

1 local air pollution control program. At the hearing, testi-
2 mony and evidence on the application, including the Stipula-
3 tion, were presented by LCC and the Department. An oppor-
4 tunity to be heard was provided to all interested parties at
5 the hearing, and testimony and evidence on the application
6 were presented by the public. Based upon the record in this
7 proceeding, the Board enters the following Findings of Fact,
8 Conclusions of Law and Order:

9 Findings of Fact

10 3. On October 17, 1990, and after a public hearing,
11 the Lincoln County Commission adopted regulations to imple-
12 ment a local air pollution control program. On November 5,
13 1991, the Libby City Council conducted a public hearing and
14 adopted regulations to implement a local air pollution con-
15 trol program. The regulations adopted by the City and County
16 are identical.

17 4. On August 14, 1991, and upon proper public notice,
18 the Libby City Council and the Lincoln County Commission
19 conducted a joint public hearing on the regulations described
20 above in Paragraph 3. At the conclusion of the hearing, the
21 City and County reaffirmed the adoption of the above-
22 mentioned regulations, and approved the creation of a local
23 air pollution control program.

24 5. The local air pollution control program adopted by
25 the LCC encompasses the County of Lincoln including the City

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1 of Libby (excluding the municipalities of Eureka, Rexford and
2 Troy), and contains requirements for the control of PM-10
3 emissions from both fugitive dust (from roads, parking lots
4 and log yards), and wood combustion (from solid fuel burning
5 devices and prescribed open burning). Those sections of the
6 program which regulate PM-10 emissions from solid fuel burn-
7 ing (Regulation 2) and fugitive dust from roads, parking lots
8 and sawmill log yards (Regulations 3, 4, 5 and 6) only apply
9 to a discrete area within Lincoln County, defined as an Air
10 Pollution Control District (District). A map and legal de-
11 scription of the area included in the proposed District is
12 attached as Exhibit A to the Stipulation between the Depart-
13 ment and LCC (Appendix A). That section of the proposed pro-
14 gram which regulates PM-10 emissions from prescribed open
15 burning (Regulation 7) only applies to a discrete area within
16 Lincoln County defined as an Impact Zone. A map and legal
17 description of the area included in the proposed Impact Zone
18 is attached as Exhibit B to the Stipulation between the De-
19 partment and LCC (Appendix A).

20 6. As noted above, LCC has filed an application with
21 the Board seeking approval of its proposed local air pollu-
22 tion control program, pursuant to Section 75-2-301, MCA. A
23 copy of that application, which includes the entire proposed
24 local air pollution control program, is attached to this
25 order as Appendix B and by this reference is incorporated

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1 herein in its entirety as part of this document.

2 7. The location, character and extent of particular
3 concentrations of population and air contaminant sources, and
4 the geographic, topographic and meteorological considerations
5 involved, and combinations of the foregoing, are such as to
6 make impracticable the maintenance of appropriate levels of
7 air quality without an air pollution program such as that
8 proposed by the LCC application.

9 8. A local air pollution control program which in-
10 cludes the boundaries proposed in the LCC application is an
11 acceptable alternative to direct state administration.

12 9. The proposed local air pollution control program
13 provides for administrative organization, staff, financial
14 and other resources necessary to effectively and efficiently
15 carry out the program.

16 10. The proposed local air pollution control program
17 has been adopted into local law and includes the necessary
18 provisions for enforcement by administrative and judicial
19 process.

20 11. The local regulations constituting the proposed
21 local air pollution control program which is the subject of
22 this proceeding are contained in Appendix B to this Order.
23 The Board finds that these regulations are compatible with,
24 more stringent, or more extensive than the corresponding
25 requirements under the Montana Clean Air Act, Title 75, Chap-

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1 ter 2, MCA, and regulations adopted by the Board thereunder.

2 12. There are two sources within the boundaries of the
3 proposed Air Pollution Control District and Impact Zone whose
4 operations will be subject to partial regulation under the
5 proposed program. These sources include the following: the
6 sawmill and plywood plant located at Highway 2 South, Libby,
7 currently doing business as Champion International Corpora-
8 tion; and the sawmill located one mile west of Libby, cur-
9 rently doing business as Louisiana-Pacific Corporation. As
10 to these sources, the Board finds that aside from the partial
11 regulation of discrete activities at these sources (log
12 yards, solid fuel burning devices, and prescribed open burn-
13 ing) by the proposed local program, the complexity and mag-
14 nitude of these sources is otherwise beyond the reasonable
15 capability of the proposed program, and their control may be
16 more efficiently and economically performed at the state
17 level.

18 13. The Board finds that LCC is only seeking authority
19 to operate a local air pollution control program which regu-
20 lates certain defined activities (concerning roads, parking
21 lots, log yards, solid fuel burning devices and prescribed
22 open burning) in discrete geographical areas (the proposed
23 Air Pollution Control District and Impact Zone). In addi-
24 tion to these limits implicit in its application (Appendix
25 B), LCC is expressly not seeking authority to regulate any

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1 stationary source which is subject to regulation by the Dep-
2 artment under ARM 16.8.1102, with the following exceptions:

3 a. solid fuel burning devices (as defined in the
4 proposed local program) located at a stationary source
5 within the boundaries of the Air Pollution Control Dis-
6 trict shall be subject to such program; and

7 b. fugitive dust emissions from sawmill log yards
8 within the boundaries of the Air Pollution Control Dis-
9 trict shall be subject to such program; and

10 c. prescribed open burning located at a station-
11 ary source within the Impact Zone shall be subject to
12 such program.

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

19 15. The Board finds that, as part of the requisite
20 degree of authority necessary to administer its proposed
21 local air pollution control program, it is appropriate for
22 LCC to be responsible for emergency powers as provided in
23 Section 75-2-402, MCA, in regard to those sources and activi-
24 ties governed by the proposed local air pollution control
25 program. The Department shall retain such emergency powers

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1 over all other sources.

2 Conclusions of Law

3 1. Proper notice and an opportunity to participate in
4 this proceeding has been provided to both the Department and
5 LCC, and the public. Title 2, Chapters 3 and 4, MCA.

6 2. The local air pollution control program proposed by
7 LCC meets the requirements set forth by statute for approval
8 by 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 LCC has not provided by ordi-
12 nance or local law for requirements which are at least com-
13 patible with those imposed by the Montana Clean Air Act or
14 regulations adopted thereunder.

15 4. Pursuant to statute, and except for the emergency
16 powers provided for in Section 75-2-402, MCA, the Board may
17 not delegate to LCC the authority to control the following
18 sources of air contaminants: those that require the prepara-
19 tion of an environmental impact statement pursuant to Title
20 75, Chapter 1, Part 2, MCA; those that are subject to regu-
21 lation under the Montana Major Facility Siting Act, Title 75,
22 Chapter 20, MCA; those that have the potential to emit 250
23 tons per year or more of any pollutant subject to regulation
24 under the Montana Clean Air Act, Title 75, Chapter 2, MCA,
25 including fugitive emissions, unless the authority to control

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1 the source was delegated to LCC prior to January 1, 1991.
2 Section 75-2-301(4), MCA.

3 5. The Board may not delegate to LCC the authority to
4 control those sources whose complexity and magnitude is
5 beyond the reasonable capability of LCC, or the control of
6 which may be more efficiently and economically performed at
7 the state level. Section 75-2-301(9), MCA.

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

10
11 Order

12 1. The Board approves the local air pollution control
13 program proposed by the City of Libby and County of Lincoln,
14 as contained in the application initiating this proceeding
15 (Appendix B).

16 2. The Board directs the Department of Health and
17 Environmental Sciences to assume and retain full control over
18 those sources listed in Section 75-2-301(4), MCA.

19 3. Except for log yard operations, prescribed open
20 burning (in the Impact Zone) and any solid fuel burning de-
21 vices (as defined in the local program), which are regulated
22 by the approved local air pollution control program, the
23 Department should assume and retain full control of the fol-
24 lowing sources: the sawmill and plywood plant located at
25 Highway 2 South, Libby, currently doing business as Champion

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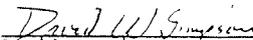
1 International Corporation; and the sawmill located one mile
2 west of Libby, currently doing business as Louisiana-Pacific
3 Corporation.

4 4. The Board directs the Department of Health and
5 Environmental Sciences to assume and retain control over
6 those sources of air contaminants which are not intended to
7 be covered by the approved local air pollution control pro-
8 gram, as described in Paragraph 13 of the Findings of Fact
9 herein.

10 5. The Board directs the Department of Health and
11 Environmental Sciences to assume and retain control over any
12 source regulated by the Montana Clean Air Act, Title 75,
13 Chapter 2, MCA, for which LCC has not provided by ordinance
14 or local law for requirements which are at least compatible
15 with those imposed by the Montana Clean Air Act or regula-
16 tions adopted thereunder.

17 6. The Board orders that the LCC shall be responsible
18 for emergency powers as provided in Section 75-2-402, MCA, in
19 regard to those sources and activities governed by the
20 approved local air pollution control program. The Department
21 shall retain such emergency powers over all other sources.

22
23 DATED this 15 day of November, 1991.

24 
25 David W. Simpson
Chairman

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