and shown to be asbestos-free;

e. all prohibited material that can be removed safely and reasonably has been removed;

f. the open burning accomplishes a legitimate training need;

g. 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 open 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. The Agency may place any reasonable requirements in an air quality fire fighter training open burning permit that the Agency determines will reduce emissions of air pollutants or will minimize the impact of emissions, and the recipient of a permit must adhere to those conditions.

3. The applicant may be required, prior to each burn, to notify the Agency of the anticipated date and location of the proposed training exercise and the type and amount of material to be burned. The Agency may be notified by phone, fax or in writing.

4. An application for an air quality firefighter training open burning permit must be made on a form provided by the Agency. The applicant must provide adequate information to enable the Agency to determine whether the application satisfies the requirements of this rule for a permit.

5. Proof of publication of public notice, consistent with this rule, must be submitted to the Agency before an application will be considered complete. An applicant for an air quality firefighter training open burning permit shall notify the public of the application for a permit by legal publication, at least once, in a newspaper of general circulation in the area affected by the application. The notice must be published no sooner than 10 days prior to submittal of an application and no later than 10 days after submittal of an application. The form of the

notice must be provided by the Agency and must include a statement that public comments may be submitted to the Agency concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

6. When the Agency approves or denies the application for a permit under this regulation, a person who is jointly or severally adversely affected by the Agency's decision may request a hearing before the Control Board. The request for hearing must be filed within 15 days after the Agency renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the Control Board under this regulation. The Agency'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. The filing of a request for a hearing postpones the effective date of the Agency's decision until the conclusion of the hearing and issuance of a final decision by the Control Board.

H. Conditional Air Quality Open Burning Permits

1. The Agency may issue a conditional air quality open burning permit if the Agency determines that:

a. alternative methods of disposal would result in extreme economic hardship to the applicant; and

b. Emissions from open burning will not endanger public health and welfare or cause or contribute to a violation of any Montana or federal ambient air quality standards.

2. The Agency must be reasonable when determining whether alternative methods of disposal would result in extreme economic hardship to the applicant.

3. Conditional open burning must conform with BACT.

4. The Agency may issue a conditional air quality open burning permit for the disposal of:

a. wood and wood by-product trade wastes by any business, trade, industry, or demolition project;

b. Untreated wood waste at licensed landfill site, if the Agency determines that:

(i) the proposed open burning would occur at an approved burn site, as designated in the solid waste management system license issued by the Department of Environmental Quality pursuant to Title 17, chapter 50, subchapter 5, ARM; and

(ii) prior to issuance of the conditional air quality open burning permit, the wood waste pile is inspected by the Agency or its designated representative and no prohibited materials listed in subsection C.1, other than wood waste, are present.

5. A permit issued under this rule is valid for the following periods:

a. Wood and wood by-products trade waste - one year; applicants may reapply for a permit annually; and

b. Untreated wood waste at licensed landfill sites - single burn. A new permit must be obtained for each burn.

6. The Agency may place any reasonable requirements in a conditional air quality open burning permit that the Agency determines will reduce emissions of air pollutants or will minimize the impact of the emissions, and the recipient of a permit must adhere to those conditions. In the case of a permit granted pursuant to subsection H.4.a, BACT for the year covered by the permit will be set out within the terms of the permit, with the provision that the source may be required, prior to each burn, to receive approval from the Agency of the date of the proposed burn to ensure that good ventilation exists and to assign priorities if other sources in the area request to burn on the same day. Approval may be obtained by calling the Agency.

7. An application for a conditional air quality open burning permit must be made on a form provided by the Agency. The applicant shall provide adequate information to enable the Agency to determine that the application satisfies the requirements for a conditional air quality open burning permit contained in this rule. Proof of publication of public notice, as required in subsection H.8, shall be submitted to the Agency before an application will be considered complete.

8. An applicant for a conditional air quality open burning permit shall notify the public of the application for a permit by means of legal publication, at least once, in a newspaper of

general circulation in the area affected by the application. The notice must be published no sooner than 10 days prior to submittal of an application and no later than 10 days after submittal of an application. Form of the notice must be provided by the Agency and must include a statement that public comments may be submitted to the Agency concerning the application within 20 days after publication of the notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

9. A conditional air quality open burning permit granted pursuant to subsection H.4.a is a temporary measure to allow time for the entity generating the trade wastes to develop alternative means of disposal.

10. The Agency's decision to approve or deny an application for a conditional air quality open burning permit may be reviewed by the Control Board in accordance with the following provisions:

a. When the Agency approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the Agency's decision may request a hearing before the Control Board. The request for hearing must be filed within fifteen (15) days after the Agency renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the Control Board under this rule. The Agency'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 subsection H.10.

b. The filing of a request for a hearing postpones the effective date of the Agency's decision until the conclusion of the hearing and issuance of a final decision by the Control Board.

I. Emergency Open Burning Permits

1. The Agency may issue an emergency air quality open burning permit to allow burning of a substance not otherwise approved for burning under this regulation if the applicant demonstrates that the substance sought 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. Oral authorization to conduct emergency open burning may be granted by the Agency by telephone (406) 256-6841, 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; and

f. The date and time that the spill or incident giving rise to the emergency was first noticed.

3. Within 10 days of receiving oral authorization to conduct emergency open burning under subsection I.2, the applicant must submit to the Agency a written application for an emergency open burning permit containing the information required under subsection I.2.

J. COMMERCIAL FILM PRODUCTION OPEN BURNING PERMIT

1. The Agency may issue an air quality commercial film production open burning permit for open burning of otherwise 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 open burning.

2. The Agency may issue an air quality commercial film production open burning permit under this regulation if the Agency determines that emissions from open burning will 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 regulation is valid for a single production.

4. Open burning under this regulation must conform with BACT.

5. The Agency may place any reasonable requirements in an air quality commercial film production open burning permit issued under this regulation that the Agency determines will reduce emissions of air pollutants or minimize the impact of emissions, and the recipient of a permit must adhere to those conditions.

6. An application for an air quality commercial film production open burning permit must be made on a form provided by the Agency. The applicant shall provide adequate information to enable the Agency to determine whether the application satisfies the requirements of this regulation for a permit. Proof of publication of public notice, as required by subsection J.7, must be submitted to the Agency before an application will be considered complete.

7. An applicant for an air quality commercial film production open burning permit shall notify the public of its application by legal publication, at least once, in a newspaper of general circulation in the area affected by the application. The notice must be published no sooner than 10 days prior to submittal of the application and no later than 10 days after submittal of the application. Form of the notice must be provided by the Agency and must include a statement that public comments may be submitted to the Agency concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

8. When the Agency approves or denies the application for a permit under this regulation, a person who is jointly or severally adversely affected by the Agency’s decision may request a hearing before the Control Board. The request for hearing must be filed within 15 days after the Agency renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the Control Board under this regulation. The Agency’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 subsection. The filing of a request for a hearing postpones the effective date

of the Agency‘s decision until the conclusion of the hearing and issuance of a final decision by the Control Board.

K. FEES

The Agency may charge an appropriate permit fee for a major open burning permit, fire fighting training permit, conditional air quality open burning permit, emergency open burning permit, or commercial film production open burning permit.