

1 BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES
2 OF THE STATE OF MONTANA
3
4

5 In the Matter of the Proposed)
6 Revision of the State Implementation)
7 Plan for the Billings Air Quality)
8 Maintenance Area) STIPULATION

9 IT IS HEREBY STIPULATED, by and between the State of Montana, Depart-
10 ment of Health and Environmental Sciences, (hereinafter Department); the Exxon
11 Company, U.S.A., a division of Exxon Corporation, Billings Refinery, (hereinafter
12 Exxon); the Continental Oil Company, Billings Refinery, (hereinafter Conoco);
13 the Farmers Union Central Exchange, Inc., Laurel Refinery, (hereinafter Cenex);
14 The Montana Power Company, Billings, Montana, (hereinafter MPC); the Great
15 Western Sugar Company, Billings, Montana, (hereinafter Great Western); and the
16 Montana Sulphur & Chemical Company, Billings, Montana, (hereinafter Montana
17 Sulphur) as follows:

18 1. That the Department and the Yellowstone County Air Pollution
19 Control Agency have been conducting ambient monitoring, source testing and other
20 studies to determine the ambient air quality of the Billings Air Quality Main-
21 tenance Area (AQMA) since August, 1971, in order to fulfill their responsibili-
22 ties under the Montana Clean Air Act;

23 2. That in conducting monitoring and studies, the Department has
24 divided the Billings AQMA into three subareas. Subarea 1 is the portion of the
25 AQMA located adjacent to Laurel, Montana. Subareas 2 and 3 combined are re-
26 ferred to collectively as the metropolitan Billings portion of the AQMA;

27 3. That based on extensive monitoring conducted by the Department in
28 subarea 1 and limited monitoring in subareas 2 and 3, the Department alleges
29 that the Montana one hour, twenty-four hour, and annual ambient rules for
30 sulfur dioxide have been exceeded, and the federal three hour (secondary),
31 twenty-four (primary) and annual (primary) ambient standards for sulfur dioxide
32 have been exceeded; and that the Department has used computer modeling to pre-
dict ambient air concentrations of sulfur dioxide in the Billings AQMA and,

1 based on that modeling, alleges that the Montana one hour and twenty-four hour
2 ambient rules and the federal three hour and twenty-four hour ambient standards
3 are being exceeded in all subareas;

4 4. That EPA has determined and issued a notice, that the Montana
5 Clean Air Act, State Implementation Plan (SIP), is inadequate to provide for the
6 attainment and maintenance of national ambient air quality standards for sulfur
7 dioxide in the Billings AQMA (Federal Register Volume 41, No. 132, July 8,
8 1976), and has directed the Department to prepare a SIP revision that will
9 attain and maintain the national ambient air quality standards for sulfur dio-
10 xide in the Billings AQMA;

11 5. That the Department has issued orders to take corrective action
12 and notices of violation against Cenex and Exxon as follows:

<u>Party</u>	<u>NOV. #</u>	<u>Date of Alleged Violation</u>	<u>Rule Involved</u>	<u>Unit Involved</u>
Exxon	760224-FG-1	8/27/75	S1430 & -S1450	Fluid Cok- ing Unit, Carbon Monoxide Boiler
Exxon	760224-FG-2	continuing	-S14070	Oil Water Separator
Exxon	760224-FG-3	9/19/75	-S1430 & -S1450	Fluid Cata- lytic Crack- ing Unit, Carbon Monoxide Boiler
Exxon	760224-FG-4	continuing	-S1470	Combustion Units
Exxon	760224-FG-5	2/6/75	-S1440	Coke Hand- ling and Storage
Exxon	Order to Take Corrective Action	2/24/76		All of the above Notices of Violation
Cenex	N760202-FG-1	2/6/76	-S1430 & -S1450	FCC-CO Boiler
Cenex	N760202-FG-2	2/6/76	-S1470	Combustion
Cenex	Order to Take Corrective Action	2/6/76		All Cenex Notices of Violation

3 6. That, in an effort to resolve the disputes described in this
4 Stipulation, Cenex, Exxon and Conoco, since October, 1976, and MPC, Montana
5 Sulphur, and Great Western, since they were invited to participate, have been
6 discussing, in good faith, the disputes herein described with the Department and
7 EPA;

8 7. That Cenex and Exxon deny that they have violated the provi-
9 sions of ARM 16-2.14(10)-S1430, S1440, S1450, S1470, S14070, and S14050 or any
10 other rule;

11 8. That Cenex, Exxon and Conoco have filed petitions for declar-
12 atory rulings now pending before the Board of Health and Environmental Sciences
13 (hereinafter Board) seeking declaratory rulings as to the interpretation and
14 applicability of ARM 16-2.14(1)-S1430, S1450, S1470 and S14050;

15 9. That Conoco, Exxon, Cenex, MPC, Great Western and Montana Sulphur
16 dispute the basis of EPA's determination concerning the need for a revision of
17 Montana's SIP for the Billings AQMA, including the validity of the model, the
18 validity of the monitoring procedures and the results;

19 10. That Conoco, Exxon, Cenex, MPC, Great Western and Montana Sulphur
20 dispute the basis of the Department's allegations and study concerning ambient
21 air quality in the Billings AQMA, including the enforceability of rule S14040 as
22 ambient standards, the validity of S14040, the validity of the model, the vali-
23 dity of the monitoring procedures, and the results;

24 11. That the Department reaffirms its belief in the validity of the
25 standards contained in rule S14040, the validity of the model, the validity of
26 the monitoring procedures, and the results, but acknowledges that there are
27 legitimate questions as to whether the pollutant limits in rule S14040 are
28 standards which are not to be exceeded and what enforcement action can be taken
29 to assure compliance with rule S14040 if the pollutant limits are standards.
30 Therefore, to avoid costly and prolonged litigation and to give the Board an
31 opportunity to resolve all questions raised concerning Montana's ambient air
32 quality rule, to revise rule S14040 to comply with the requirements of the
Federal Clean Air Act Amendments of 1977, and to re-examine rule S14040 after
ten years of experience, the Department agrees not to serve or file any notice

1 of violation, issue any order to take corrective action, or take any other
2 enforcement action based on alleged violations of rule S14040 until the Board
3 has either: (a) interpreted rule S14040 in a declaratory ruling hearing, or (b)
4 in a rule making hearing, has modified rule S14040 or adopted a new rule in lieu
5 of rule S14040 which addresses the enforceability issue. Any enforcement action
6 based on alleged violations of rule S14040 will be based only on violations, if
7 any, occurring after the Board has acted on S14040.

8 12. That all parties agree that additional ambient air sulfur dioxide
9 monitoring is needed in the Billings AQMA to validate a model and to reach a
10 final determination as to actual air quality. The Department agrees to discuss
11 with the parties the validation of the model and to make available all infor-
12 mation applicable to such validation. The Department will use the validated
13 model and data for planning purposes, as an indicator of problem areas, and as a
14 decision making tool where measured data have not been collected or are not
15 available. If the monitoring data show violations of applicable and effective
16 federal ambient air standards or if the validated model predicts violations in
17 areas where measured data have not been collected or are not available, the
18 Department shall notify the parties contributing to the violation in writing of
19 any such federal standards that have been exceeded and the extent to which
20 standards have been exceeded. Any party so notified which disputes the data
21 indicating a violation may, within fifteen days from the date of the written
22 notice, request a conference with the Department to resolve the dispute. A
23 conference will be scheduled within thirty days. If it is determined at the
24 conference that the violation would not have occurred if the plant modifications
25 and installations described herein in paragraphs 14 and 15 and the stack height
26 increases described in paragraph 16 had been completed, or if it is determined
27 that the violation did not occur or if it appears otherwise appropriate, the
28 Department shall withdraw the notice. If it is determined that the violation
29 did occur and that it would have occurred even if the stack height increases and
30 plant installations and modifications had been completed, following the confer-
31 ence the Department shall request the parties receiving the aforementioned
32 written notice to submit a proposed compliance plan within thirty days from the

1 date of conference. If no conference is requested, the Department shall request
2 the parties to submit a compliance plan within forty-five days from date of the
3 written notice. If a party refuses to submit a compliance plan, the Department
4 may take action appropriate to assure the attainment of the federal ambient air
5 quality standard violated. Nothing in this paragraph shall relieve the Depart-
6 ment of its responsibility to propose a rule to control or reduce emissions from
7 any other regulated source in the Billings AQMA that is or may be contributing
8 to the violations;

9 13. That Exxon, Conoco, Cenex, Great Western, MPC, and Montana Sul-
10 phur agree to provide emission data to the Department and to participate in a
11 program to monitor ambient air concentrations and transport of sulfur dioxide
12 pollutants in the Billings AQMA. The Companies listed in this paragraph further
13 agree to provide the funding necessary to establish and operate a maximum of
14 seven monitoring stations in the Billings AQMA at total capital and operating
15 cost not to exceed one hundred seventy thousand dollars (\$170,000) with credit
16 allowed for equipment contributed by the Companies if the equipment meets EPA
17 specifications. Exxon, Conoco, Cenex, MPC, Montana Sulphur, and Great Western
18 agree to pay the total capital and operating cost not to exceed \$170,000 based
19 upon the following proportions: Exxon -- up to \$45,000; Conoco -- up to \$45,000;
20 MPC -- up to \$45,000; Cenex -- up to \$20,000; Montana Sulphur -- up to \$7,500;
21 and Great Western -- up to \$7,500. Each station shall be located, equipped,
22 operated, and maintained as agreed upon by the Department, Exxon, Conoco, Cenex,
23 Montana Sulphur, MPC, and Great Western. The Department will provide the neces-
24 sary right-of-way for locating each station, quality control, data processing,
25 and will assume all liability of whatever nature arising from the operation and
26 maintenance of the stations. The Department shall contract with a third party
27 consultant agreeable to the Companies for the operation and maintenance of the
28 stations. The Department shall submit to the Companies a list of at least three
29 consultants and the Companies shall select a third party consultant from the
30 list. Each Company listed in this paragraph shall be entitled to complete
31 access to the test results. All emission and ambient data shall be reported to
32 the Department on a monthly basis. Each party reserves its right to challenge

1 any test result. After a maximum shakedown period of three months from the date
2 the equipment is received, the monitoring stations shall be operated for a least
3 twelve (12) months or as agreed upon by the parties;

4 14. That Cenex agrees to install the following facilities which will
5 have the effect of reducing sulfur emissions from its Laurel refinery according
6 to the timetable set forth below:

7		Contract or	Initial	Completion
8		Purchase	Construction	
9	<u>Project</u>	<u>Date</u>	<u>Date</u>	<u>Date</u>
10	FCC Heat Exchanger	12-1-77	12-1-77	12-31-78
11	Asphalt Loading Heater	12-1-77	12-1-77	8-31-78
12	Continuous O ₂ Analyzers	12-1-77	5-1-78	12-31-78
13	Insulation of Asphalt Tanks	12-1-77	12-1-77	12-31-78
14	FCC Gas Compressor			
15	Electrification	12-1-77	5-1-78	12-31-80
16	Crude Main Preheat System			
17	and Stack	2-1-78	7-1-78	12-31-79
18	Spare Sulfur Reactor System			
19	and Stack	12-1-77	12-1-77	12-31-79

20 The Department agrees that the installation by Cenex of the spare sulfur reactor
21 system as set forth above shall be conditioned upon a determination by the EPA,
22 based upon final regulations for Federal Standards of Performance for New Sta-
23 tionary Sources, Petroleum Refineries, which are not yet promulgated, that said
24 spare unit is not a new source. In the event said unit is determined to be a
25 new source, Cenex shall not be obligated to install the unit.

26 Cenex agrees as part of its spare sulfur plant reaction system and
27 stack modification referred to above to modify the present sulfur plant stack
28 from its existing height of approximately 100 feet to a new height of 199 feet,
29 said modified stack to service both the existing sulfur plant and the new sulfur
30 plant. Cenex further agrees as part of its crude main heater preheat system and
31 stack modification to eliminate the present twin 50 foot high stacks and install
32 a single stack of 199 feet in height in their stead. In addition, Cenex shall
have the right, but not the duty, to install modifications to or replacements of
the following refinery stacks:

	<u>Approximate Present Height</u>	<u>Modified Height</u>
1		
2		
3	Boiler No. 3	100'
4	Boiler No. 4	100'
5	Boiler No. 5	100'
6	Crude Preheat Heater	90'
7	CO Boiler	125'
8	FCC Preheat Heater	100'
9		199'
10		199'
11		199'
12		199'
13		199'
14		199'

6 Cenex agrees to make a final decision on whether to install any or all of the
7 stack height increases described in this paragraph on or before January 1, 1980.

8 Cenex agrees to submit an application for a Montana Clean Air Act
9 permit for any proposed stack height increase specified herein and the Depart-
10 ment agrees to review such permit applications based only on a determination of
11 whether the stack height increase constitutes good engineering design as defined
12 by Sections 121 and 123 of the Federal Clean Air Act Amendments of 1977, until
13 such time as the Board adopts a stack height increase rule. Any permit applica-
14 tion submitted by Cenex for a stack height increase is done for the purpose of
15 settlement and is not an admission that such applications are in fact required
16 by the law. The Department agrees that any stack height increase reviewed and
17 approved shall be given full credit for SO₂ dispersion under the law.

18 The Department agrees to complete its review and make a decision
19 on all permit applications filed for the projects listed in this paragraph on or
20 before the effective date of this Stipulation if all applications are submitted
21 on or before November 22, 1977. If the Department denies a permit or imposes a
22 condition unacceptable to Cenex, the agreements contained in this Stipulation
23 between Cenex and the Department concerning the project in question are void.
24 Nothing in this paragraph shall be construed to mean that Cenex may not appeal
25 any of the Department's decisions concerning a permit application to the Board
26 or an appropriate Court forum and that Cenex may, based on the Board's or the
27 Court's decision, agree to comply with the provisions of this Stipulation.

28 It is agreed that any permit granted pursuant to this paragraph shall
29 be subject to automatic renewal as necessary to permit construction to proceed
30 according to schedules described in this paragraph except in situations where
31 the permit period has expired and the renewal application contains new condi-
32 tions or changed information. If permit conditions imposed on renewal are

1 changed by the Department, the agreements contained in this Stipulation con-
2 cerning that project are void.

3 The Department agrees that so long as Cenex meets the schedule de-
4 scribed in this paragraph, or any mutually agreed extensions thereof, the
5 Department shall not issue to Cenex any notices of any kind or nature alleging
6 violations of Rule S1470 or S14040 as it pertains to sulfur oxides, to the
7 extent consistent with paragraph 11 of this Stipulation, or initiate any enforce-
8 ment action of any kind against Cenex for alleged violations of rule S1470
9 provided that during the schedule described in this paragraph, Cenex will make a
10 good faith effort to operate its plant as efficiently as possible and to comply
11 with S1470.

12 Should events occur which cause or are likely to cause delays in the
13 achievement of the actions called for in this paragraph, Cenex shall notify the
14 Department and the Director, Enforcement Division, U.S. Environmental Protection
15 Agency, Region VIII, immediately in writing of the delay or anticipated delay,
16 as appropriate, describing in detail the anticipated length of the delay, the
17 precise cause or causes of the delay, and the timetable by which these measures
18 shall be implemented. Upon proof satisfactory to the Department and the Direc-
19 tor, Enforcement Division, that the delay or anticipated delay, or some portion
20 thereof, has been or will be caused by circumstances beyond the control of
21 Cenex, the time for performance hereunder will be extended for the period or
22 periods equal to the delay resulting from said circumstances. Increased costs
23 associated with implementation of the actions called for in this Stipulation
24 shall not be considered a cause for delay beyond the control of Cenex. In an
25 action alleging one or more violations of this paragraph or of ARM 16-2.14(1)-
26 S1470, the burden of proving that the delay is caused by circumstances beyond
27 the control of Cenex shall rest with Cenex. Cenex shall take all reasonable
28 precautions to avoid or minimize any such delay.

29 15. That Exxon agrees to install a computer which will improve its
30 ability to monitor and control the amount of sulfur in fuel fired at its Bil-
31 lings refinery. The computer shall be installed according to the following
32 schedule:

- 1 (a) Date by which the computer
will be ordered May 1, 1978
- 2
- 3 (b) Date of initiation of on-site
installation of the computer November 1, 1978
- 4 (c) Date for completion of on-site
installation of the computer December 1, 1978
- 5
- 6 (d) Date by which the computer will
be operational December 31, 1978

7 Should events occur which cause or are likely to cause delays in the
8 achievement of the actions called for in this paragraph, Exxon shall notify the
9 Department and the Director, Enforcement Division, U.S. Environmental Protection
10 Agency, Region VIII, immediately in writing of the delay or anticipated delay,
11 as appropriate, describing in detail the anticipated length of the delay, the
12 precise cause or causes of the delay, the measures taken and to be taken by
13 Exxon to prevent or minimize the delay, and the timetable by which these mea-
14 sures shall be implemented. Upon proof satisfactory to the Department and the
15 Director, Enforcement Division that the delay or anticipated delay, or some
16 portion thereof, has been or will be caused by circumstances beyond the control
17 of Exxon, the schedule described above will be extended for the period or per-
18 iods equal to the delay resulting from said circumstances. Increased costs
19 associated with implementation of the actions called for in this paragraph shall
20 not be considered a cause for delay beyond the control of Exxon. In an action
21 alleging one or more violations of this paragraph or of ARM 16-2.14(1)-S1470,
22 the burden of proving that the delay is caused by circumstances beyond the
23 control of Exxon shall rest with Exxon. Exxon shall take all reasonable pre-
24 cautions to avoid or minimize any such delay.

25 The Department agrees that so long as Exxon meets the schedule des-
26 cribed in this paragraph, or any mutually agreed extensions thereof, the Depart-
27 ment shall not issue to Exxon any notices of any kind or nature alleging viola-
28 tions of rules S1470 or S14040 as it pertains to sulfur oxides, to the extent
29 consistent with paragraph 11 of this Stipulation, or initiate any enforcement
30 action of any kind against Exxon for alleged violations of rule S1470 provided
31 that during the schedule described in this paragraph, Exxon will make a good faith
32 effort to operate its plant as efficiently as possible and to comply with rule S1470.

1 16. That the Department has reviewed the permit applications for
2 stack height increases submitted by Exxon, Montana Sulphur and Conoco, and the
3 Department has issued permits 1156, 1157 and 1158 because the proposed stack
4 height increases constitute good engineering design;

5 17. For the purpose of evaluating the impact of proposed stack
6 height increases on ambient air quality, Conoco, Exxon, Cenex, MPC, Great Wes-
7 tern and Montana Sulphur agree to apply for a Montana Clean Air Act permit in
8 accordance with Section 69-3911, Revised Codes of Montana, 1947, and rules
9 adopted pursuant thereto for any proposed stack height increase and the Depart-
10 ment agrees to review permit applications for stack height increases based only
11 on a determination of whether the proposed stack height increase constitutes
12 good engineering design as that term is defined in Section 121 and Section 123
13 of the Federal Clean Air Act Amendments of 1977 until such time as the Board
14 adopts a stack height increase rule;

15 18. That in order to resolve the disputes concerning rule S1470 as
16 described in the notices of violation listed in paragraph 5 and the petitions
17 for declaratory rulings submitted by Cenex, Exxon and Conoco, and to resolve all
18 other disputes concerning the applicability of rule S1470, all the parties agree
19 as follows:

20
21 (a) Rule S1470 shall be interpreted and applied to mean:

22 No person shall burn solid, liquid, or gaseous fuels
23 such that the aggregate sulfur content of all fuels
24 burned within a plant during any day exceeds one pound
 of sulfur per million BTU fired.

25 It is further agreed that daily metering deviations and statistical
26 probability of reporting errors require that this rule be interpreted to allow a
27 daily deviation of 0.1 pound of sulfur per million BTU fired.

28 It is mutually understood and agreed that this interpretation allows
29 the blending of all fuels burned in a plant during a given time period in
30 determining the aggregate sulfur content for purposes of this rule, and it shall
31 not be construed to require blending or physical mixing of fuels at any given
32 furnace or heater within the plant complex.

1 Due to the difficulties which may be inherent in any request for
2 data, Exxon, Conoco, and Cenex agree that in compiling, maintaining, and re-
3 porting of daily sulfur in fuel emission data, such data will be furnished to
4 the Department and the EPA upon request on a one day per calendar month basis,
5 with the parties negotiating requests for data on a more frequent basis.

6 (b) It is agreed in recognition of the foregoing interpretation of
7 rule S1470 that item 2 contained in the Department's letter of March 11, 1976,
8 amending its decision of February 13, 1976, respecting Conoco's construction
9 permit #916 for a dual fuel system for steam plant boiler B-6, is deleted with
10 all other conditions remaining the same; and Conoco agrees that its petition for
11 a hearing before the Board on this permit dated February 26, 1976, is withdrawn.

12 (c) Cenex, Exxon and Conoco agree to the extent consistent with
13 subparagraph (a) to:

- 14 (i) install and operate fuel flow rate instruments and recorders
15 to determine the total fuel fired daily in the refinery;
16 (ii) provide analyses of the sulfur content and heating value of
17 all fuels burned daily using recognized methods; and
18 (iii) maintain fuel flow rate, heating value and sulfur content
19 data for the period during which the monitoring program
20 described in paragraph 13 is in effect and submit such data
21 to the Department upon request.

22 (d) The Department will withdraw and dismiss with prejudice all of
23 the orders to take corrective action and notices of violation issued against
24 Cenex and Exxon listed in paragraph 5 of this Stipulation;

25 (e) Cenex, Exxon and Conoco will withdraw their respective petitions
26 for declaratory rulings as described in paragraph 8 of this Stipulation;

27 19. That in order to resolve the disputes concerning rules S1430 and
28 S1450 as described in the notices of violation listed in paragraph 5, and the
29 petitions for declaratory rulings submitted by Cenex, Exxon and Conoco, the
30 parties agree as follows:

31 (a) Rule S1430 shall mean in the case of fluid catalytic cracking
32 units in a petroleum refinery, that no person shall emit particulate matter in
excess of that allowed by the following equations:

1 E = $4.10P^{0.67}$ for P less than or equal to 30 tons per hour and
2 E = $55.0P^{0.11}$ -40 for P greater than 30 tons per hour where E is
3 the allowable particulate emission in pounds per hour and P is
4 the catalyst circulation rate in tons per hour.

4 In a petroleum refinery when an industrial process or processes and a
5 fuel burning unit or units are connected to a single stack, the allowable emis-
6 sions of particulate matter for said stack shall be determined by adding toge-
7 ther the allowable emissions of particulate matter for the industrial process or
8 processes as determined herein and the allowable emissions of particulate matter
9 for the fuel burning unit or units as determined by rule 16-2.14(1)-S1450;

10 (b) As applied to Claus sulfur plants, it is agreed that "process
11 weight" as utilized in Rule S1410, S1430, and S1450 shall be interpreted to mean
12 the weight of the following where applicable:

- 13 (i) sour material streams processed through amine units, strip-
14 pers or other separating equipment where the acid gas waste
15 streams from such equipment are discharged to a Claus Sulfur
16 Unit for treatment; and
17 (ii) waste acid, acid sludge or other sulfurous materials fed
18 into a Claus Sulfur Unit for treatment or destruction and
19 not accounted for in (i) above; and
20 (iii) any chemicals and reagents added and consumed in the Claus
21 reactions and specifically including process air utilized in
22 the Claus reaction for the conversion of the acid gases,
23 waste acid, acid sludges or other sulfurous materials into
24 less noxious materials.

21 Excluded from "process weight" shall be auxiliary gaseous heating fuels, air
22 used to combust such auxiliary fuels, excess air added to any tail-gas oxidizer,
23 non-contact cooling air or water, recirculating material streams (such as amine
24 solutions, catalysts, or heat transfer media). This interpretation applies
25 notwithstanding the actual physical location or ownership of the equipment
26 feeding acid gas streams or other sulfurous wastes to the Claus unit.

27 In applying this interpretation to Montana Sulphur, Conoco and Exxon a-
28 gree to cooperate with the Department in providing the information necessary to de-
29 termine compliance or non-compliance, including material flowrates described in (i)
30 above. Furthermore, for the purposes of interpretation, material charged to Mont-
31 ana Sulphur's hydrogen sulfide liquefaction plant shall be deemed to have been char-
32 ged to the Claus plant directly in computing allowable particulate emissions from

1 the Claus plant.

2 (c) Rule S1450 shall mean as applied to a petroleum refinery when an
3 industrial process or processes and a fuel burning unit or units are connected
4 to a single stack, that the allowable emissions of particulate matter for said
5 stack shall be determined by adding together the allowable emissions of particu-
6 late matter for the industrial process or processes as determined by Rule 16-
7 2.14(1)-S1430 and the allowable emissions of particulate matter for the fuel
8 burning unit or units as determined herein;

9 (d) The Department believes that compliance with rules S1430 and
10 S1450 should be determined by applying the testing methods and calculations
11 contained in EPA method 5 as defined in Appendix A of Title 40, Part 60, Code of
12 Federal Regulations, but modified to include the "back half" catch. Exxon,
13 Cenex, Conoco, Montana Sulphur, Montana Power and Great Western Sugar believe
14 that only "dry catch" particulate matter should be measured and that impinger
15 collected material should be discarded from measurement. In order to avoid
16 costly and prolonged litigation over this disagreement and to give the Board an
17 opportunity to resolve it, the Department agrees not to serve or file any notice
18 of violation, issue any order to take corrective action, or take any other
19 enforcement action against the industrial parties listed in this paragraph based
20 on alleged violations of rules S1430 and S1450 using the "back half" catch
21 method until the Board has addressed the question respecting testing in an
22 appropriate rule making or declaratory ruling hearing. It is also agreed that
23 any interpretation or amendment of rules S1430 and S1450 concerning the use of
24 the "back half" catch method will not be retroactively applied.

25 (e) The Department will withdraw and dismiss with prejudice all of
26 the orders to take corrective action and notices of violation issued against
27 Cenex and Exxon listed in paragraph 5 of this Stipulation;

28 (f) Cenex, Exxon and Conoco will withdraw their respective petitions
29 for declaratory rulings as described in paragraph 8 of this Stipulation;

30 20. That Exxon, Conoco, Cenex, Montana Sulphur, MPC and Great Western
31 hereby expressly, jointly and severally reserve any and all right to challenge
32 the EPA's determination that the existing Montana SIP is inadequate; the basis

1 for that determination; and all proceedings and actions by the EPA and the
2 Department resulting in, flowing out of, or related to that determination,
3 specifically, but not limited to, injunctive rights;

4 21. That all parties hereby expressly waive and forfeit any defense
5 of estoppel, laches, acquiescence, or waiver in the event any such challenge is
6 initiated as described in paragraph 20;

7 22. That the Department agrees that it will not serve or file any
8 notice of violation, issue any order to take corrective action, or take any
9 other enforcement action based upon any alleged violation of applicable Montana
10 Clean Air Act rules listed in paragraph 5 of this Stipulation by Exxon, Conoco,
11 Cenex, MPC, Montana Sulphur, and Great Western which have occurred or may occur
12 during the period beginning February 6, 1975, and ending the date this Stipu-
13 lation becomes effective;

14 23. That the parties agree that the agreements contained in this
15 Stipulation constitute an interim settlement of the disputes described herein
16 and that in any future rule-making proceedings before the Board the parties are
17 not bound by the agreements contained in this Stipulation.

18 24. That a press release approved by all parties to this stipulation
19 and the EPA shall be prepared to inform the public of the monitoring program
20 described in paragraph 13.

21 25. That this stipulation shall not be effective and no party shall
22 be bound by any of its terms or provisions until:

- 23 (a) it has been approved by the Board of Health and Environmental
24 Sciences; and,
- 25 (b) the EPA has given notice in writing that this stipulation meets
26 its requirements published in the Federal Register, Volume 41,
27 No. 132, July 8, 1976, for revisions in the Montana SIP which
will attain and maintain national ambient air quality standards
for sulfur dioxide in the Billings AQMA; and
- 28 (c) the EPA withdraws and dismisses with prejudice the following
Notices of Violation it has issued against Exxon and Cenex:
- 29 (i) Docket No. A-76-26, Notice of Violation to Exxon dated
30 October 1, 1976, alleging a violation of S1470, Sulfur Oxide
Emissions.
- 31 (ii) Docket No. A-76-15, Notice of Violation to Cenex dated
32 May 21, 1976, alleging violations of S1430 and S1470.

1 26. If any party hereto fails to comply with any provision hereof
2 pertaining to such party, such failure shall not affect the enforceability of
3 this agreement by any other party hereto.

4 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
5 Cogswell Building
6 Capital Complex
7 Helena, Montana 59601

8 Date of Signature

9 Nov 20 1977 *x A C Knight*
10 DR. ARTHUR C. KNIGHT

11 11/23/77 *Benjamin F. Wake*
12 BENJAMIN F. WAKE

13 11-23-77 *Michael Roach*
14 MICHAEL ROACH

15 FARMERS UNION CENTRAL EXCHANGE, INC.
16 (CENEX)
17 By Their Attorneys
18 DAVIDSON, VEEDER, BAUGH & BROEDER, P.C.
19 805 Midland Bank Building
20 Billings, Montana 59101

21 November 28, 1977 *David A. Veeder*
22 DAVID A. VEEDER

23 11-28-77 *Louis J. Day*
24 LOUIS J. DAY, Refinery Manager of Cenex

25 EXXON COMPANY, U.S.A., BILLINGS REFINERY
26 A division of Exxon Corporation,
27 By Their Attorneys
28 CROWLEY, HAUGHEY, HANSON, TOOLE & DIETRICH
29 500 Electric Building
30 Billings, Montana 59101

31 Nov. 29, 1977 *Thomas N. Kelley*
32 THOMAS N. KELLEY

Nov 29, 1977 *Thomas H. Howard*
THOMAS H. HOWARD

MONTANA SULPHUR & CHEMICAL CO.

November 30, 1977 *Donald Turmezick*

CONTINENTAL OIL COMPANY
By Their Attorneys
CROWLEY, HAUGHEY, HANSON, TOOLE & DIETRICH
500 Electric Building
Billings, Montana 59101

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11-29-77

John Gallinger
JOHN GALLINGER

11/29/77

Robert B. Blomeyer
ROBERT B. BLOMEYER, Refinery Manager of Conoco

GREAT WESTERN SUGAR CO.

11/29/77

Robert E. Munroe
by Robert E. Vandell

THE MONTANA POWER COMPANY

12-1-77

By its attorney
John Carl

APPROVED:

Chairman, Board of Health and Environmental Sciences

ATTEST:

This Stipulation was approved by resolution of the Board of Health and Environmental Sciences at their meeting held on _____ at _____.

Secretary, Board of Health and Environmental Sciences