

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the application)
of Yellowstone County for)
approval of amendments to its)
local air pollution control)
program.)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER**

BACKGROUND

Yellowstone County (County) has filed an application with the Board of Environmental Review (Board), seeking approval of amendments to its local air pollution control program ("the program").

After public notice, the Board conducted a public hearing on the proposed amendments on May 14, 1999, at the Metcalf Building, Helena, Montana. The County and the Department of Environmental Quality (Department) presented testimony. Due to written comments submitted by the Environmental Protection Agency (EPA) on April 13, 1999, which required further consideration, the Board continued the hearing to September 24, 1999, to allow the Department and Yellowstone County to consider the comments and take any appropriate action.

On September 24, 1999, the Board resumed the hearing in this matter. The Department and the County provided additional testimony.

The Board provided all interested persons with an opportunity to be heard at the two public meetings held by the Board in this matter.

Based upon the record in this proceeding, the Board enters the following Findings of Fact, Conclusions of Law and Order:

STATE OF MONTANA
AIR QUALITY CONTROL
IMPLEMENTATION PLAN

Subject: Yellowstone County
Air Pollution
Control Program

FINDINGS OF FACT

1. Yellowstone County operates a local air pollution control program approved by the Board. The program was first approved by the Board's predecessor, the Montana Board of Health and Environmental Sciences, in 1969.

2. The County's program is known as the Yellowstone County Air Pollution Control program. The program is under the direction and control of a Control Board.

3. The County program encompasses all of Yellowstone County, the Cities of Billings and Laurel and the Town of Broadview.

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

5. On December 23, 1992, the Department submitted an amended Yellowstone County program to EPA for approval into the State Implementation Plan (SIP). However, EPA has not approved or disapproved the amended program.

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

7. The proposed amendments include minor editorial changes, changes to conform the program regulations to the new name of the Board and Department (after the July 1, 1995.

Replaces Page:

Dated:

September 24, 1999

Page 3 of 11

reorganization of State natural resource agencies) and changes to conform the program to revisions in statutes and rules implemented by the Department.

8. The proposed amendments include deletion of the following regulations:

- a) Ambient air quality standards;
- b) Preconstruction and operating permit requirements;
- c) Restrictions regarding particulate emissions from incinerators;
- d) Restrictions regarding particulate emissions from industrial processes;
- e) Restrictions regarding airborne particulate matter;
- f) Restrictions regarding particulate emissions from fuel burning equipment;
- g) Restrictions regarding visible air contaminants;
- h) Restrictions regarding sulfur in fuel;
- i) Requirements regarding malfunctions of air pollution control equipment, process equipment and processes that affect emissions;
- j) Restrictions regarding circumvention of detection of air contaminants and creation of a public nuisance;
- k) Restrictions regarding removal or alteration of air pollution control devices in motor vehicles;
- l) Requirements regarding testing of air contaminant sources and operation of continuous emission monitors;
- m) Restrictions regarding storage of petroleum products;
- n) New source performance standards (NSPS); and
- o) Emission standards for hazardous air pollutants (HAPs).

9. The proposed amendments include the following specific revisions:

STATE OF MONTANA
AIR QUALITY CONTROL
IMPLEMENTATION PLAN

Subject: Yellowstone County
Air Pollution
Control Program

- a) Amendments to open burning regulations, largely to conform to changes in the Department's open burning rules; and
- b) Amendment of the Emergency Episode Plan to specify that Yellowstone County, rather than the Department as in the past, now operates two continuous sulfur dioxide monitors connected by modem to the Department's Billings office.

10. After publishing notice to the public, the Billings City Council, Broadview Town Council and Laurel City Council, respectively, approved the original proposed amendments after a public hearing.

11. After publishing notice to the public, the Yellowstone County Board of County Commissioners approved the original proposed amendments after a public hearing.

12. On April 11, 1999, the Helena Independent Record and Billings Gazette, respectively, published notice that the Board would consider the County's application for approval of the amendments at a public hearing on May 14, 1999, at 9:00 a.m., in Room 111 of the Metcalf Building, Helena, Montana.

13. On April 13, 1999, EPA, Region VIII, submitted written comments to the Board regarding the proposed amendments. EPA's material comments were that:

- a) EPA cannot approve a variance provision that allows variances from SIP requirements;
- b) Sections F(3) and (4) of Regulation No. 2 were less stringent than the corresponding Department rule, ARM 17.8.605, in that they would have allowed major open burning and conditional open burning during the entire year, whereas the Department rule allows those types of open burning only during the months of March through November; and
- c) That various provisions of the emergency episode plan were less stringent than the Department's emergency episode plan.

Replaces Page:

Dated:

September 24, 1999

Page 5 of 11

STATE OF MONTANA
AIR QUALITY CONTROL
IMPLEMENTATION PLAN

Subject: Yellowstone County
Air Pollution
Control Program

14. On May 14, 1999, the Board held a public hearing to take testimony on the proposed amendments and on submittal of the proposed revised County program to EPA for approval into the State Implementation Plan (SIP). Department staff and Steve Duganz, Director of the Yellowstone County Air Pollution Control program, testified. No members of the public testified or submitted written comments.

15. Due to the need for the Department and County to consider EPA's comments further and take any necessary action, the Board continued the public hearing until September 24, 1999.

16. After publishing notice to the public, and after public hearings, the Billings City Council, Broadview Town Council and Laurel City Council, respectively, approved further amendments to the program, proposed in response to EPA's comments.

17. After publishing notice to the public, and after a public hearing, the Yellowstone County Board of County Commissioners approved further amendments to the program, proposed in response to EPA's comments.

18. On August 15, 1999, the Helena Independent Record and Billings Gazette, respectively, published notice that the Board would again consider the County's application for approval of the amendments at a public hearing on September 24, 1999, at 9:00 a.m., in Room 111 of the Metcalf Building, Helena, Montana.

19. In response to EPA's comments, the County has revised the open burning provisions in Sections F(3) and (4) of Regulation No. 2, to conform to ARM 17.8.605.

20. On July 8, 1997, the Department submitted a revised State emergency episode plan to EPA for approval into the SIP. EPA has not approved or disapproved the plan.

Replaces Page:

September 24, 1999

Dated:

Page 6 of 11

21. The County's emergency episode plan includes provisions that may not be as stringent as the most recent State emergency episode plan.

22. The Department recommended to the County that it not revise its emergency episode plan until EPA has acted on the State plan.

23. The Department testified that the County emergency episode plan is adequate to protect public health and the environment during an emergency pending action by EPA on the State's revised plan.

24. Except for the program's emergency episode plan, the County program provides for requirements compatible with, more stringent than or more extensive than those imposed by the Clean Air Act of Montana, and rules adopted under that Act.

25. The proposed amendments to the County program do not make the County program more stringent than the comparable state law. Currently, Regulation 010(C) requires persons conducting any type of regulated open burning to obtain an air quality open burning permit from the County. The comparable Department rule, ARM 17.8.606(1), specifies that a permit is not required for minor source open burning unless a permit is required under another provision of the Department's open burning rules. However, the County is not proposing amendments to the open burning regulations that would make the existing regulations more stringent than the State open burning rules.

26. The County program provides for enforcement of its requirements by appropriate administrative and judicial processes.

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

STATE OF MONTANA
AIR QUALITY CONTROL
IMPLEMENTATION PLAN

Subject: Yellowstone County
Air Pollution
Control Program

28. The Department should assume or retain control over any emission sources regulated by the Clean Air Act of Montana for which the County's program does not provide requirements compatible with, more stringent than or more extensive than those imposed by the Clean Air Act of Montana or rules adopted under that Act.

29. Implementation of the County's program, as proposed to be amended, is not intended in any way to interfere with retention of jurisdiction by the Department over those emission sources and activities not expressly subject to the County's program.

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

CONCLUSIONS OF LAW

1. After public hearing, a municipality or county may establish and administer a local air pollution control program if the program is consistent with the Clean Air Act of Montana, Title 75, Chapter 2, MCA, and is approved by the Board. § 75-2-301(1), MCA. The County held public hearings prior to establishing the program, as proposed to be amended.

2. For a county to establish a local air pollution control program that encompasses all or part of a municipality, the county and each municipality must approve the program after a public hearing. § 75-2-301(2), MCA. The County and each municipality encompassed by the Yellowstone County program have approved the program after notices to the public and public hearings.

3. Notice to the public and an opportunity to be heard are required for the County's application for Board approval. § 2-3-103, MCA. Advertisement in a newspaper of general circulation within the area to be affected constitutes proper notice. § 2-3-104(4), MCA. Proper

Replaces Page:

Dated:

September 24, 1999

Page 8 of 11

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

4. The Board by order may approve a local air pollution control program that:

- a) provides by ordinance or local law for requirements compatible with, more stringent than, or more extensive than those imposed by §§ 75-2-203, 75-2-204, 75-2-211, 75-2-212, 75-2-215, 75-2-217 through 75-2-219, and 75-2-402, MCA, and rules adopted under these sections;
- b) provides for the enforcement of requirements by appropriate administrative and judicial processes; and
- c) provides for administrative organization, staff, financial resources, and other resources necessary to effectively and efficiently carry out the program.

Section 75-2-301(3), MCA.

5. With the exception of the current emergency episode plan, the program requirements are compatible with, more stringent than, or more extensive than the requirements of the Clean Air Act of Montana. However, it is appropriate for the County to wait to conform its emergency episode plan until after EPA has approved or disapproved the State's revised plan.

6. The program meets the requirements of § 75-2-301(3), MCA.

7. Under §§ 75-2-207 and 301(4), MCA, (House Bill 521 from the 1995 Montana Legislature) the Board may not approve a local air quality ordinance or law that is more stringent than the comparable state law unless the Board makes written findings after a public hearing and public comment that the proposed local ordinance or law protects public health or the environment, can mitigate harm to the public health or environment and is achievable under current technology. HB 521 is not applicable to the County's application for Board approval because the County is not

proposing any amendments that would make the County program more stringent than the Clean Air Act of Montana and the rules adopted under that Act.

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

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

- a) requires the preparation of an environmental impact statement in accordance with Title 75, chapter 1, part 2;
- b) is subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75, chapter 20; or
- c) has the potential to emit 250 tons per year or more of any pollutant subject to regulation under the Clean Air Act of Montana, including fugitive emissions, unless the authority to control the source was delegated prior to January 1, 1991.

Section 75-2-301(4), MCA.

10. It is appropriate for the County to continue to be responsible for emergency powers regarding all air pollutant sources in Yellowstone County regulated under the Clean Air Act of Montana.

ORDER

1. The Board hereby approves the Yellowstone County Air Pollution Control program, as proposed to be amended in Exhibit A.

2. Except for emergency powers, the Department of Environmental Quality shall retain control over those air pollutant sources listed in § 75-2-301(4), MCA.

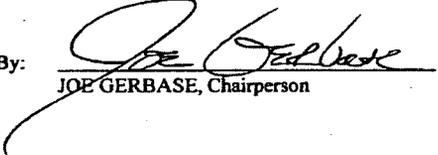
3. The Department of Environmental Quality shall assume or retain control over any other air pollutant sources regulated under the Clean Air Act of Montana that are not covered by the Yellowstone County program.

4. Yellowstone County shall continue to be responsible for emergency powers, as provided in § 75-2-402, MCA, regarding all air pollutant sources in Yellowstone County that are regulated under the Clean Air Act of Montana.

DATED this 24th day of September, 1999.

BOARD OF ENVIRONMENTAL REVIEW

By:


JOE GERBASE, Chairperson