

STATE OF MONTANA
AIR QUALITY CONTROL
IMPLEMENTATION PLAN

Subject: Lewis and Clark Co.
Air Pollution
Control Program

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the Matter of the Application
of the Department of Environmental
Quality for Revision of the
Montana State Air Quality Control
Implementation Plan Relating to
Control of Lead Emissions in the
East Helena Nonattainment Area,
Affecting the Following Industries:
Asarco, Inc.

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER

The Department of Environmental Quality ("Department") has filed with the Board of Environmental Review ("Board") a Petition seeking a Board Order approving and adopting revisions to Asarco, Incorporated's ("ASARCO's") control strategy for achieving and maintaining the lead National Ambient Air Quality Standards ("NAAQS") in the East Helena nonattainment area.

Pursuant to public notice, and on June 21, 1996, the Board of Environmental Review ("Board") conducted a hearing in Helena, Montana on the Petition filed by the Department. At the hearing, an opportunity for comment was provided to the Department, ASARCO, and interested members of the public. The Board deferred final action and kept its record open until the close of a hearing on June 24, 1996, to take public comment on the submittal of the revised ASARCO plan to EPA. Based on the comments, both oral and written, received at the June 21 and June 24 hearings, and based on the attached Stipulation, the Board enters the following Findings of Fact, Conclusions of Law and Order in regard to this matter:

FINDINGS OF FACT

1. On October 5, 1978, the United States Environmental Protection Agency ("EPA") promulgated NAAQS for lead. The NAAQS were set at a level of 1.5 micrograms of lead per cubic meter of air averaged over a calendar Quarter. These standards were promulgated by EPA pursuant to Section 109 of the Federal Clean Air Act, 42 U.S.C. 7401 et seq. ("Act").

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1 2. The Act requires each state to submit an implementation plan for the control
2 of each air pollutant for which NAAQS have been promulgated (42 U.S.C. § 7410). Since
3 NAAQS have been promulgated for lead, the State of Montana is required to submit a lead
4 implementation plan for East Helena to EPA.

5 3. On September 16, 1983, the Department and ASARCO stipulated to a plan for
6 the control of lead emissions from the East Helena facility. The plan was approved by the
7 Board of Health and Environmental Sciences, predecessor to the Board of Environmental
8 Review, on September 16, 1983. On September 29, 1983, the Governor of Montana submitted
9 the plan to EPA as part of the Montana State Implementation Plan for lead ("1983 lead SIP").

10 4. On July 17, 1995, the Department and ASARCO stipulated to a revised plan
11 for the control of lead emissions from the city of East Helena and the ASARCO East Helena
12 facility ("1995 Stipulation"). The plan, which superseded the 1983 lead SIP, was approved
13 by the Board of Environmental Review on August 4, 1995. On August 16, 1995, the Governor
14 of Montana submitted the plan to EPA as a revision to the Montana State Implementation Plan
15 for lead ("1995 lead SIP").

16 5. On March 13, 1996, the Department and ASARCO stipulated to certain
17 modifications to the 1995 lead SIP. The purpose of the modifications to the 1995 lead SIP
18 was to allow ASARCO additional operational flexibility, while still assuring attainment and
19 maintenance of the NAAQS for lead. The 1996 modifications to the 1995 lead SIP were
20 approved by the Board on April 12, 1996.

21 6. The Department and ASARCO have agreed to certain additional revisions to
22 the 1995 lead SIP. The purpose of the additional revisions is to allow ASARCO additional
23 operational flexibility and to ensure the feasibility of the control strategy, while still assuring
24 attainment and maintenance of the NAAQS for lead.

25 7. The additional revisions will not increase lead emissions above that already
26 expected in the modeling performed for the 1995 lead SIP, as amended. Therefore, no
27 additional modeling is necessary to show compliance with the lead NAAQS.

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1 8. The revised emission control strategy for ASARCO is described in the
2 Stipulation, Exhibit A, and Attachments entered into between ASARCO and the Department,
3 which are attached to this Order and incorporated herein. The requirements of this Stipulation,
4 Exhibit A, and Attachments are intended to supersede the existing East Helena lead control
5 plan for ASARCO contained in the September 16, 1983, July 17, 1995, and March 13, 1996
6 Stipulations between the Department and ASARCO, and to supersede any less stringent
7 corresponding conditions in any existing permit currently issued to ASARCO.

8 9. It is the intent of the parties that the stipulated emission control strategy for
9 ASARCO, after adoption and incorporation by Board Order, be submitted to the EPA for
10 review and approval as part of the revised control strategy for achieving and maintaining the
11 lead NAAQS in the East Helena nonattainment area.

12 10. The Department has issued public notice of the proposed additional revisions
13 to the 1995 lead SIP. Notice of the proposal was published, at least 30 days prior to the date
14 of the hearing in this matter, by prominent advertisement in the affected area. A copy of the
15 Stipulation containing the proposed revisions, together with the proposed Board Order
16 adopting the Stipulation, was made available for public inspection.

17
18 **CONCLUSIONS OF LAW**

19 Based on the foregoing Findings of Fact, the Board hereby enters the following
20 Conclusions of Law:

21 1. The public has been provided with appropriate notice and an opportunity to
22 participate in this matter pursuant to Title 2, chapters 3 and 4, MCA.

23 2. The federal requirements for notice and hearing prior to adoption of revisions
24 of State Implementation Plans have been met. 40 CFR Section 51.102.

25 3. The Department is required to prepare and develop a comprehensive plan for
26 the prevention, abatement, and control of air pollution in this state. Section 75-2-112(2)(e),
27 MCA.

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1 4. The Board has authority to issue orders necessary to provide for a coordinated
2 statewide program of air pollution prevention, abatement and control or to effectuate the
3 purposes of Title 75, Chapter 2, MCA. Section 75-2-111(O), MCA.

4 5. A Board Order adopting the attached Stipulation is consistent with attainment
5 and maintenance of the lead MAAQS in the East Helena area.

6 6. All Findings of Fact are hereby incorporated in these Conclusions of Law.

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ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY
ORDERED THAT:

1. The ASARCO Stipulation, Exhibit A, and Attachments thereto are adopted by
the Board and are incorporated herein as part of this Order. The requirements of this Order
shall supersede the existing East Helena lead control plan for ASARCO contained in the
September 16, 1983, August 4, 1995, and April 12, 1996, Board Orders, and shall supersede
any less stringent corresponding conditions in any existing permit currently issued to
ASARCO.

2. This Order shall be enforceable by the Department.

3. Modifications of this Order shall only be by initiation of the Board or by
petition to the Board and the issuance of a subsequent order revising this Order.

DATED this 21st day of June, 1996

By: Cindy E. Youlton
Cindy E. Youlton, Chairperson
Board of Environmental Review

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Dated: