

1 Order as Attachment B and by this reference are incorporated herein. Attachment B is a
2 partial copy of the regulations comprising the County Program. The Amendments that are
3 the subject of this proceeding are indicated in Attachment B in ~~strikeout~~/underline format.

4 3. The Amendments consist of: (a) modifications to the County's open burning
5 rules. Some of these modifications simply make the County rules consistent with state
6 rules (subchapter 13). Other modifications are more stringent than the state rules, in that
7 they require permits year-round for minor open burners; (b) modifications to the New
8 Source Performance Standards (NSPS) and National Emission Standards for Hazardous
9 Air Pollutants (NESHAP) to update to all federal regulations promulgated through July 1,
10 1996; (c) an increase in penalties from \$1,000 to \$10,000 per day of violation; and (d)
11 various minor changes for clarification purposes.

12 4. The following Findings address the requirements of Section 75-2-301(3),
13 MCA, for Board approval of a local air pollution control program:

14 a. The Board finds that the Amendments are compatible with, and not less
15 stringent or less extensive than, those imposed under the following Montana Clean Air Act
16 Sections and rules adopted pursuant to them:

- | | | |
|----|------------------------|---|
| 17 | Section 75-2-203 | (Board to set emission levels) |
| 18 | Section 75-2-204 | (Rules relating to construction, alteration, operation,
or use) |
| 19 | Section 75-2-211 | (Permits for construction, installation, alteration, or
use) |
| 20 | Section 75-2-212 | (Variances - renewals - filing fees) |
| 21 | Section 75-2-215 | (Solid or hazardous waste incineration - additional
permit requirements) |
| 22 | Section 75-2-217 - 219 | (Operating permit program); and |
| | Section 75-2-402 | (Emergency procedures) |

23 b. The Board finds that the year-round permit requirements for minor open
24 burners are more stringent than comparable state law. Accordingly, special findings have
25 been issued and are attached to this Order as Attachment C. Sections 75-2-301(3)(b), and
26 75-2-207, MCA.

27 c. In its Order of September 16, 1994, the BHES found that the County

1 Program:

2 i. provided for administrative organization, staff, financial resources, and
3 other resources necessary to effectively and efficiently carry out the program (Finding of
4 Fact 8), and

5 ii. provided for enforcement of the requirements by appropriate administrative
6 and judicial processes (Finding of Fact 9). Because the enforcement and administrative
7 mechanisms of the County Program have not changed since the 1994 BHES Order, the
8 Board reaffirms, for the Amended County Program, BHES Findings of Fact 8 and 9.

9 5. In its Order of September 16, 1994, the BHES found that it was appropriate
10 to delegate to the County emergency powers, as provided in Section 75-2-402, MCA, in
11 regard to those sources and activities governed by the County Program (Finding of Fact
12 13). This Board finds that it is also appropriate to delegate such emergency powers for
13 sources and activities governed by the current Amendments to the County Program.

14 6. The Amendments were publicly heard and adopted by all applicable
15 municipalities and agencies in Missoula County on the following dates:

16 Air Pollution Control Board	Public Hearing: March 20, 1997 Adoption: March 20, 1997
17 Missoula City Council	Public Hearing: April 28, 1997 Adoption: April 28, 1997
18 Missoula County	Public Hearing: April 9, 1997 Adoption: April 9, 1997

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21 7. Public notice of the Board's hearing on the proposed Amendments was
22 published at least 30 days before the hearing in newspapers of general circulation in
23 Missoula, Great Falls, Helena, Billings, and Miles City. Repositories containing the
24 proposed Amendments were established in Missoula, Great Falls, Billings, and Miles City.

25
26 CONCLUSIONS OF LAW

27 1. The public has been provided with appropriate notice and an opportunity to

1 participate in this matter. Title 2, chapters 3 and 4, MCA. The public notice requirements
2 set forth in 40 CFR section 51.102 have been fulfilled.

3 2. The Amendments to the Missoula County air quality rules have been
4 approved by all municipalities within Missoula County as required by §75-2-301(2), MCA.

5 3. The Amendments to the County Program meet the requirements set forth by
6 statute for approval by the Board. Section 75-2-301(3), MCA.

7 4. The requirements of HB 521 have been met for Amendments that are more
8 stringent than comparable state law. Sections 75-2-301(3)(b), and 75-2-207, MCA.

9 5. The Board may not delegate to a local pollution control program the
10 authority to control any air pollutant source that:

11 (a) requires the preparation of an environmental impact statement in accordance
12 with Title 75, chapter 1, part 2;

13 (b) is subject to regulation under the Montana Major Facility Siting Act, as
14 provided in Title 75, chapter 20; or

15 (c) has the potential to emit 250 tons a year or more of any pollutant subject to
16 regulation under the Montana Clean Air Act, including fugitive emissions, unless the
17 authority to control the source was delegated to a local air pollution control program prior
18 to January 1, 1991. Section 75-2-301(4), MCA.

19 6. If the Board finds that the control of a particular air pollutant source because
20 of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction
21 or may be more efficiently and economically performed at the state level, it may direct the
22 Department to assume and retain control over that air pollutant source. Section 75-2-
23 301(9), MCA.

24 7. The Findings of Fact contained in this Order are hereby adopted as
25 Conclusions of Law.

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ATTACHEMENT A

1994 BHES ORDER

1 4. In the application that is the subject of this
2 proceeding, MCCAPCB is seeking approval of amendments to
3 Missoula's air pollution control program. A copy of those
4 amendments (underlined or strike-out in text) is attached to
5 this Order as Exhibit A and by this reference is incorporated
6 herein.

7 5. Exhibit A contains amendments to Chapter 16 and to
8 Rules 401, 1401, 1423, 1424 and 1428 of Missoula's air pollu-
9 tion control program. These amendments are summarized as
10 follows:

11 a. Chapter 16 is amended to more clearly indicate
12 that changes to the local air pollution rules will be
13 approved by the city council and county commissioners,
and will become effective upon approval by the State
Board.

14 b. Rule 401 is amended to lower the level at
15 which PM-10 air pollution alerts are called from 100
micrograms/cubic meter to 80 micrograms/cubic meter.

16 c. Rule 1401 is amended to require paving of new
17 public and private roads, driveways, and parking lots in
the Air Stagnation Zone. The Rule 1401 amendments also
18 incorporate existing city street sweeping ordinances
into the air pollution control program.

19 d. Rules 1423 and 1424 are amended to incorporate
20 by reference citation changes in the federal rules.

21 e. Rule 1428 is amended to require all new in-
22 stallations of solid fuel burning devices in new con-
struction and existing residences to meet an emission
23 rate of 1.0 gram per hour or less. Uncertified wood
stoves must be replaced or removed upon the sale of a
24 home or other title transfer. Fines are increased, and
time necessary for staff to record a wood stove opacity
violation is reduced from 20 minutes to 10.

25 6. MCCAPCB received public comment on the amendments
26 that are the subject of this application on December 14,
27 1993, January 27, 1994, and February 17, 1994. MCCAPCB con-

1 ducted three public hearings on the amendments that are the
2 subject of this application on March 29, 1994, May 10, 1994,
3 and July 7, 1994. The amendments were adopted by the City
4 Council/County Commissioners on July 25, 1994.

5 7. In previous Orders concerning the Missoula air
6 pollution control program, the Board has found that the loca-
7 tion, character, and extent of particular concentrations of
8 population and air contaminant sources, and the geographic,
9 topographic and meteorological considerations involved, and
10 combinations of the foregoing, were such as to make impracti-
11 cable the maintenance of appropriate levels of air quality
12 without a local air pollution control program such as that
13 administered by the MCCAPCB. The Board reaffirms the appro-
14 priateness of these findings, as they relate to the Missoula
15 air pollution control program, as amended.

16 8. In previous Orders concerning the Missoula air
17 pollution control program, the Board has found that the pro-
18 gram provided for administrative organization, staff, finan-
19 cial and other resources necessary to effectively and effi-
20 ciently carry out the program. The Board reaffirms the ap-
21 propriateness of these findings as they relate to the Missou-
22 la air pollution control program, as amended.

23 9. In previous Orders concerning the Missoula air
24 pollution control program, the Board has found that the
25 program included the necessary provisions for enforcement by
26 administrative and judicial processes. The Board reaffirms
27 the appropriateness of these findings as they relate to the

1 Missoula air pollution control program, as amended.

2 10. Exhibit A to this Order contains the Missoula regu-
3 lations that constitute the proposed amendments to the Misso-
4 ula air pollution control program that are the subject of
5 this proceeding. The Board finds that these regulations are
6 compatible with, more stringent; or more extensive than the
7 corresponding requirements under the Montana Clean Air Act,
8 Title 75, Chapter 2, MCA, and regulations adopted thereunder.

9 11. Implementation of the Missoula air pollution con-
10 trol program, as amended, is not intended to interfere with
11 the retention of jurisdiction by the Department over certain
12 sources located within the County of Missoula, as required by
13 the Board's Order of June 28, 1991.

14 12. The Department should assume and retain control
15 over any source regulated by the Montana Clean Air Act, Title
16 75, Chapter 2, MCA, for which MCCAPCB has not provided by
17 ordinance or local law for requirements which are compatible
18 with, more stringent, or more extensive than those imposed by
19 the Montana Clean Air Act or regulations adopted thereunder.

20 13. The Board finds that, as part of the requisite
21 degree of authority necessary to administer the Missoula air
22 pollution control program, as amended, it is appropriate for
23 MCCAPCB to be responsible for emergency powers as provided in
24 Section 75-2-402, MCA, in regard to those sources and activi-
25 ties governed by the local air pollution control program, as
26 amended. The Department shall retain such emergency powers
27 over all other sources.

CONCLUSIONS OF LAW

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2 1. Proper notice and an opportunity to participate in
3 this proceeding has been provided to the public, the Depart-
4 ment, and MCCAPCB. Title 2, Chapters 3 and 4, MCA.

5 2. The Missoula air pollution control program, includ-
6 ing the amendments that are the subject of this application,
7 meets the requirements set forth by statute for approval by
8 the Board. Section 75-2-301, MCA.

9 3. The Department should assume and retain control
10 over any source regulated by the Montana Clean Air Act, Title
11 75, Chapter 2, MCA, for which MCCAPCB has not provided by
12 ordinance or local law for requirements which are compatible
13 with, more stringent than, or more extensive than those im-
14 posed by the Montana Clean Air Act or regulations adopted
15 thereunder.

16 4. Pursuant to Section 75-2-301(4), MCA, and except
17 for the emergency powers provided for in Section 75-2-402,
18 MCA, the Board may not delegate to MCCAPCB the authority to
19 control the following sources of air contaminants: those that
20 require the preparation of an environmental impact statement
21 pursuant to Title 75, Chapter 1, Part 2, MCA; those that are
22 subject to regulation under the Montana Major Facility Siting
23 Act, Title 75, Chapter 20, MCA; and those that have the po-
24 tential to emit 250 tons per year or more of any pollutant
25 subject to regulation under the Montana Clean Air Act, Title
26 75, Chapter 2, MCA, including fugitive emissions, unless the
27 authority to control the source was delegated to MCCAPCB

1 prior to January 1, 1991.

2 5. If the Board finds that the control of a particular
3 air pollutant source, because of its complexity or magnitude,
4 is beyond the reasonable capability of MCCAPCB or may be more
5 efficiently and economically performed at the state level,
6 the Board may direct the Department to assume and retain
7 control over that air pollutant source. Section 75-2-301(9),
8 MCA.

9 6. The Findings of Fact contained in this Order are
10 hereby adopted as Conclusions of Law.

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ORDER

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1. The Board approves the Missoula air pollution con-
trol program, as amended by the application in this proceed-
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2. The Board directs the Department of Health and
Environmental Sciences to assume and retain control over
those sources of air contaminants listed in Section
75-2-301(4), MCA.

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3. Approval herein by the Board of the amendments to
the Missoula air pollution control program does not interfere
with the retention of jurisdiction by the Department over
certain sources located within the County of Missoula, as
required by the Board's previous Order of June 28, 1991.

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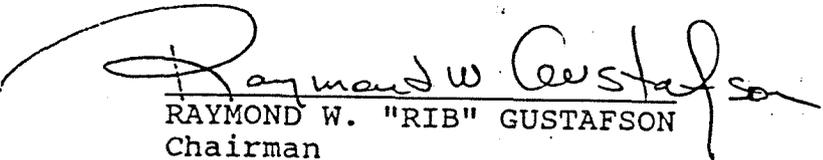
4. The Board directs the Department of Health and
Environmental Sciences to assume and retain control over any
source regulated by the Montana Clean Air Act, Title 75,

1 Chapter 2, MCA, for which MCCAPCB has not provided by ordi-
2 nance or local law for requirements which are compatible
3 with, more stringent than, or more extensive than those im-
4 posed by the Montana Clean Air Act or regulations adopted
5 thereunder.

6 5. The Board orders that MCCAPCB shall be responsible
7 for emergency powers as provided in Section 75-2-402, MCA, in
8 regard to those sources and activities governed by the local
9 air pollution control program, as amended. The Department
10 shall retain such emergency powers over all other sources.

11
12 DATED this 16 day of September, 1994.

13 BOARD OF HEALTH AND
14 ENVIRONMENTAL SCIENCES

15 
16 RAYMOND W. "RIB" GUSTAFSON
17 Chairman
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ATTACHEMENT B
MISSOULA COUNTY AMENDMENTS

(See R.O.S. Section #3)

Change all references of the Montana Department of Health and Environmental Sciences, and Board of Health and Environmental Sciences to Montana Department of Environmental Quality and Montana Board of Environmental Review.

In 1996 the Administrative Rules of Montana (ARM's) were recodified, change all ARM references to their respective new numbers.

Change all references to the "Chairman" of the Air Pollution Control Board to Chair

Rule 701 - GENERAL DEFINITIONS

[No changes in (1) through (34)]

~~(35) Salvage Operation: Any operation conducted in whole or in part for the salvaging or reclaiming of any product or material.~~

(35) ~~(36)~~ Source: Any property, real or personal, or person contributing to air pollution.

(36) ~~(37)~~ Stack or Chimney: Any flue, conduit or duct arranged to conduct emissions.

(37) ~~(38)~~ Standard Conditions: A temperature of 70° Fahrenheit and pressure reduced to 29.92 inches of mercury at sea level.

~~(39) Trade Waste: Solid, liquid, or gaseous material resulting from construction or the operation of any business, trade, industry, or demolition operation including but not limited to wood, wood products, plastic, cartons, grease, oil, chemicals and cinders.~~

~~(40) Wood waste Burners: Devices commonly called tepee burners, silos, truncated cones, wigwam burners, and other such burners commonly used by the wood product industry for the disposal or burning of wood wastes.~~

Subchapter 13 - Open Burning

Rule 1301 - DEFINITIONS

For the purpose of the Open Burning subchapter the following definitions apply:

- (1) "Best Available Control Technology (BACT)" means those techniques and methods of controlling emission of pollutants from an existing or proposed open burning source which limit those emissions to the maximum degree which the department determines, on a case-by-case basis, is achievable for that source, taking into account impacts on energy use, the environment, and the economy, and any other costs, including cost to the source. Such techniques and methods may include the following: scheduling of burning during periods and seasons of good ventilation, applying dispersion forecasts, utilizing predictive modeling performed by the department or other public agency to minimize smoke impacts, limiting the amount of burning to be performed during

any one period of time, using burning techniques which minimize smoke production, selecting fuel preparation methods that will minimize dirt and moisture content, promoting fuel configurations which create an adequate air to fuel ratio, prioritizing burns as to air quality impact and assigning control techniques accordingly, and promoting alternative treatments and uses of materials to be burned. ~~In the case of essential~~ For essential agricultural open burning during September or October, or prescribed wildland open burning during September, October, or November, BACT includes burning only during the time periods specified by the department. ~~In the case of~~ For prescribed wildland open burning during December, January or February, BACT includes burning only during the time periods specified by the department, which may be determined by calling (406)728-2667.

- (2) "Bonfire" means a ceremonial fire, in which the materials burned are cordwood or clean untreated dimensional wood and, which is conducted by an educational, fraternal, or religious organization for the purpose of celebrating a particular organization related event.
- (3) "Essential Agricultural Open Burning" means any open burning conducted on a farm or ranch ~~for the purpose of to:~~
- (a) ~~Eliminating~~ eliminate excess vegetative matter from an irrigation ditch where no reasonable alternative method of disposal is available-;
 - (b) ~~Eliminating~~ eliminate excess vegetative matter from cultivated fields when no reasonable alternative method of disposal is available-;
 - (c) ~~Improving~~ improve range conditions when no reasonable alternative method is available-; or
 - (d) ~~Improving~~ improve wildlife habitat when no reasonable alternative method is available.
- (4) "High Impact Zone" means the geographical area designated as such by a map adopted by the Missoula City-County Air Pollution Control Board on August 25, 1983. (see Appendix A)
- ~~(9)~~(5) "Impact Zone M" means the area inside a boundary beginning at the intersection of the Carlton Creek Road and Highway 93 (1), going west to Lolo Peak (2), then north down the South Fork of Lolo Creek to Highway 12, then west on Highway 12 to a point where Davis Creek enters Lolo Creek, then north to Telephone Butte (3), then northwest to Petty Mountain (4), then north to Interstate 90 where Six Mile Creek enters the Clark Fork, then northeast to a high-point (5), then east northeast to Charity Peak (6), then across Highway 93 to Murphy Peak (7), then northeast along the Reservation Boundary to Triangle Peak (8), then southeast to Boulder Lake (9), then south to Bull Lake (10), then southeast to Shoofly Meadows (11), then southwest to Sheep Mountain (12), then west southwest to Blue Point (13), then south along Johnson Gulch to Highway 200, then southwest on Highway 200 to Bonner, to map point (14) at the head of Bear Run Creek, then down Bear Run Creek, across Miller Creek and up to the head of Davis Creek, then down Davis Creek, across the Bitterroot River to Highway 93, then south on Highway 93 to Carlton Creek (1), the point of beginning, all as shown on the attached map. (see Appendix A)
- ~~(5)~~(6) "Major Open Burning Source" means any person, agency, institution, business, or industry conducting any open burning ~~which that,~~ on a Missoula County basis, will emit more than 500 tons per calendar year of carbon monoxide or 50 tons per calendar year of any other pollutant regulated under this chapter, except hydrocarbons.

- (6)(7) "Minor Open Burning Source" means any person, agency, institution, business, or industry conducting any open burning ~~which that~~ is not a major open burning source.
- (7)(8) "Open Burning" means combustion of any material directly in the open air with or without a receptacle, or in a receptacle other than a furnace, multiple chambered incinerator, or wood waste burner, with the exception of small recreational fires, construction site heating devices used to warm workers, or safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants or elemental phosphorous plants. ~~Open burning does not include the use of a residential solid fuel burning device, the use of a barbecue using only enough fuel to cook food, the use of construction site heating devices using refined or gaseous fuels, or safety flares used to dispose of dangerous gases at refineries, gas sweetening plants, or oil or gas wells.~~
- (8)(9) "Prescribed Wildland Open Burning" means any planned open burning, either deliberately or naturally ignited, ~~which that~~ is conducted on forest land or relatively undeveloped rangeland ~~for the purpose of to:~~
- (a) ~~Improving improve~~ wildlife habitat-;
 - (b) ~~Improving improve~~ range conditions-;
 - (c) ~~Promoting promote~~ forest regeneration-;
 - (d) ~~Reducing reduce~~ fire hazards resulting from forestry practices, including reduction of log deck debris when the log deck is ~~located in close proximity to a timber harvest site-;~~
 - (e) ~~Controlling control~~ forest pests and diseases-; ~~or~~
 - (f) ~~Promoting promote~~ any other accepted silvicultural practices.
- (10) "Salvage Operation" means any operation conducted in whole or in part to salvage or reclaim any product or material, except the silvicultural practice commonly referred to as a salvage cut.
- (11) "Trade Waste" means solid, liquid, or gaseous material resulting from construction or operation of any business, trade, industry, or demolition project. Wood products industry wastes such as sawdust, bark, peelings, chips, shavings, and cull wood are considered trade wastes. Trade wastes do not include wastes generally disposed of by essential agricultural burning and prescribed wildland open burning, as defined in this rule.
- (12) "Wood-waste Burners" means devices commonly called tepee burners, silos, truncated cones, wigwam burners, and other such burners commonly used by the wood products industry to dispose of wood.

Rule 1302 - MATERIALS PROHIBITED

- (1) The Control Board hereby adopts and incorporates by reference 40 Code of Federal Regulations (CFR) Part 261, which identifies and defines hazardous wastes.
- (2) The following material may not be disposed of by open burning:
 - (a) ~~Any any~~ waste which is moved from the premises where it was generated, including ~~that waste~~ moved to a solid waste disposal site, except as provided for in CHAPTER IX, 1307 or 1308;

- (b) ~~Food~~ food wastes-;
- (c) ~~Styrofoam~~ styrofoam and other plastics-;
- (d) ~~Wastes~~ wastes generating noxious odors-;
- (e) ~~Wood~~ wood and wood by-products other than trade wastes, that have been coated, painted, stained, or contaminated by foreign material, such as papers, cardboard, or painted or stained wood, or tree limbs, unless a public or private garbage hauler, or rural container system, is unavailable, or unless open burning is allowed under CHAPTER IX, 1311-;
- (f) ~~Poultry~~ poultry litter-;
- (g) ~~Animal~~ animal droppings-;
- (h) ~~Dead~~ dead animals or dead animal parts-;
- (i) ~~Tires~~ tires, except as provided in CHAPTER IX, 1306;
- (j) ~~Rubber~~ rubber materials-;
- (k) ~~Asphalt~~ asphalt shingles, except as provided in CHAPTER IX, 1306 or 1311-;
- (l) ~~Tar~~ tar and tar paper, except as provided in CHAPTER IX, 1306-;
- (m) ~~Automobile~~ automobile or aircraft bodies and interiors, except as provided in CHAPTER IX, 1306 or 1311-;
- (n) ~~Insulated~~ insulated wire, except as provided in CHAPTER IX, 1306 or 1311-;
- (o) ~~Oil~~ oil or petroleum products, except as provided in CHAPTER IX, 1306 or 1311-;
- (p) ~~Treated~~ treated lumber and timbers-;
- (q) ~~Pathogenic~~ pathogenic wastes-;
- (r) ~~Hazardous~~ hazardous wastes as defined by 40 CFR Part 261-;
- (s) ~~Trade~~ trade wastes, except as provided in CHAPTER IX, 1307 or 1308-;
- (t) ~~Any~~ any materials resulting from a salvage operation-;
- (u) ~~Chemicals~~ chemicals, except as provided in CHAPTER IX, 1306 or 1311;
- (v) ~~Piles~~ piles of deciduous leaves, grass, or compost within the Air Stagnation Zone-; (see Appendix A)
- ✓ (w) asbestos or asbestos-containing materials;
- ✓ (x) standing or demolished structures except as provided in CHAPTER IX, 1306, 1307, or 1311.

Rule 1303 - MINOR OPEN BURNING SOURCE REQUIREMENTS

- (1) A a minor open burning source must:

(a) conform with BACT;

~~(a)~~(b) Comply comply with all open burning rules, except CHAPTER IX, 1304;

~~(b)~~(c) Comply with any requirements or regulations relating to open burning established by any public agency responsible for protecting public health and welfare, or which is responsible for fire prevention or control-;

~~(e)~~(d) If if it desires to conduct essential agricultural open burning during September or October or prescribed wildland open burning during September, October or November, adhere to the time periods set for burning by the department- and available by calling (406) 728-2667; and

~~(d)~~(e) If if it desires to conduct prescribed wildland open burning during December, January, or February, adhere to the time periods set by the department.

(i) submit a written request to the department, demonstrating that the prescribed wildland open burning must be conducted prior to reopening of open burning in March;

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

(iii) adhere to the time periods set for burning by the department and available by calling (406)

728-2667.

- (2) ~~Minor open burning sources need not obtain an open burning permit during a period of good dispersion established and announced by the department, except when such open burning occurs within a restricted area. The period during which permits are not required shall take place during March, April, and May and shall not exceed 60 total days.~~

Rule 1304 - MAJOR OPEN BURNING SOURCE RESTRICTIONS

- (1) ~~A major open burning source must:~~

~~(a) Utilize BACT.~~

~~(b)(1) Prior to open burning, a major open burning source must submit an application to the department for an air quality open burning permit. The application must contain the following information:~~

- ~~(i) A legal description of each planned site of open burning or a detailed map showing the location of each planned site of open burning.~~
- ~~(ii) The elevation of each planned site of open burning.~~
- ~~(iii) The average fuel loading or total fuel loading at each site to be burned.~~
- ~~(iv) The method of burning to be utilized at each planned site to be burned.~~

- (2) Proof of publication of public notice, consistent with this rule, must be submitted to the department before an application will be considered complete. An applicant for an air quality major open burning permit shall notify the public of the application for permit by legal publication, at least once, in a newspaper of general circulation in each airshed (as defined by the department) affected by the application. The notice must be published no sooner than 10 days prior to submittal of an application and no later than 10 days after submittal of an application. The form of the notice must be provided by the department and must include a statement that public comments may be submitted to the department concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

- (3) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.

- (4) A major open burning source must:

(a) conform with best available control technology; and

~~(e)(b) Receive~~ receive and adhere to the conditions in any air quality open burning permit issued to it by the department, which will be in effect for one year from its date of issuance.

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

~~(2)~~(6) Open burning sources need not apply for and obtain an air quality open burning permit from the department if the open burning source has obtained a permit from the Montana Department of ~~Health and Environmental Sciences~~ Environmental Quality pursuant to ARM ~~16.8.1304 (1989)~~ 17.8.610 and where no other provision of these regulations is violated. A permit issued by the Montana Department of ~~Health and Environmental Sciences~~ Environmental Quality to burn, pursuant to ARM ~~16.8.1304 (1989)~~ 17.8.610, will be valid in Missoula County only when the Montana State Airshed Group monitoring unit is in operation. Open burning sources issued a permit pursuant to ARM ~~16.8.1304 (1989)~~ 17.8.610 shall be required to obtain an air quality open burning permit from the department when the Montana State Airshed Group monitoring unit is not in operation.

Rule 1305 - SPECIAL BURNING PERIODS

(1) Essential agricultural open burning may be conducted only during the months of March through October.

√ (2) Open burning authorized under the commercial film production provisions set forth in CHAPTER IX, 1311 may be conducted only during the months of March through November.

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

~~(2)~~ Prescribed (a) prescribed wildland open burning-;

(b) open burning performed to train fire fighters under CHAPTER IX, 1306-;

(c) open burning authorized under the emergency open burning permit provisions set forth in CHAPTER IX, 1308,

(d) open burning for the purpose of thawing frozen ground to allow excavation of utilities, may be conducted during the entire year.

~~(3)~~(4) Open burning other than those categories listed in Sections (1) and (2) above may be conducted only during the months of March through August.

Rule 1306 - FIRE FIGHTER TRAINING

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

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

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

- (c) all asbestos containing material has been removed;
 - (d) asphalt shingles, flooring material, siding, and insulation which might contain asbestos have been removed, unless samples have been analyzed by a certified laboratory and shown to be asbestos free;
 - (e) all prohibited material that can be removed safely and reasonably has been removed;
 - (f) the open burning accomplishes a legitimate training need;
 - (g) clear educational objectives have been identified for the training;
 - (h) burning is limited to that necessary to accomplish the educational objectives;
 - (i) the training operations and procedures are consistent with nationally accepted standards of good practice; and
 - (j) emissions from open burning will not endanger public health or welfare or cause or contribute to a violation of any Montana or federal ambient air quality standard.
- (2) The department may place any requirements in an air quality fire fighter training open burning permit that the department determines will reduce emissions of air pollutants or will minimize the impact of emissions, and the recipient of a permit must adhere to those conditions.
- (3) The applicant may be required, prior to each burn, to notify the department of the anticipated date and location of the proposed training exercise and the type and amount of material to be burned. The department may be notified by phone, fax or in writing.
- (4) An application for an air quality fire fighter training open burning permit must be made on a form provided by the department. The applicant must provide adequate information to enable the department to determine whether the application satisfies the requirements of this rule for a permit.
- (5) Proof of publication of public notice, consistent with this rule, must be submitted to the department before an application will be considered complete. An applicant for an air quality fire fighter training open burning permit shall notify the public of the application for a permit by legal publication, at least once, in a newspaper of general circulation in the area affected by the application. The notice must be published no sooner than 10 days prior to submittal of an application and no later than 10 days after submittal of an application. The form of the notice must be provided by the department and must include a statement that public comments may be submitted to the department concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.
- (6) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.

Rule 1307 - CONDITIONAL AIR QUALITY OPEN BURNING PERMITS

- (1) The department may issue a conditional air quality open burning permit if the department determines that:
- (a) alternative methods of disposal would result in extreme economic hardship to the applicant; and
 - (b) emissions from open burning will not endanger public health or welfare or cause or contribute to a violation of any Montana or federal ambient air quality standard; and
 - (c) the open burning will not occur within the Air Stagnation Zone. (see Appendix A)
- (2) The department must be reasonable when determining whether alternative methods of disposal would result in extreme economic hardship to the applicant.
- (2)(3) Conditional open burning must conform with BACT.
- (1)(4) The department may issue a conditional air quality open burning permit ~~for the disposal~~ to dispose of:
- (a) Wood and wood by-product trade wastes by any business, trade, industry, or demolition project; ~~or if it determines that:~~
 - ~~(i) Open burning constitutes BACT; and~~
 - ~~(ii) Emissions from such open burning do not endanger public health and welfare or cause a violation of any Montana or Federal ambient air quality standards.~~
 - ~~(iii) The open burning does not occur within the Air Stagnation Zone. (see Appendix A)~~
 - (b) Untreated untreated wood waste at a licensed landfill sites, if the department determines that:
 - ~~(i) Alternative methods of disposal would result in extreme economic hardship to the solid waste management system owner or operator;~~
 - ~~(ii) Emissions from such open burning would not endanger public health and welfare or cause a violation of any Montana or Federal ambient air quality standard; and~~
 - (i) the proposed open burning will occur at an approved burn site, as designated in the solid waste management system license issued by the Montana Department of Environmental Quality; and
 - ~~(iii)(ii) Prior to issuance of the conditional air quality open burning permit, the wood waste pile is inspected by the department or its designated representative and no prohibited materials listed in CHAPTER IX, 1302, other than wood waste, are present;~~
 - ~~(iv) The open burning does not occur within the Air Stagnation Zone. (see Appendix A)~~
- (2)(5) ~~A conditional air quality open burning permit issued under this rule is valid for the following periods:~~
- (a) Wood and wood by-products trade waste - one calendar year-; applicants may reapply for a permit annually; and
 - (b) Untreated wood waste at licensed landfill sites - single burn. A new permit must be obtained for each burn.
- (3)(6) The department may place any reasonable requirements in a conditional air quality open burning permit that ~~it~~ the department determines will reduce emissions of air pollutants or ~~will~~ minimize the impact of ~~said~~ emissions, and the recipient of ~~such~~ a permit must adhere to those conditions. ~~In the case of~~ For a permit granted pursuant to under Section (1)(4)(a) above, BACT for the year

covered by the permit will be ~~set out~~ specified within the terms of the permit, ~~with the provision that; however~~ the source may be required, prior to each burn, to receive approval from the department of the date of the proposed burn to ensure that good ventilation exists and to assign burn priorities if other sources in the area request to burn on the same day. Approval may be obtained requested by calling the department at (406) 523-4755.

~~(4)(7)~~ An application for a conditional air quality open burning permit must be made on a form provided by the department. The applicant ~~must~~ shall provide adequate information to enable the department to determine ~~that~~ whether the application satisfies the requirements for a conditional air quality open burning permit contained in this rule. Proof of publication of public notice, as required in Section ~~(5)(7)~~ of this rule, ~~shall~~ must be submitted to the department ~~as part of any before an application, consistent with this rule will be considered complete.~~

~~(5)(8)~~ The An applicant for a conditional air quality open burning permit shall notify the public of ~~its the application for a permit by means of~~ legal publication, at least once in a newspaper of general circulation in the area affected by the application. The notice ~~shall~~ must be made not sooner than 10 days prior to submittal of an application and ~~not~~ no later than 10 days after submittal of an application. Form of the notice ~~shall~~ must be provided by the department and ~~shall~~ must include a statement that public comments may be submitted to the department concerning the application within 20 days after publication of the notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

~~(6)(9)~~ A conditional air quality open burning permit granted ~~pursuant to~~ under Section ~~(1)(3)(a)~~ above is a temporary measure to allow time for the entity generating the trade wastes to develop alternative means of disposal.

~~(7)(10)~~ The department's decision to approve or deny an application for a conditional air quality open burning permit may be reviewed by the board in accordance with the following provisions:

(a) A person who has submitted written comments and who is adversely affected by the department's final decision may request 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 or why it should be issued with particular conditions. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The department's decision is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section.~~ The Control Board may, if it appears that sufficient grounds exist to believe that the conditional air quality open burning permit should be denied or should be issued with particular conditions attached, conduct a hearing within sixty (60) days after receipt of such request upon due notice to the applicant and to the public. Within thirty (30) days following the hearing the Control Board shall instruct the department to issue, issue with conditions, or deny the conditional air quality open burning permit.

(b) The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.

- (1) The department may issue an emergency air quality open burning permit to allow burning of a substance not otherwise approved for burning under this subchapter if the applicant demonstrates that the substance ~~sought~~ to be burned poses an immediate threat to public health and safety, or plant or animal life, and that no alternative method of disposal is reasonably available.
- (2) Application for such a permit may be made to the department by telephone or in writing, and must include:
 - (a) ~~Evidence why~~ facts establishing that alternative methods of disposing of the substance are not reasonably available;
 - (b) ~~Facts facts~~ facts establishing that the substance to be burned poses an immediate threat to human health and safety or plant or animal life-;
 - (c) ~~The the~~ the legal description or address of the site where the burn will occur;
 - (d) ~~The the~~ the amount of material to be burned; ~~and~~
 - (e) ~~The the~~ the date and time of the proposed burn.

Rule 1309 - OPEN BURNING PERMITS REQUIRED

- (1) No person, agency, institution, business, or industry shall cause or allow open burning unless he has first applied for and received a permit for such open burning from the department or an agent authorized by the department, except as allowed under CHAPTER IX, ~~1303 (2) and 1304 (2)~~ 1304 (6).
- (2) The department may place any reasonable requirements in an open burning permit ~~and on open burning conducted during the period in which permits are not required~~ that it determines will reduce emissions of air pollutants or will minimize the impact of said emissions or protect the public health or safety, and the person or agency conducting the burn must adhere to those conditions.
- (3) Sources in Missoula County which are major open burning sources on a statewide basis and which are members of the Montana State Airshed Group are required to obtain an open burning permit from the Montana Department of Environmental Quality pursuant to ARM 17.8.610. The Montana Department of Health and Environmental Sciences hereby authorized to issue open burning permits pursuant to ARM 16.8.1304 (1989) to sources in Missoula County which are major open burning sources on a statewide basis and which are members of Montana State Airshed Group.

Rule 1310 - RESTRICTED AREAS

- (1) Restricted areas: There shall be no open burning within Missoula City limits or within other areas of Missoula County designated as restricted areas on a map adopted by the Control board.
- (2) Notwithstanding Section (1) above, open burning may be allowed within the Missoula City limits, areas surrounded by the City or within areas designated by the Control Board as restricted when the applicant has first applied for and received a permit from the department or an agent authorized by the department. Such permits may be issued when, in the opinion of the department open burning is necessary:
 - (a) ~~For~~ for the purpose of elimination of a fire hazard which cannot be abated by any other

means;

- (b) ~~For~~ for the purpose of fire fighter training;
 - (c) ~~For~~ for the purpose of thawing frozen ground to allow excavation of utilities;
 - (d) ~~For~~ for elimination of hazards in an emergency as provided for in CHAPTER IX, 1308;
 - (e) ~~For~~ for the purpose of burning a bonfire as long as the time, location, and materials to be burned are approved in writing prior to issuance by the City Police and Fire Departments for bonfires conducted inside the City or by the County Sheriffs Office for bonfires conducted outside of the City.
- (3) Prescribed wildland open burning is allowed during the period September 1 through November 30 within "Impact Zone M" only on days of good dispersion established and announced by the department. Prescribed wildland open burning shall not be allowed in "Impact Zone M" December 1 through February 28.

Rule 1311 - COMMERCIAL FILM PRODUCTION OPEN BURNING PERMITS

(1) The department may issue an air quality commercial film production open burning permit for open burning of otherwise prohibited material as part of a commercial or educational film or video production for motion pictures or television. Use of pyrotechnic special effects materials, including bulk powder compositions and devices, smoke powder compositions and devices, matches and fuses, squibs and detonators, and fireworks specifically created for use by special effects pyrotechnicians for use in motion picture or video productions is not considered open burning.

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

(3) A permit issued under this rule is valid for a single production.

(4) Open burning under this rule must conform with BACT.

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

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

(7) An applicant for an air quality commercial film production open burning permit shall notify the public of its application by legal publication, at least once, in a newspaper of general circulation in the area affected by the application. The notice must be published no sooner than

10 days prior to submittal of the application and no later than 10 days after submittal of the application. Form of the notice must be provided by the department and must include a statement that public comments may be submitted to the department concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

(8) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.

Rule 1423 - STANDARD OF PERFORMANCE FOR NEW STATIONARY SOURCES

- (1) For the purpose of this rule, the following definitions apply:
 - (a) "Administrator", as used in 40 CFR Part 60, ~~July 1, 1992~~, means the department, except in the case of those duties which cannot be delegated to the local program by the state and the U.S. Environmental Protection Agency, in which case "administrator" means the administrator of the U.S. Environmental Protection Agency.
 - (b) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Federal Clean Air Act, ~~42 U.S.C. §7407, et seq., as amended in 1990.~~
- (2) The terms and associated definitions specified in 40 CFR 60.2, ~~July 1, 1992~~, shall apply to this rule, except as specified in subsection (1)(a).
- (3) The owner and operator of any stationary source or modification, as defined and applied in 40 CFR Part 60, ~~July 1, 1992~~, shall comply with the standards and provisions of 40 CFR Part 60, ~~July 1, 1992~~.
- (4) For the purpose of this rule, the board hereby adopts and incorporates by reference 40 CFR Part 60, July 1, ~~1992~~ 1996, which pertains to standards of performance for new stationary sources and modifications. ~~40 CFR Part 60, July 1, 1992, is available for public inspection and copying at the Missoula City County Health Department, Environmental Health Division, 301 W. Alder, Missoula, MT; at the Air Quality Bureau, Department of Health and Environmental Sciences, P.O. Box 200901, Helena, MT 59620-0901; at EPA's Public Information Reference Unit, 401 M Street SW, Washington, DC 20460; and at the libraries of each of the ten EPA Regional Offices. Copies are also available as supplies permit from the U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; and copies may be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.~~

Rule 1424 - EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

- (1) For the purpose of this rule, the terms and associated definitions specified in 40 CFR 61.02, ~~July 1, 1992~~, shall apply, except that:
 - (a) "Administrator", as used in 40 CFR Part 61, ~~July 1, 1992~~, means the department, except in the case of those duties which cannot be delegated to the local program by the state and the U.S. Environmental Protection Agency, in which case "administrator" means the administrator of the U.S. Environmental Protection Agency.
- (2) The owner or operator of any existing or new stationary source, as defined and applied in 40 CFR Part 61, ~~July 1, 1992~~, shall comply with the standards and provisions of 40 CFR Part 61, ~~July 1, 1992~~.
- (3) For the purpose of this rule, the board hereby adopts and incorporates by reference 40 CFR Part 61, July 1, 1992 1996, which pertains to emission standards for hazardous air pollutants. ~~40 CFR Part 61, July 1, 1992, is available for public inspection and copying at the Missoula City-County Health Department, Environmental Health Division, 301 W. Alder, Missoula, MT 59802, at the Air Quality Bureau, Department of Health and Environmental Sciences, P.O. Box 200901, Helena, MT 59620 0901; at EPA's Public Information Reference Unit, 401 M Street SW, Washington, DC 20460; and at the libraries of each of the ten EPA Regional Offices. Copies are also available as supplies permit from the U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; and copies may be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.~~

CHAPTER XII. CRIMINAL PENALTIES.

- (1) Except as provided for in Section (3) below, any person who violates any of the provisions, regulations, or any rule enforced under this Program, or any order made pursuant to this Program, shall be guilty of an offense and subject, upon conviction thereof, to a fine not to exceed ~~one thousand dollars (\$1000.00)~~ ten thousand dollars (\$10,000). Each day of the violation shall constitute a separate offense.
- (2) Action under this Chapter shall not be 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.
- (3) Notwithstanding the provisions of Section (1), any person who violates any of the provisions of CHAPTER IX, 1428 shall be guilty of an offense and subject, upon conviction thereof, to a fine not to exceed one hundred dollars (\$100.00). Each day of the violation shall constitute a separate offense.
- (4) All fines collected shall be deposited in the County General Fund.

ATTACHMENT C

HB 521 FINDINGS

(See R.O.S. Section #5)

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

3
4 In the Matter of the Application of the)
5 County of Missoula for Approval of)
6 Amendments to the Local Air Pollution)
7 Control Program and for Incorporation)
8 of the Amendments into the Montana)
9 State Implementation Plan.)

HB 521 FINDINGS

9 The amendments to the Missoula County air quality program in this matter consist
10 of: (1) modifications to the County's open burning rules. Some of these modifications
11 simply make the County rules consistent with state rules (subchapter 13). Other
12 modifications are more stringent than the state rules, in that they require permits year-
13 round for minor open burners; (2) modifications to the New Source Performance Standards
14 (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) to
15 update to all federal regulations promulgated through July 1, 1996; (3) an increase in
16 criminal penalties from \$1,000 to \$10,000 per day of violation; and (4) various minor
17 changes for clarification purposes.

18 The permit requirements for minor open burners are more stringent than
19 comparable state law. Accordingly, special findings are required pursuant to Sections 75-
20 5-301 (3) (b) and 75-2-207, MCA (HB 521).

21 The Board finds that the County amendments requiring permits year-round for
22 minor open burners are necessary to protect and mitigate harm to the public health and the
23 environment under the conditions of the Missoula airshed. The amendments will result in
24 fewer escaped fires and fewer incidents of burning garbage or other prohibited materials.
25 The public contact with fire prevention personnel for permit issuance is also an educational
26 opportunity that results in less prohibited materials being burned and fewer escaped fires.
27 Less toxic emissions are thereby generated which protects the public. Fewer escaped fires

1 protects the public health from emissions and protects the environment of the state as well.

2 The permit requirements are achievable under current technology.

3 Information supporting the amendments has been submitted by Missoula County,

4 and is attached to these Findings as Exhibit A and incorporated herein by reference.

5 Scientific studies supporting the amendments have also been submitted by Missoula

6 County and are a part of the Board record.

7

8 DATED this 31st day of October, 1997

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By: 
CINDY E. YOUNKIN
Chairperson
Board of Environmental Review

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