

1 BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
2 OF THE STATE OF MONTANA

3 *****

3 In the Matter of the application of)
4 Cascade County for approval of) FINDINGS OF FACT,
4 amendments to its local air) CONCLUSIONS OF LAW
5 pollution control program.) AND ORDER

5 *****

6 **BACKGROUND**

7 Cascade County ("the County") has filed an application with the Board of Environmental
8 Review ("Board") seeking approval of amendments to the County's local air pollution control
9 program ("the program"). After public notice, the Board conducted a public hearing on the
10 proposed amendments on September 15, 2000, in Billings, Montana. Based upon the record, the
11 Board enters the following Findings of Fact, Conclusions of Law and Order:

12 **FINDINGS OF FACT**

13 1. The County operates a local air pollution control program approved by the Board.
14 The program was first approved by the Board's predecessor, the Montana Board of Health and
15 Environmental Sciences, in 1970.

16 2. The program is known as the Cascade County Air Pollution Control Program.

17 3. The program encompasses all of Cascade County, including the City of Great
18 Falls and the Towns of Belt, Cascade and Neihart.

19 4. In addition to the other authority delegated to the County, the Board has, pursuant
20 to Sections 75-2-301(4) and 402, MCA, delegated to the County emergency powers over air
21 pollutant sources that require an environmental impact statement, that are subject to the Major
22 Facility Siting Act or that have the potential to emit 250 tons a year or more of any pollutant
23 subject to regulation under the Clean Air Act of Montana, including fugitive emissions.
24

1 5. The County seeks approval of amendments to the program. A copy of the
2 program, as proposed to be amended, is attached to this order as Exhibit A.

3 6. The proposed amendments include minor editorial revisions, revisions to conform
4 the program regulations to comparable state statutes and rules and deletion of the County's major
5 open burning source permitting program.

6 7. The substantive proposed amendments include the following:

7 a. Adding a definition of "ambient air" to Section 1-4;

8 b. Revising the definitions of "control equipment," "emission," "owner or operator,"
9 "person," "public nuisance" and "source" in Section 1-4;

10 c. Revising Section 1-7, "Inspections";

11 d. Revising the definition of "open burning," in Section 7-1;

12 e. Revising Section 7-3, "Minor Open Burning Source Requirements";

13 f. Deleting Section 7-4, "Major Open Burning Source Restrictions";

14 g. Revising Section 7-5, "Special Burning Periods";

15 h. Revising Section 7-6, "Firefighter Training";

16 i. Revising Section 7-7, "Conditional Air Quality Opening Burning Permits";

17 j. Revising Section 7-8, "Emergency Open Burning Permits";

18 k. Revising Section 7-9, "Commercial Film Production Open Burning Permits";

19 l. Revising Section 7-10, "Fees"; and

20 m. Revising Section 8-1, "Criminal Penalties."

21 8. On January 19, 2000, and January 23, 2000, the Great Falls Tribune published
22 notice of a local public hearing to be held on February 15, 2000, to consider approval of the
23 proposed program revisions and to accept comments on incorporation of the amended program
24 into the State Implementation Plan (SIP).

1 9. On February 3, 2000, the Monarch Community Association ("the Association")
2 submitted written comments to the Cascade County Board of Commissioners. The Association
3 commented that the U.S. Forest Service intends to conduct prescribed burning bordering three
4 sides of Monarch and intends to cut or burn forest along or near private property in the
5 Hughesville area without the consent of the owners. The Association commented that it is
6 concerned about the health effects of the burning on area citizens, reduction of attractiveness and
7 desirability of property in the area and the negative impact on business. The Association
8 commented that its specific concerns are that the Environmental Assessment for the Forest
9 Service's Dry Fork Project does not include mitigation for the impact on the Monarch
10 Community, such as provisions for additional fire fighting equipment, provisions to care for
11 smoke-sensitive people, and provisions for monitoring of air quality. The Association requested
12 that the County temporarily retain jurisdiction over its air quality program until the Forest
13 Service modifies its plans.

14 10. The Cascade County Air Pollution Control Board (APCB) responded to the
15 Association's comments. The APCB stated that the Association's general concerns relating to
16 Forest Service land management activities were outside the scope of the rule revision
17 proceeding. In response to the Association's specific concerns, the APCB stated that, under the
18 proposed rule revisions, the Forest Service would be required to obtain a major source open
19 burning permit from the Department of Environmental Quality and would be required to comply
20 with the State's open burning requirements, including best available control technology (BACT).
21 The APCB stated that the County program staff believe that Forest Service burning in
22 compliance with State requirements will protect public health. The APCB also responded that
23 the State administers a sophisticated major source open burning program, including major source
24 permitting, a contracted meteorologist, mandatory fuel parameter reporting and daily open

1 burning restriction notification, and that the County does not have the resources to administer a
2 comparable major source open burning program.

3 11. The City-County Health Department of Cascade County conducted a public
4 hearing on February 15, 2000, in Great Falls, Montana.

5 12. On April 11, 2000, the Cascade County Commissioners approved the proposed
6 program amendments, based upon the February 15, 2000, public hearing.

7 13. Great Falls is the only city in Cascade County; and the only towns in the County
8 are Belt, Cascade and Neihart.

9 14. On June 6, 2000, the Great Falls City Commission approved the proposed
10 program amendments, based upon the February 15, 2000, public hearing.

11 15. On May 3, 2000, June 2, 2000, and June 6, 2000, respectively, the Town Councils
12 of Belt, Cascade and Neihart approved the proposed program amendments, based upon the
13 February 15, 2000, public hearing.

14 16. On August 13, 2000, the Helena Independent Record and Great Falls Tribune
15 published notice that the Board would consider the County's application for approval of the
16 program amendments at a public hearing on September 15, 2000, at Room 608 of the
17 Yellowstone County Courthouse in Billings, Montana, beginning at 9:00 a.m., or as soon
18 thereafter as the matter could be heard.

19 17. On September 15, 2000, the Board held a public hearing at the Yellowstone
20 County Courthouse to accept comments regarding the proposed program amendments and
21 regarding submission of the proposed amended program to EPA for approval into the SIP. Brian
22 K. Clifton, Cascade County Sanitarian, and Department staff testified.

1 18. The program provides for requirements compatible with, more stringent than or
2 more extensive than those imposed by the Clean Air Act of Montana and rules adopted under
3 that act.

4 19. The proposed amendments would not make the program more stringent than
5 comparable state air quality program requirements.

6 20. The program provides for enforcement of its requirements by appropriate
7 administrative and judicial processes.

8 21. The program provides for administrative organization, staff, financial resources,
9 and other resources necessary to effectively and efficiently carry out the program.

10 22. Implementation of the program, as proposed to be amended, is not intended in any
11 way to interfere with retention of jurisdiction by the Department over those emission sources and
12 activities not expressly subject to the program.

13 23. It is appropriate for the County to continue to be responsible for emergency
14 powers, as provided in Section 75-2-402, MCA, for all air pollutant sources subject to the Clean
15 Air Act of Montana.

16 CONCLUSIONS ON LAW

17 1. After a public hearing, a municipality or county may establish and administer a
18 local air pollution control program if the program is consistent with the Clean Air Act of
19 Montana, Title 75, chapter 2, MCA, and is approved by the Board.

20 § 75-2-301(1), MCA. The public hearings conducted by the Board and the County met the
21 public hearing requirement of Section 75-2-301(1), MCA.

22 2. For a county to establish a local air pollution control program that encompasses
23 all or part of a municipality, the county and each municipality must approve the program after a
24 public hearing. § 75-2-301(2), MCA. This requirement has been met by the County and each

1 city and town in the County approving the program revisions after the public hearing held by the
2 City-County Health Department of Cascade County.

3 3. Adequate notice to the public and the opportunity for public participation are
4 required for agency decisions that are of significant interest to the public. § 2-3-103, MCA.

5 4. Advertisement in a newspaper of general circulation within the area to be affected
6 by a decision of significant interest to the public, sufficiently prior to a final decision to permit
7 public comment on the matter, constitutes proper notice. § 2-3-104(4), MCA.

8 5. Proper notice and an opportunity to participate in this proceeding have been
9 provided to the Department, the County and the public.

10 6. The Board, by order, may approve a local air pollution control program that:

11 a. provides by ordinance or local law for requirements compatible with, more
12 stringent than, or more extensive than those imposed by Sections 75-2-203, 75-2-204, 75-2-211,
13 75-2-212, 75-2-215, 75-2-217 through 75-2-219 and 75-2-402. MCA, and rules adopted under
14 these sections;

15 b. provides for enforcement of requirements by appropriate administrative and
16 judicial processes; and

17 c. provides for administrative organization, staff, financial resources, and other
18 resources necessary to effectively and efficiently carry out the program.

19 § 75-2-301(3), MCA.

20 7. The County's program requirements are compatible with, more stringent than, or
21 more extensive than the requirements of the Clean Air Act of Montana and rules adopted under
22 that act.

23 8. The program provides for enforcement of requirements by appropriate
24 administrative and judicial processes.

1 9. The program provides for administrative organization, staff, financial resources,
2 and other resources necessary to effectively and efficiently carry out the program.

3 10. The program meets the requirements of Section 75-2-301(3), MCA, for Board
4 approval.

5 11. Under Sections 75-2-207 and 301(4), MCA, (House Bill 521 from the 1995
6 Montana Legislative Session) the Board may not approve a local air quality ordinance or law that
7 is more stringent than the comparable state law unless the Board makes written findings after a
8 public hearing and public comment that the proposed local ordinance or law protects public
9 health or the environment, can mitigate harm to the public health or environment and is
10 achievable under current technology. HB 521 is not applicable to the County's application for
11 Board approval because the County is not proposing any amendments that would make the
12 County program more stringent than the Clean Air Act of Montana or rules adopted under that
13 act.

14 12. The Department should assume or retain control over any source regulated by the
15 Clean Air Act of Montana for which the County has not provided for requirements that are
16 compatible with those imposed by the Clean Air Act of Montana and rules adopted under that
17 act.

18 13. Except for those emergency powers provided for in Section 75-2-402, MCA, the
19 Board may not delegate to a local air pollution control program the authority to control any air
20 pollution source that:

21 a. requires preparation of an environmental impact statement in accordance with
22 Title 75, chapter 1, part 2;

23 b. is subject to regulation under the Major Facility Siting Act, as provided in Title
24 75, chapter 20; or

1 c. has the potential to emit 250 tons per year or more of any pollutant subject to
2 regulation under the Clean Air Act of Montana, including fugitive emissions, unless the authority
3 to control the source was delegated prior to January 1, 1991.
4 § 75-2-301(4), MCA.

5 14. It is appropriate for the County to continue to be responsible for emergency
6 powers regarding all air pollutant sources in Cascade County regulated under the Clean Air Act
7 of Montana.

8 **ORDER**

9 1. The Board hereby approves the Cascade County Air Pollution Control Program,
10 as proposed to be amended in Exhibit A.

11 2. Except for emergency powers, the Department shall retain control over those air
12 pollutant sources described in Section 75-2-301(4), MCA, for which the Board may not delegate
13 authority to a local air pollution control program.

14 3. Cascade County shall be responsible for emergency powers, as provided in
15 Section 75-2-402, MCA, regarding all air pollutant sources in Cascade County that are regulated
16 under the Clean Air Act of Montana.

17 4. The Department shall assume or retain control over any other air pollutant sources
18 regulated under the Clean Air Act of Montana that are not covered by the Cascade County Air
19 Pollution Control Program.

20 DATED this 16th day of October, 2000.

21 BOARD OF ENVIRONMENTAL REVIEW

22
23 By: 

24 JOE GERBASE, Chairperson