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## 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~~

~~**$PM_{2.5}$** – Particulate Matter under 2.5 microns in diameter~~

~~**$PM_{10}$** – 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~~

| | |
|---|---|
| **$\mu g/m^3$** | Micrograms Per Cubic Meter |
| **AASHTO** | American Association of State and Highway Transportation Officials |
| **ARM** | Administrative Rules of Montana |

| | |
|---|---|
| **BACT** | Best Available Control Technology |
| **BTU** | British Thermal Unit |
| **C** | Celsius |
| **CFR** | Code of Federal Regulations |
| **cm** | Centimeter |
| **CO** | Carbon Monoxide |
| **DEQ** | Montana Department of Environmental Quality |
| **EPA** | United States Environmental Protection Agency |
| **FCAA** | Federal Clean Air Act |
| **HAP** | Hazardous Air Pollutants |
| **hr** | Hour |
| **LAER** | Lowest Achievable Emissions Rate |
| **lbs** | Pounds |
| **MACT** | Maximum Achievable Control Technology |
| **MCA** | Montana Code Annotated |
| **$mg/m^3$** | Milligrams Per Cubic Meter |
| **MT** | Montana |
| **NAAQS** | National Ambient Air Quality Standard |
| **$NO_2$** | Nitrogen dioxide |
| **$O_3$** | Ozone |
| **OAR** | Oregon Administrative Rules |
| **PM** | Particulate Matter |
| **$PM_{2.5}$** | Particulate Matter with an Aerodynamic Diameter of 2.5 Microns or Less |
| **$PM_{10}$** | Particulate Matter with an Aerodynamic Diameter of 10 Microns or Less |
| **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 |
| **USC** | United States Code |
| **VOC** | Volatile Organic Compound |

# CHAPTER 1
# PROGRAM AUTHORITY AND ADMINISTRATION

**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~~53 subchapter 5 which incorporates by reference 40 CFR 261 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° 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.

(a)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~~ a non-attainment areas fails 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~~9.601 and if the department determines that motor vehicles are greater than 40 percent of the cause, the department will implement Rule 10.~~110~~111.

**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 except as allowed by Rule 4.112.

(2) Nothing in this chapter limits the authority of the Control Board or department to act in an emergency situation. The department may act to protect the public from imminent danger caused by any air pollutant. Such action may include but is not limited to verbal orders to cease emission release, or ordering the use of specified procedures in the management of actual or potential toxic air pollution releases resulting from accidents involving the transportation, use, or storage of toxic chemicals or mixtures of chemicals that could result in the release of toxic chemicals.

(3) When in effect, the requirements of this chapter supersede all other regulations under this Program that are less restrictive.

**Rule 4.104 - Air Pollution Control Stages**
(1) Stage I - ALERT for Particulate Matter

(a) The department may declare a Stage I Alert for particulate matter if it determines using available scientific and meteorological data that, any of the following conditions occurs. If the department determines that the primary air pollution source is crustal, an alert can be called for the air stagnation zone, rather than all of Impact Zone M:

(i) whenever the ambient concentration of $PM_{2.5}$ meets or exceeds 21 ~~ug~~/µg/$m^3$ averaged over an eight hour period; or
(ii) whenever the ambient concentration of $PM_{10}$ exceeds 80 ~~ug~~/µg/$m^3$ averaged over an eight hour period.

(b) The department shall declare a Stage I Alert for particulate matter if it determines using available scientific and ~~meterological~~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) whenever the ambient concentration of $PM_{2.5}$ meets or exceeds 28 ~~ug~~/µg/$m^3$ averaged over an eight hour average; or
(ii) whenever the ambient concentration of $PM_{2.5}$ can reasonably be expected to exceed 35 ~~ug~~/µg/$m^3$ 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~~/µg/$m^3$ averaged over the next 24 hours if a Stage I Alert is not called.

(2) Stage II - WARNING

(a) The department shall declare a Stage II Warning for particulate matter if it determines using available scientific and ~~meterological~~meteorological data, that any of the following conditions occurs unless dispersion conditions are expected to improve rapidly:
(i) whenever the ambient concentration of $PM_{2.5}$ meets or exceeds 35 ~~ug~~/µg/$m^3$ for an eight hour average; or
(ii) whenever scientific and ~~meterological~~meteorological data indicate that the 24-hour average $PM_{2.5}$ concentrations will remain at or above 35 ~~ug~~/µg/$m^3$ if a Stage II Warning is not called; or
(iii) whenever the ambient concentration of $PM_{10}$ exceeds 150 ~~ug~~/µg/$m^3$ 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~~/µg/$m^3$ 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~~/µg/$m^3$ 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:

| | | |
|---|---|---|
| $SO_2$ | 800 ~~ug~~/µg/$m^3$ | 24-hour average |
| CO | 17 mg/$m^3$ | 3-hour average |
| $O_3$ | 400 ~~ug~~/µg/$m^3$ | 1-hour average |
| $NO_2$ | 1130 ~~ug~~/µg/$m^3$ | 1-hour average |
| $NO_2$ | 282 ~~ug~~/µg/$m^3$ | 24-hour average |

(3) Stage III - EMERGENCY
The department shall declare a Stage III Emergency whenever the ambient concentration of any of the following pollutants listed equals or exceeds the specified levels:

| | | |
|---|---|---|
| $PM_{2.5}$ | 80 ~~ug~~/µg/$m^3$ | 24-hour average |
| $PM_{10}$ | 420 ~~ug~~/µg/$m^3$ | 24-hour average |
| $SO_2$ | 1600 ~~ug~~/µg/$m^3$ | 24-hour average |
| CO | 34 mg/$m^3$ | 3-hour average |
| $O_3$ | 800 ~~ug~~/µg/$m^3$ | 1-hour average |
| $NO_2$ | 2260 ~~ug~~/µg/$m^3$ | 1-hour average |
| $NO_2$ | 565 ~~ug~~/µg/$m^3$ | 24-hour average |

(4) Stage IV - CRISIS
The department shall declare a Stage IV CRISIS whenever the ambient concentration of any of the following pollutants listed equals or exceeds the specified levels:

| | | |
|---|---|---|
| $PM_{2.5}$ | 135 ~~ug~~/µg/$m^3$ | 24-hour average |
| $PM_{10}$ | 500 ~~ug~~/µg/$m^3$ | 24-hour average |
| $SO_2$ | 2100 ~~ug~~/µg/$m^3$ | 24-hour average |

| | | |
|---|---|---|
| CO | 46 mg/m$^3$ | 8-hour average |
| $O_3$ | 1000 ~~ug/~~µg/m$^3$ | 1-hour average |
| N~~O~~$\underline{O}$~~0~~$_2$ | 3000 ~~ug/~~µg/m$^3$ | 1-hour average |
| $NO_2$ | 750 ~~ug/~~µg/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) shall advise citizens via public media and the department's Air Pollution Hotline of the actions listed under an Alert, and of ~~medical~~ health precautions~~.~~; and

(b) shall suspend outdoor burning~~.~~; and

(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~~ must 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.

(d) Recreational fires must comply with the applicable requirements of Chapter 7.

(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.

(d) Recreational fires must comply with the applicable requirements of Chapter 7.

(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/µg/$m^3$:
(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.

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**Rule 4.110 - Stage III Emergency Control Activities**

(1) During a Stage III Emergency, the department shall:
(a) advise citizens via public media and the department's Air Pollution Hotline of the actions described under an Emergency and of medical precautions.

(b) inspect stationary sources required to implement an abatement plan by Rule 4.106 to ensure compliance with the plan.

(c) if conditions continue to worsen, issue a specific advisement that total curtailment under a Crisis condition is possible.

(d) notify DEQ so it can initiate notification and communication procedures contained in the Montana Emergency Episode Avoidance Plan (Montana State Implementation Plan, Chapter 9). However, the department is responsible for notifying state and county permitted sources and the public of requirements under this plan.

(2) During a Stage III Emergency, the following general curtailment provisions take effect:
(a) All Alert and Warning conditions apply, except where Emergency steps are more stringent.

(b) All nonessential public gatherings should be voluntarily canceled.

(c) Persons driving motor vehicles must reduce operations by use of carpools, non-motorized transportation and public transportation and by eliminating unnecessary driving.

(d) Solid fuel burning devices may not be operated.

(3) During a Stage III Emergency, the following curtailment provisions for stationary sources take effect:
(a) All Warning restrictions remain in effect, except where Emergency steps are more stringent;

(b) Incinerators, except pollution control devices, must cease operation;

(c) For manufacturing industries that require a relatively short lead time for shut down, the source must show elimination of air pollutants from manufacturing operations by ceasing, curtailing, postponing or deferring production and allied operations to the extent possible without causing injury to persons or damage to equipment.

(d) For sources still allowed to operate, a minimum forty percent (40%) reduction in emissions below maximum permissible operating emissions is required, except this requirement does not apply to those sources where the department determines such reductions are not physically possible. For manufacturing operations, the source may have to assume reasonable economic hardship by postponing production and allied operation to meet this reduction;

(e) Each stationary source emitting or capable of emitting twenty-five (25) tons or more per year of any pollutant shall implement its abatement plan to reduce emissions during an Emergency.

**Rule 4.111 - Stage IV Crisis Control Activities**

(1) During a Stage IV Crisis, the department shall:
(a) inspect stationary sources required to implement an abatement plan by Rule 4.106 to ensure compliance with the plan.

(b) The department will notify DEQ so it can initiate notification and communication procedures contained in the Montana Emergency Episode Avoidance Plan (Montana State Implementation Plan, Chapter 9). However, the department is responsible for notifying state and county permitted sources and the public of requirements under this plan.

(2) During a Stage IV Crisis, the following general curtailment provisions take effect:
(a) All conditions from the Alert, Warning, and Emergency stages apply except where Crisis steps are more stringent.

(b) Only those establishments (e.g., places of employment or business) associated with essential services may remain open. Essential services are news media, medically associated services (hospitals, labs, pharmacies), direct food supply (grocery markets, restaurants), drinking water supply and wastewater treatment, police, fire and health officials and their associated establishments. It is expressly intended that any service not defined as essential cease all business. Depending on the duration and nature of the crisis,

the department may add the operation of certain services and facilities to the list of essential services. Examples of businesses and establishments considered nonessential include, but are not limited to: banks (except for supplying funds for essential services), all offices, bars and taverns, laundries, gas stations, barber shops, schools (all levels), repair shops, amusement and recreation facilities, libraries, and city, state and federal offices (except those identified as essential services).

(c) The use of motor vehicles is prohibited except in emergencies with the approval of law enforcement and the department.

(3) During a Stage IV Crisis, the following curtailment provisions for stationary sources take effect:
(a) Stationary sources shall cease all manufacturing functions, but they may maintain operations necessary to prevent injury to persons or damage to equipment.

(b) Each stationary source emitting or capable of emitting twenty-five (25) tons or more per year of any pollutant shall implement its abatement plan to reduce emissions during a Crisis.

**Rule 4.112 – Wildfire Smoke 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.

# CHAPTER 5
# GENERAL PROVISIONS

**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 5.104 - Reserved**

**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 5.107 - Reserved**

**Rule 5.108 - Permit Fees**

(1) The Control Board shall establish a schedule for the payment of fees for inspections and issuance of permits or renewals under this Program. Such fees may be based upon factors including, but not limited to, the size of the unit inspected, the time involved in the inspection, the time involved in issuing the permit, the cost of administering and ensuring compliance of the regulations and any other factors the Control Board determines produces a fair and reasonable fee. Fees may be adopted or changed at any regularly scheduled meeting of the Control Board providing that the action is scheduled on the Control Board agenda and public comment is allowed. (See Attachment A for current fee schedule.)

(2) The fees must adequately compensate, but may not exceed, the direct and indirect costs to the department of administering the Program. ~~(added in response to comments from several businesses)~~

(3) For sources that are permitted by both DEQ pursuant to MCA 75-2-217 and this Program, the fee structure must be established after consultation with DEQ in a manner that is fair and equitable taking into account the fees paid to this Program and the DEQ, and the services rendered by each agency.

(4) All fees required under this subchapter are a debt due and owing under this Program that may be collected in a civil suit by the Control Board. All fees collected must be deposited in the Missoula County Health Fund.

(5) For fees based on estimated emissions, the owner or operator of a source may appeal any portion or all of the fee by requesting, in writing, an administrative review within 20 days of receipt of the department's fee assessment. If any portion of the fee is not appealed to the department, that portion is due 30 days after receipt of the department's fee assessment. Any remaining fee that is due after the completion of an appeal is due immediately upon the completion of the administrative appeals process or upon completion of any judicial review of the Control Board's decision.

**Rule 5.109 and Rule 5.110 - Reserved**

**Rule 5.111 - ~~Amendments And Revisions~~Rule Changes to the Missoula City-County Air Pollution Control Program**

~~(1) Amendments and revisions to this Program may be approved by a majority vote of the Control Board after a properly noticed public hearing. The department shall give notice by publication in a newspaper published at least once a week in Missoula County. The notice must be published two times with at least six days separating each publication. The first publication must be no more than 21 days prior to the hearing and the last no less than 3 days prior to the hearing. The published notice must contain the date, time and place at which the hearing will occur; a brief statement of the proposed amendments and revisions and the address and telephone number of the person who can be contacted for further information.~~

(1) The Control Board must hold a noticed public hearing for any proposed rule changes to the Missoula City County Air Pollution Control Program.

(a) The department shall maintain a list of interested persons who wish to be informed of actions related to rules adopted under this air pollution control program.

(b) At least 30 days before the hearing, the department shall give written notice of the intended action. The notice must include the following:

(i) a statement of the terms or substance of the intended action or a description of the subjects and issues affected by the intended action;

(ii) an explanation of the procedure for a person to be included on the list of interested persons established pursuant to subsection (1)(a) of this rule;

(iii) an explanation of the procedures and deadlines for presentation of oral or written comments related to the intended action; and

(iv) a rationale for the intended action(s) which explains why the intended action is reasonably necessary to implement the goals and purposes of the air pollution control program.

(c) The department shall provide a copy of the proposed rule changes to the list of interested persons established pursuant to Rule 5.111(1)(a) who have made timely request to be included on the list.

(d) The department shall prepare a written response to all comments submitted in writing or presented at the public hearing for consideration by the Control Board prior to adoption, revision, or repeal of the proposed rule.

(e) A person who submits a written comment on a proposed action or who attends a public hearing in

regard to a proposed action must be informed of the final action.

(f) Rule changes to this Program may be approved by a majority vote of the Control Board after a noticed public hearing.

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(2) The Board of County Commissioners and the City Council may approve or veto the Control Board's amendments and revisions by resolution ~~at a public meeting~~ after a public hearing.

(3) Upon approval by the City Council and Board of County Commissioners, the Control Board shall forward the amendments or revisions to the Montana Board of Environmental Review for final approval. Unless otherwise provided for in the amendment or revision, the amendments and revisions are effective upon approval of the Montana Board of Environmental Review.

**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.

**Rule 5.113 - Severability Clause**
If any Section or part thereof of this Program is declared invalid by a court of competent jurisdiction, such decision does not affect the remainder of the Program or any part thereunder.

**Rule 5.114 - Limitations**
Nothing in this Program:

(1) Grants the Control Board any jurisdiction or authority with respect to air pollution existing solely within buildings.

(2) Supersedes or limits the applicability of any law or regulation relating to sanitation, industrial health or safety.

# 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. The department may grant a 12-month extension to an air quality permit if the construction, installation or alteration has not been completed within the initial 36 months and applicable local, state and federal rules have not changed. The department may grant no more than two 12-month extensions.

(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 | Maximum Allowable Emissions of Particulate Matter |
|---|---|

| (million BTUs/hr) | (lbs/million BTU's) | |
|---|---|---|
| | Existing Fuel Burning Equipment | New Fuel Burning Equipment |
| ≤ 10 | 0.60 | 0.60 |
| 100 | 0.40 | 0.35 |
| 1,000 | 0.28 | 0.20 |
| ≥ 10,000 | 0.19 | 0.12 |

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

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

(6) This rule does not apply to:

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

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

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

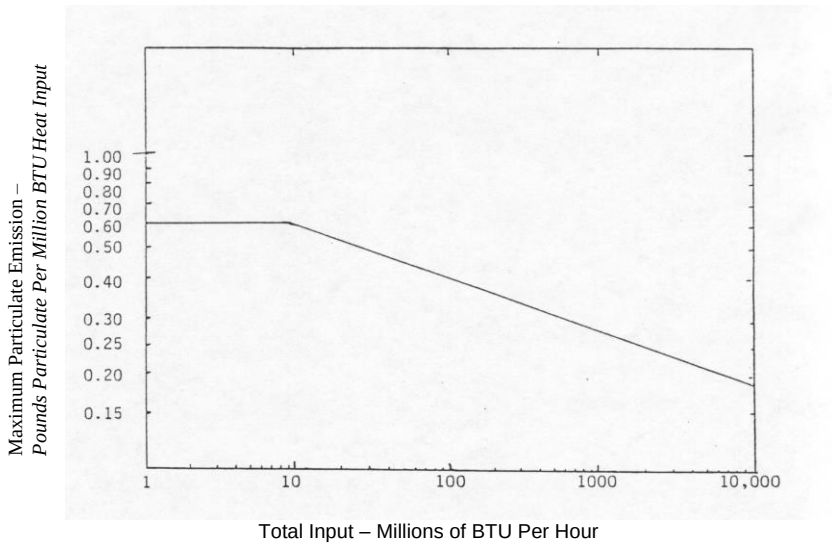
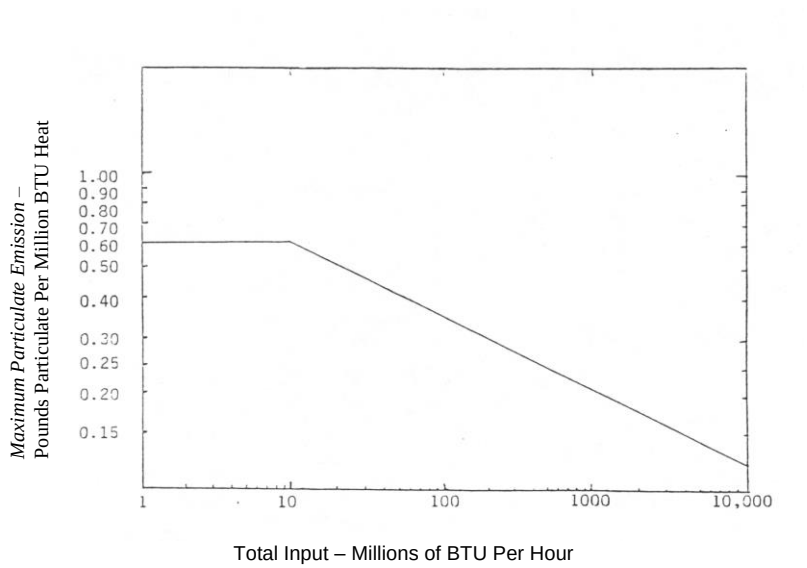



**FIGURE 2**
**Maximum Emission of Particulate Matter from New Fuel Burning Installations**



**Rule 6.503 - Particulate Matter from Industrial Processes**

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

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

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

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

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

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

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

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

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

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

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

(c) fuel burning equipment, and

(d) incinerators.

**Rule 6.504 - Visible Air Pollutants**

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

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

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

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

(a) wood-waste burners;

(b) incinerators;

(c) motor vehicles;

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

(e) residential solid-fuel burning devices.

**Rule 6.505 - Fluoride Emissions**

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

(2) Pond emissions:

(a) A person may not cause or allow fluorides in excess of 108 micrograms per square centimeter per 28 days ($\mu g/cm^2/28$ days) to be released into the outdoor atmosphere from any storage pond, settling basin, ditch, liquid holding tank or other liquid holding or conveying device from operations outlined in Section (1). The concentration of fluorides is to be determined using the calcium formate paper method. Papers must be exposed in a standard Montana Box located not less than 18 inches or more than 48 inches above the level of the liquid in the devices herein enumerated and not more than 16 inches laterally from the liquid's edge. Other locations may be permitted if approved by the department.

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

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

(3) Preparation, exposure and analysis:

(a) Preparation of calcium formate papers:

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

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

(b) Exposure of calcium formate papers:

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

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

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

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

**Rule 6.506 - New Source Performance Standards**

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

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

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

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

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

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

**Rule 6.507 - Hazardous Air Pollutants**

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

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

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

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

**Rule 6.508 - Hazardous Air Pollutants for Source Categories**

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

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

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

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

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

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

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

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

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

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

(f) "Major source of HAP" means:

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

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

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

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

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

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

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

construction, unless:

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

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

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

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

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

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

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

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

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

(8) The following rules govern the application, review and final approval or denial of a notice of MACT approval or 112 (g) exemption: Rules 5.112, 6.103(2), 6.103(4)-(7), 6.106, 6.107(1) and 6.107(6);

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

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

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

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

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

**Subchapter 6 – Incinerators**

**Rule 6.601 - Minimum Standards**

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

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

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

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

**Rule 6.602 - Hours of Operation**

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

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

**Rule 6.603 - Performance Tests**

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

**Rule 6.604 - Hazardous Waste Incinerators**

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

**Rule 6.605 - Additional Air Quality Permit Requirements**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

of public health, safety and welfare and the environment.

## Subchapter 7 – Wood Waste Burners

### Rule 6.701 - Opacity Limits

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

### Rule 6.702 - Operation

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

(2) A minimum temperature of 700ºF 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 700ºF minimum temperature does not apply. The burner must maintain 700ºF 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) "Air Curtain Burner" means an engineered apparatus consisting of a manufactured, refractory walled firebox equipped with a blower and manifold to create an air curtain over the box.

(2) "Air Curtain Destructor" means a trailer-mounted air curtain incineration system that requires a pit or earthen trench that functions as a firebox. The air curtain incineration system consists of a power plant, mechanical drive system, blower fan and fuel tank. In order to be considered an air curtain destructor, the pit or trench must be constructed to manufacturer's specifications.

(~~1~~3) "Airshed Group" means the Montana-Idaho Interstate Airshed Group.

(~~2~~4) "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~~5) "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~~6) "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~~7) "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~~8) "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;

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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~~9) "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~~10) "Minor Outdoor Burning Source" means any person conducting outdoor burning that is not a major outdoor burning source.

(~~9~~11) "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~~12) "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~~13) "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~~14) "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~~15) "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~~they have 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~~a) fire fighter~~s~~ training;

(~~c~~b) emergency outdoor burning;

(~~d~~c) for the purpose of thawing frozen ground to allow excavation of utilities.

(~~e~~d) 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) Prescribed wildland burning may only be conducted March through November, except as allowed under Rules 7.106(2) and 7.107(6).

(~~4~~5) 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).~~

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(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 burn authorization from the department prior to burning.~~receive specific permission for the burning from the department;~~.

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**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.

(6) If a major 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 burn authorization from the department prior to burning.

**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.

(d) Natural vegetation generated off-site, if the department determines that:

(i) the outdoor burning will occur in an air curtain burner or an air curtain destructor;

(ii) the use of the air curtain burner or air curtain destructor is temporary; and

(iii) the material being disposed of is not trade waste.

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(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) with the exception of burns permitted under 7.110(1)(d), 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~~.~~; and

(c) Natural vegetation disposed in an air curtain burner or air curtain destructor – up to 1 year.

(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.

**Rule 7.116 – Prohibition of recreational fires during Air Alerts and Warnings**

(1) Within the Air Stagnation Zone, recreational fires are prohibited during a Stage I Alert declared by the department pursuant to Rule 4.104.

(2) Within Impact Zone M, including the Air Stagnation Zone, recreational fires are prohibited during a Stage II Warning, a Stage III Emergency, and a Stage IV Crisis declared by the department pursuant to Rule 4.104.

(3) When declaring an air pollution Alert or other air pollution control stage, the department shall 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 this section.

(4) Every person shall ensure recreational fires are not prohibited by this rule prior to having a recreational fire.

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# 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 39$^{th}$ 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~~ 5 (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~~ 5 (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.

**Rule 8.208 – Paving Alternative but Equivalent Areas**

(1) With approval by the department, when there will be a public health benefit, a person may pave an alternative area to the paving required by Rule 8.202 and Rule 8.203 of this Subchapter. The alternative area paved must be of equal or greater square footage and equal or greater vehicle usage when compared to the paving required by Rule 8.202 and Rule 8.203.

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

**Rule 8.301 - Deicer Required**

(1) When the ambient temperature is above 10ºF. 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 32ºF 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~~ or 40 CFR Part 60 Subpart QQQQ.

(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) "Seeley Lake Wood Stove Zone" means the area defined by the Seeley Lake Wood Stove Zone map in Appendix A.

(~~10~~11) "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, disposal, or heating purposes, that burns less than 1,000,000 BTU's per hour.

(~~11~~12) "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~~13) "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) Chapter 9 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 Requirements 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~~ensure 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 Inside the Seeley Lake Wood Stove Zone**

(1) Inside the Seeley Lake Wood Stove Zone, the department may only issue solid fuel burning device installation permits for:

(a) Pellet stoves with emissions that do not exceed 2.0 gram per hour when labeled and tested in conformance with the EPA method (Subpart AAA). Pellet stoves must be 70% energy efficient or greater using the EPA method (Subpart AAA).

(b) Solid fuel burning devices with emissions that do not exceed 2.0 grams per hour when tested with crib wood or solid fuel burning devices with emissions that do not exceed 2.5 grams per hour when tested with cord wood. The solid fuel burning devices must be labeled and tested in accordance with the EPA method (Subpart AAA). Solid fuel burning devices must be 70% energy efficient or greater using the EPA method (Subpart AAA).

(c) A Wood-Fired Hydronic Heater or Wood Fired Forced Air Furnace that:

(i) is labeled and has been tested in accordance with the EPA Method (Subpart QQQQ); and

(ii) has particulate matter emissions less than or equal 0.15 pounds per million Btu heat output for each individual burn rate.

(2) An installation permit expires 180 days after issuance unless a final inspection is conducted or unless the department receives adequate documentation to ensure the type of device, and installation are in compliance with the provisions of this Program.

(3) Solid fuel burning devices approved for installation must be installed, maintained and operated in the same condition under which they were tested.

**Rule 9.~~204~~ 205 - Installation Permit Requirements outside the Air Stagnation Zone and outside the Seeley Lake Wood Stove Zone**

(1) Outside the Missoula Air Stagnation Zone and outside the Seeley Lake Wood Stove Zone, only the following solid fuel burning devices may be installed in Missoula County~~:~~.

(a) A solid fuel burning device ~~equipped with a catalytic combustor~~ with emissions less than or equal to ~~4.1~~4.5 grams per hour weighted average when labeled and tested in accordance with the EPA method (Subpart AAA).

~~(b) A solid fuel burning device not equipped with a catalytic combustor with emissions less than or equal to 7.5 grams per hour weighted average when tested in accordance with the EPA method.~~

~~(c) A pellet stove tested at an independent lab which has:~~

~~(i) an air to fuel ratio of 35:1 or greater using EPA Method 28A; and~~

~~(ii) test results using EPA Method 5H, or Method 5G corrected to 5H, that have been conducted under minimum burn conditions, (category 1 of EPA Method 28) with particulate emissions that do not exceed 4.1 grams per hour.~~

(~~d~~b) ~~An Outdoor~~A Wood -Fired Hydronic Heater or ~~Outdoor Pellet-Fired Hydronic Heater~~Wood Fired Forced Air Furnace that:

(i) ~~has had EPA Test Method 28 OWHH emission test conducted on the model line~~ is labeled and tested in accordance with the EPA Method (Subpart QQQQ); and

(ii) has ~~been certified to meet the EPA Hydronic Heater Phase 2 Program emission limit~~

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~~of~~particulate matter emissions less than or equal 0.32 pounds per million Btu heat output.~~; and~~

~~(iii) within each of the test burn rate categories, no individual test run exceeds 18 grams per hour; and~~

~~(iv) the average emissions are less than or equal to 7.5 grams per hour.~~

(~~e~~c) A solid fuel burning device with a heat input capacity between 250,000 and 1,000,000 BTU/hr that has been tested and shown to have emissions less than or equal to 0.9 grams per hour per 10,000 BTU heat input. Prior to approval for installation, testing methods used to determine compliance with this emission rate and sufficient documentation to show the device meets the emission requirements must be submitted to the department. Approval of the testing method is at the sole discretion of the department.

(~~f~~d) A solid fuel burning device not included in (a), (b), ~~(c),~~ or (~~d~~c) above which has been tested by an independent lab using an alternative testing method approved by the department that shows it has a particulate emission rate of less than or equal to ~~7.5~~4.5 grams per hour. Prior to approval for installation, testing methods used to determine compliance with this emission rate and sufficient documentation to show the device meets the emission requirements must be submitted to the department. Approval of the alternative testing method is at the sole discretion of the department.

(~~g~~e) Solid fuel burning devices installed in a licensed mobile food service establishment if the following conditions are met.

(i) The mobile food service establishment must have a current Montana food purveyor's license. Permit will be considered automatically revoked if the Montana food purveyor's license lapses.

(ii) Mobile food trailer or vehicle must only be used for food preparation purposes.

(iii) The mobile food vendor may not operate the solid fuel burning device in Missoula County from November 1 through the end of February each winter.

(iv) The mobile food vendor shall not operate more than 7 consecutive days at any one location in Missoula County.

(v) The permitted solid fuel burning device must not create a nuisance. The department may revoke the installation permit and require the removal of the solid fuel burning device for a licensed mobile food service establishment if the department determines that the solid fuel burning device is creates a nuisance.

(2) An installation permit expires 180 days after issuance unless a final inspection is conducted or the department receives adequate documentation to insure the type of device and installation comply with the provisions of this program.

(3) New solid fuel burning devices may not be installed or used with a flue damper unless the device was so equipped when tested in accordance with Rule 9.401.

(4) Solid fuel burning devices approved for installation must be installed, maintained and operated in the same ~~fashion~~ condition under which they were tested.

**Rule 9.~~205~~ 206 - 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~~ 207 - 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 Impact 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 Impact 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~~ 208 - 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~~ 209 - 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~~ 210 - 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~~ 211 - 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~~ 212 - 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, 9.205 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, 9.205 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~~(Insert date of approval by State Board of Environmental Review~~, in the Air Stagnation Zone~~, before a property is sold, transferred or conveyed in the Air Stagnation Zone all solid fuel burning devices contained on the property that is sold, transferred or conveyed ~~to be sold~~ must be removed from the property or rendered permanently inoperable unless they meet the ~~emissions requirements~~ specifications listed in Section (2) of this rule.

(2) The following solid fuel burning devices may remain on a property that is sold, transferred or conveyed 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~~ Treasurer's 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~~4) 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~~5) The Certificate of Compliance must be in a format specified by the department. All legal solid fuel burning devices remaining on the property must be listed on the form and the form must be signed by the seller(s) or the current owner(s), the buyer(s) or the new owner(s), and when applicable 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~~6) 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~~ effect 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.

# CHAPTER 10
# FUELS

## Subchapter 1 - Oxygenated Fuels Program

**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 ~~4~~21, 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~~ ensure 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 – When Authorized by the Federal Government - Cessation of Oxygenated Fuels Program**

(1) Within one year of the EPA authorizing Missoula County to cease the Oxygenated Fuels Program, the department shall suspend Rules 10.103 through 10.109.

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**Rule 10.~~110~~ 111 - 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.

(2) If the Oxygenated Fuels Program has been suspended per Rule 10.110 and 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 Oxygenated Fuels Program, Rules 10.103 through 10.109 will be reinstated and the control period must be extended to include the month of the violation and any intervening months.

## Subchapter 2 - Sulfur Limits

**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".

## Subchapter 3 - Petroleum Products Storage

**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 doubledeck 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.

# CHAPTER 11
# MOTOR VEHICLES

**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 12
# ODORS

**Rule 12.101 - Public Nuisance**

(1) A person may not cause or allow any emissions of gases, vapors, or odors beyond his or her property line in such a manner as to create a public nuisance.

**Rule 12.102 - Odor Control Equipment**

(1) A person operating any business or using any machine, device, equipment, process or other contrivance that discharges odorous air pollutants into the outdoor air shall provide, properly install, use, and maintain in good working order such control devices as may be specified by the department.

**Rule 12.103 - Other Odor Control Measures**

(1) Odor producing materials must be stored and handled so they do not create a public nuisance. A person may not cause or allow the accumulation of quantities of such materials as to permit spillage or other escape.

(2) Odor bearing gases, vapors, fumes or dusts arising from materials in process must be so confined at the point of origin as to prevent liberation of odorous matter. Confined gases, vapors, fumes or dusts must be treated before discharge to the atmosphere as required in Rule 12.102.

**Rule 12.104 - Enclosure Of Buildings**

(1) Whenever air pollutants escape and cause a public nuisance, the department may order that a building or buildings in which processing, handling and storage are done be tightly closed and ventilated so that all air and air pollutants leaving the building are effectively treated before discharge into the open air.

**Rule 12.105 - Odor Control Equipment Required in Reduction Processes**

(1) A person may not operate or use any device, machine, equipment or other contrivance for the reduction of animal matter unless all gases, vapors and gas-entrained effluent from such facility are incinerated at 1200ºF or higher for at least 0.3 seconds, or processed in such manner as determined by the department to be equally or more effective for the purpose of air pollution control.

(2) A person incinerating or processing gases, vapors, or gas-entrained effluent pursuant to this regulation shall provide, properly install, use, and maintain in good working order, devices as specified by the department for indicating temperature, pressure or other operating conditions.

# CHAPTER 13
# VARIANCES

**Rule 13.101 - Purpose**

A variance is permission given by the Control Board after a hearing allowing short-term deviation from strict compliance with these regulations.

**Rule 13.102 - General Requirements**

(1) A person who owns or is in control of a property subject to this Program may apply to the Control Board for a variance from rules governing the quality, nature, duration or extent of emissions of air pollutants.

(2) The Control Board may grant or renew a variance if it finds:
(a) The emissions occurring or proposed to occur do not constitute a danger to public health or safety; and

(b) Compliance with the provisions of this Program from which variance or variance renewal is sought would produce hardship without equal or greater benefit to the public.

(3) The Control Board may place conditions on a variance or variance renewal to reduce emissions, minimize the impacts of air pollutants or protect the public health or safety, and the person subject to the variance shall adhere to those conditions. Failure to adhere to the conditions is a violation of this Program and is cause for revocation of the variance or renewal and other appropriate legal action.

(4) The Control Board shall hold a public hearing before deciding on a variance or variance renewal request.

(5) Variances and variance renewals are non-transferable and remain valid only for the applicant to whom they are granted.

(6) No variance or variance renewal granted by the Control Board prevents or limits the application of the emergency provisions and proceedings of Chapter 4 of this Program to any person or his property.

**Rule 13.103 - Limitations to Granting Variances**

(1) The Control Board may grant a variance only after a public hearing and after it has considered the relative interest of the applicant, owners of property likely to be affected by the emissions and the general public.

(2) The Control Board may not grant a variance or variance renewal for a period of more than six months, except that a variance or variance renewal from the provisions of Chapter 9 (Solid Fuel Burning Devices) may be granted for up to one year.

(3) The Control Board may renew a variance only once.

**Rule 13.104 - Application**

(1) An application for a variance may be in the form of a letter and must contain the following information:
(a) Applicant's name and address;

(b) Specific provision(s) of this Program from which a variance is requested;

(c) Legal description or address of property where variance would apply;

(d) Detailed and accurate description of the circumstances under consideration;

(e) Explanation addressing each ~~criteria~~ criterion under Rule 13.102(2);

(f) Any other relevant information that the department or Control Board may require.

(2) Upon receipt of a completed application and fee, the Control Board shall schedule a public hearing and shall give the applicant at least thirty days notice prior to the hearing.

**Rule 13.105 - Public Notice**

(1) Notice of a variance hearing must be published:
(a) at least once in a newspaper of general circulation in the geographical area where the plant, equipment, or affected property is located;

(b) at least thirty (30) days before the hearing.

(2) Notice of hearing must be given to all known interested persons and to any person or group upon request.

(3) The contents of the public notice must include at least the following:
(a) The name and address of the applicant;

(b) Time, location and nature of the hearing;

(c) Brief description of applicant's activities, matter asserted, or operations for which a variance is requested;

(d) the location of the facility or activity subject to the variance request;

(e) A brief description of the purpose of the hearing, including a reference to the particular statute and rules involved;

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

(g) The legal authority and jurisdiction under which the hearing is to be held.

**Rule 13.106 - Final Decision**

(1) The Control Board shall make a final decision within thirty (30) days following the public hearing, unless it notifies the applicant that more time (up to an additional 60 days) is needed. The final order must be in writing and signed by the chair of the Control Board and must include findings of fact and conclusions of law and a decision. Notice of the final order is to be given parties and their attorneys within twenty (20) days following issuance of the final order.

(2) The granting of a variance or a variance renewal is made solely at the discretion of the Control Board. A person adversely affected by a variance or variance renewal granted by the Control Board may obtain judicial review thereof as provided in Chapter 14 of this Program.

**Rule 13.107 - Renewal**

(1) A person who has been granted a variance by the Control Board may request a renewal.

(2) Requests for renewals may be in the form of a letter, and must include the information required in Rule 13.104.

(3) Upon receipt of a completed application and payment of the fee required by 13.108, the Control Board shall schedule a public hearing and shall notify the applicant of the time and place of that hearing.

(4) Public notice of the renewal application and public hearing must be given at the applicant's expense at least 30 days prior to the hearing by publication at least once in a newspaper of general circulation published within the geographical area wherein the plant, equipment or property is located.

(5) The notice must include the following information:
(a) a statement that application is being made to the Control Board to renew a variance and for what purpose;

(b) the address of the property where the variance applies;

(c) the name and business address of the applicant; and

(d) the time, location and date of the public hearing.

(6) The applicant shall provide a copy of the notice, certified as to the manner of publication, to the department concurrent with the publication.

**Rule 13.108 - Fees**

(1) A person who applies to the Control Board for a variance shall submit with the application a sum of not less than $500 or 2% of the cost of the equipment to bring the facility into compliance with the rule for which a variance is sought, whichever is greater, but not to exceed $80,000.

(2) The person requesting the variance shall describe the facility or situation in sufficient detail, with accompanying estimates of cost and verifying materials, to permit the department to determine the fee with reasonable accuracy.

(3) The department may charge a minimum variance application fee of $50 for requests for a variance from Chapter 9 if the applicant demonstrates economic hardship.

(4) The department shall prepare a statement of actual costs incurred and shall return unused fees to the applicant.

(5) For a renewal of a variance the minimum fee applies or the fee may be waived by the department.

(6) The fee must be deposited in a special revenue account of the Health fund and used by the Control Board to compile the information required for rendering a decision on the request, to offset the costs of a public hearing, printing or mailing and to carry out its other responsibilities under this Program.

# 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. A request for a hearing must be received within fifteen (15) days of the administrative review's conclusion. The request for a hearing must state in writing specific grounds for disputing the administrative reviews decision.

(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 within 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.

## List of Appendices

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## List of Attachments

**Attachment A - Fees**

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