

STATE OF MONTANA
AIR QUALITY CONTROL
IMPLEMENTATION PLAN

Subject: Missoula County
Air Pollution Control
Program

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

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

BACKGROUND

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

After public notice, the Board conducted a public hearing on the amendments on November 17, 2000, in Helena, Montana. Based upon the record, the Board enters the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. The 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 program is known as the Missoula City-County Air Pollution Control Program.

3. The program encompasses all of Missoula County, including the City of Missoula.

4. In addition to the other authority delegated to the County, the Board has, pursuant to Sections 75-2-301(4) and 402, MCA, delegated to the County emergency powers over air pollutant sources that require an environmental impact statement, that are subject to the Major

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1 Facility Siting Act or that have the potential to emit 250 tons a year or more of any pollutant
2 subject to regulation under the Clean Air Act of Montana, including fugitive emissions.

3 5. The County seeks approval of amendments to the program. A copy of the
4 program, as amended, is attached to this order as Exhibit A.

5 6. The amendments include the following revisions that are not intended to change
6 the meaning of the rules:

7 (a) Minor editorial revisions;

8 (b) Revision of language to conform to the rule and bill drafting style followed by
9 State of Montana agencies;

10 (c) Simplification of language; and

11 (d) Renumbering and reorganization of the rules so they are easier to follow.

12 7. The amendments also include:

13 (a) New provisions necessary to make the County rules at least as stringent as recent
14 amendments to the State air quality rules;

15 (b) Revisions to include practices of the Missoula City-County Health Department in
16 implementing the rules;

17 (c) Revisions intended to remove unnecessary requirements;

18 (d) Revisions to further improve air quality and protect public health; and

19 (e) Revisions made in response to public comments.

20 8. On April 2, 9 and 16, 2000, the County published notice in the Missoulian

21 newspaper of a local public hearing to be held by the Missoula City-County Air Pollution

22 Control Board (MCCAPCB) on April 20, 2000, to consider approval of proposed program

23 amendments and to accept comments concerning incorporation of the amended program into the

24 State Implementation Plan (SIP).

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- 1 9. On April 20, 2000, the MCCAPCB conducted a public hearing to take comment
2 on the proposed amendments. Due to the large number of persons wishing to testify, the
3 MCCAPCB continued the hearing on May 3, 2000.
- 4 10. On June 9, 2000, the County issued a press release notifying the public of the
5 availability of a second draft of proposed program amendments made in response to comments
6 and notifying the public of a public hearing concerning the second draft before the MCCAPCB
7 on June 15, 2000.
- 8 11. On June 15, 2000, the MCCAPCB conducted a public hearing to take comment
9 on the second draft of proposed program amendments.
- 10 12. On July 20, 2000, the County issued a press release notifying the public of a
11 public hearing before the MCCAPCB to be held on July 25, 2000, concerning a third draft of
12 proposed program amendments.
- 13 13. On July 25, 2000, the MCCAPCB conducted a public hearing to take comment on
14 the third draft of proposed program amendments.
- 15 14. On July 25, 2000, the MCCAPCB approved the amendments now submitted for
16 Board approval.
- 17 15. On September 11, 2000, the Missoula City Council conducted a public hearing
18 concerning the proposed program amendments. After the hearing, the City Council approved the
19 proposed amendments.
- 20 16. Missoula is the only city within Missoula County and there are no incorporated
21 towns in the County.
- 22 17. On September 8, 2000, the County issued a public notice of a public hearing
23 before the County Commission to be held on September 13, 2000, concerning the proposed
24 program amendments.

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- 1 18. On September 13, 2000, the Missoula County Commission conducted a public
2 hearing concerning the proposed program amendments. After the hearing, the County
3 Commission approved the proposed amendments.
- 4 19. On October 11, 2000, the Helena Independent Record and Missoulian published
5 notice that the Board would consider the County's application for approval of the program
6 amendments at a public hearing on November 17, 2000, in Room 111 of the Metcalf Building in
7 Helena, Montana, beginning at 9:00 a.m., or as soon thereafter as the matter could be heard.
- 8 20. On November 17, 2000, the Board held a public hearing at the Metcalf Building
9 to accept comments concerning the proposed program amendments and concerning submission
10 of the proposed amended program to EPA for approval into the SIP.
- 11 21. The program provides for requirements compatible with, more stringent than or
12 more extensive than those imposed by the Clean Air Act of Montana and rules adopted under
13 that act.
- 14 22. Certain provisions of the County's current program that previously has been
15 approved by the Board are more stringent than comparable state air quality program
16 requirements.
- 17 23. Certain provisions of the County's current program that previously has been
18 approved by the Board and certain proposed new requirements are more stringent than the state
19 air quality program, however, they relate to the County's control plan required under the federal
20 Clean Air Act to address particulate nonattainment issues in the County for which the state has
21 no comparable rules.
- 22 24. The following proposed new requirements would make the program more
23 stringent than comparable state air quality program requirements:
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- 1 a. Rule 4.106(3) and (4), Abatement Plan for Certain Sources: The current County
2 rule is more stringent than the comparable state rule because the County requires an emergency
3 abatement plan for sources with the potential to emit 25 tons or more of a regulated pollutant per
4 year, whereas the state emergency episode plan requires an abatement plan only for sources with
5 the potential to emit more than 100 tons of a regulated pollutant per year. The amendments
6 would require facilities that are required to have a plan to periodically review and update the plan
7 in response to new requirements or in response to a request from the County. The amendments
8 incorporate the local department's interpretation of the current County rule.
- 9 b. Rule 7.109, Firefighter Training: The amendments would require a permit prior to
10 each burn used for firefighter training, whereas ARM 17.8.615, of the state air quality rules,
11 requires only a one-time permit that does not expire. Both the state rules and the County's rules
12 require notification prior to each burn. The amendments incorporate the local department's
13 interpretation of the current County rule.
- 14 c. Rule 14.105, Credible Evidence: The amendments would codify the local
15 department's current practice of relying on any relevant evidence to prove that an air quality
16 violation has occurred.
- 17 25. The program provides for enforcement of its requirements by appropriate
18 administrative and judicial processes.
- 19 26. The program provides for administrative organization, staff, financial resources,
20 and other resources necessary to effectively and efficiently carry out the program.
- 21 27. Implementation of the program, as amended, is not intended in any way to
22 interfere with retention of jurisdiction by the Department over those emission sources and
23 activities not expressly subject to the program.
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1 28. It is appropriate for the County to continue to be responsible for emergency
2 powers, as provided in Section 75-2-402, MCA, for all air pollutant sources subject to the Clean
3 Air Act of Montana.

4 CONCLUSIONS ON LAW

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

8 § 75-2-301(1), MCA. The public hearings conducted by MCCAPCB, the County, the City of
9 Missoula and the Board met the public hearing requirement of Section 75-2-301(1), MCA.

10 2. For a county to establish a local air pollution control program that encompasses
11 all or part of a municipality, the county and each municipality must approve the program after a
12 public hearing. § 75-2-301(2), MCA. This requirement has been met by the County and the City
13 of Missoula approving the program revisions after public hearings.

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

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

19 5. Proper notice and an opportunity to participate in this proceeding have been
20 provided to the Department, the County, the City of Missoula and the public.

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

22 a. provides by ordinance or local law for requirements compatible with, more
23 stringent than, or more extensive than those imposed by Sections 75-2-203, 75-2-204, 75-2-211,
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1 75-2-212, 75-2-215, 75-2-217 through 75-2-219 and 75-2-402, MCA, and rules adopted under
2 these sections;

3 b. provides for enforcement of requirements by appropriate administrative and
4 judicial processes; and

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

7 § 75-2-301(3), MCA.

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

11 8. The program provides for enforcement of requirements by appropriate
12 administrative and judicial processes.

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

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

17 11. Under Sections 75-2-207 and 301(4), MCA, (House Bill 521 from the 1995
18 Montana Legislative Session) the Board may not approve a local air quality ordinance or law that
19 is more stringent than the comparable state law unless the Board makes written findings after a
20 public hearing and public comment that the proposed local ordinance or law protects public
21 health or the environment, can mitigate harm to the public health or environment and is
22 achievable under current technology. HB 521 is not applicable to the County's application for
23 Board approval. Existing requirements that are more stringent than comparable state
24 requirements and are continued in the amendments are not subject to HB 521. All new

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1 requirements that are more stringent than state requirements either relate to rules for which there
2 are no comparable state rules, such as rules that relate to the County's particulate matter control
3 plan, or relate to procedural, administrative and evidentiary matters that are not subject to MB
4 521.

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

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

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

14 b. is subject to regulation under the Major Facility Siting Act, as provided in Title
15 75, chapter 20; or

16 c. has the potential to emit 250 tons per year or more of any pollutant subject to
17 regulation under the Clean Air Act of Montana, including fugitive emissions, unless the authority
18 to control the source was delegated prior to January 1, 1991.
19 § 75-2-301(4), MCA.

20 14. It is appropriate for the County to continue to be responsible for emergency
21 powers regarding all air pollutant sources in Missoula County regulated under the Clean Air Act
22 of Montana.

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1. The Board hereby approves the Missoula City-County Air Pollution Control Program, as proposed to be amended in Exhibit A.

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

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

4. The Department 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 Missoula City-County Air Pollution Control Program.

DATED this 30th day of November, 2000.

BOARD OF ENVIRONMENTAL REVIEW

By:


JOE GERBASE, Chairperson

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