

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the Matter of the Application)
of the Cities of Columbia Falls)
and Kalispell and the County of)
Flathead for Approval of a Local)
Air Pollution Control Program)

FINDINGS
CONCLUSIONS
AND ORDER

Background

1. The Cities of Columbia Falls and Kalispell and the County of Flathead (collectively referred to as Applicants) have filed an application with the Board of Health and Environmental Sciences (Board), seeking approval of a local air pollution control program. A Stipulation between the Applicants and the Department of Health and Environmental Sciences (Department) has been presented to the Board in this proceeding (Stipulation). In the Stipulation the Department and the Applicants agree that the proposed Flathead County Air Pollution Control Program should be approved by the Board as consistent with Section 75-2-301, MCA. A copy of this Stipulation is attached to this Order as Appendix A and by this reference is incorporated herein in its entirety as part of this document.

2. Pursuant to public notice, and on November 15, 1991, at the Cogswell Building, Helena, Montana, the Board conducted a hearing on the above-referenced application to establish a local air pollution control program. At the

(FINDINGS, CONCLUSIONS AND ORDER)

-1-

Replaces Pages:

November 15, 1991

Dated:

Page: 2 of 10

1 hearing, testimony and evidence on the application, including
2 the Stipulation, were presented by the Applicants and the
3 Department. An opportunity to be heard was provided to all
4 interested parties at the hearing, and testimony and evidence
5 on the application was presented by the public. Based upon
6 the record in this proceeding, the Board enters the follow-
7 ing Findings of Fact, Conclusions of Law and Order.

8
9 Findings of Fact

10 3. On October 21, 1991, the City of Columbia Falls
11 passed Resolution 925 implementing a local air pollution
12 control program for the area encompassed within the city
13 limits. The regulations adopted by Columbia Falls contain
14 requirements for the control of PM-10 emissions from both
15 fugitive dust (from roads, parking lots, construction and
16 demolition, street sweeping and flushing, and land clearing),
17 and wood combustion (from open burning). In addition, the
18 adopted regulations include a voluntary curtailment program
19 for solid fuel burning devices. Administration and implemen-
20 tation of the adopted local program is to be performed by the
21 Flathead City-County Board of Health and the Flathead City-
22 County Health Department.

23 4. On September 16, 1991, and after a public hearing,
24 the City of Kalispell adopted regulations implementing a
25 local air pollution control program for the area encompassed

(FINDINGS, CONCLUSIONS AND ORDER)

-2-

Replaces Pages:

November 15, 1991

Dated:

Page: 3 of 10

1 within the city limits. The regulations adopted by Kalispell
2 contain requirements for the control of PM-10 emissions from
3 both fugitive dust (from roads, parking lots, construction
4 and demolition, street sweeping and flushing, and land clear-
5 ing), and wood combustion (from open burning). In addition,
6 the adopted regulations include a voluntary curtailment pro-
7 gram for solid fuel burning devices. Administration and
8 implementation of the adopted local program is to be per-
9 formed by the Flathead City-County Board of Health and the
10 Flathead City-County Health Department.

11 5. On October 3, 1991, and after a public hearing, the
12 County of Flathead adopted regulations implementing a local
13 air pollution control program for the area encompassed within
14 the county boundaries. The regulations adopted by Flathead
15 contain both requirements for the control of PM-10 emissions
16 from wood combustion (from open burning), and a voluntary
17 curtailment program for solid fuel burning devices. Adminis-
18 tration and implementation of the adopted local program is to
19 be performed by the Flathead City-County Board of Health and
20 the Flathead City-County Health Department.

21 6. The regulations adopted by the Applicants are col-
22 lectively known as the Flathead County Air Pollution Control
23 Program. Aside from the municipalities of Columbia Falls and
24 Kalispell, no other municipalities within Flathead County
25 have approved of the proposed program.

(FINDINGS, CONCLUSIONS AND ORDER)

-3-

Replaces Pages:

November 15, 1991

Dated:

Page: 4 of 10

1 7. As noted above, the Cities of Columbia Falls and
2 Kalispell and the County of Flathead have filed an applica-
3 tion with the Board, seeking approval of the proposed Flat-
4 head County Air Pollution Control Program, pursuant to Sec-
5 tion 75-2-301, MCA. A copy of that application, which in-
6 cludes the entire proposed local air pollution control pro-
7 gram, is attached to this Order as Appendix B and by this
8 reference is incorporated herein in its entirety as part of
9 this document.

10 8. The location, character and extent of particular
11 concentrations of population and air contaminant sources, and
12 the geographic, topographic and meteorological considerations
13 involved, and combinations of the foregoing, are such as to
14 make impracticable the maintenance of appropriate levels of
15 air quality without an air pollution program such as that
16 proposed, and whose territorial boundaries include the entire
17 County of Flathead, including the Cities of Columbia Falls
18 and Kalispell, but excluding Whitefish.

19 9. A local air pollution control program which in-
20 cludes the boundaries described above is an acceptable alter-
21 native to direct state administration.

22 10. The proposed local air pollution control program
23 provides for administrative organization, staff, financial
24 and other resources necessary to effectively and efficiently
25 carry out the program.

(FINDINGS, CONCLUSIONS AND ORDER)

-4-

Replaces Pages:

November 15, 1991

Dated:

Page: 5 of 10

1 11. The proposed local air pollution control program
2 has been adopted into local law and includes the necessary
3 provisions for enforcement by administrative and judicial
4 process.

5 12. The local regulations constituting the proposed
6 local air pollution control program which is the subject of
7 this proceeding are contained in Appendix B to this Order.
8 The Board finds that these regulations are compatible with,
9 more stringent, or more extensive than the corresponding
10 requirements under the Montana Clean Air Act, Title 75, Chap-
11 ter 2, MCA, and regulations adopted by the Board thereunder.

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

19 14. The Board finds that the Applicants are only seek-
20 ing authority to operate a local air pollution control pro-
21 gram which regulates certain defined activities (concerning
22 roads, parking lots, construction and demolition, land clear-
23 ing, open burning and solid fuel burning devices) in discrete
24 geographical areas (i.e., city limits and county boundaries).
25 Except to the extent that the proposed local air pollution

(FINDINGS, CONCLUSIONS AND ORDER)
-5-

Replaces Pages:

November 15, 1991

Dated:

Page: 6 of 10

1 control program is expressly applicable, the Applicants are
2 not seeking authority to regulate any stationary source which
3 is subject to regulation by the Department under ARM
4 16.8.1102.

5 15. The Board finds that, as part of the requisite
6 degree of authority necessary to administer its proposed
7 local air pollution control program, it is appropriate for
8 the Applicants to be responsible for emergency powers as pro-
9 vided in Section 75-2-402, MCA, in regard to those sources
10 and activities governed by the proposed local air pollution
11 control program. The Department shall retain such emergency
12 powers over all other sources.

13 Conclusions of Law

14 1. Proper notice and an opportunity to participate in
15 this proceeding have been provided to the Department, the
16 Applicants, and the public. Title 2, Chapters 3 and 4, MCA.

17 2. The Flathead County Air Pollution Control Program
18 proposed by the Applicants meets the requirements set forth
19 by statute for approval by the Board. Section 75-2-301, MCA.

20 3. The Department should assume and retain control
21 over any source regulated by the Montana Clean Air Act, Title
22 75, Chapter 2, MCA, for which the Applicants have not pro-
23 vided by ordinance or local law for requirements which are at
24 least compatible with those imposed by the Montana Clean Air
25

(FINDINGS, CONCLUSIONS AND ORDER)

-6-

Replaces Pages:

November 15, 1991

Dated:

Page: 7 of 10

1 Act or regulations adopted thereunder.

2 4. Pursuant to statute, and except for the emergency
3 powers provided for in Section 75-2-402, MCA, the Board may
4 not delegate to the Applicants the authority to control the
5 following sources of air contaminants: those that require
6 the preparation of an environmental impact statement pursuant
7 to Title 75, Chapter 1, Part 2, MCA; those that are subject
8 to regulation under the Montana Major Facility Siting Act,
9 Title 75, Chapter 20, MCA; those that have the potential to
10 emit 250 tons per year or more of any pollutant subject to
11 regulation under the Montana Clean Air Act, Title 75, Chapter
12 2, MCA, including fugitive emissions, unless the authority to
13 control the source was delegated to the Applicants prior to
14 January 1, 1991. Section 75-2-301(4), MCA.

15 5. If a local air pollution control program estab-
16 lished by a county encompasses all or part of a municipality,
17 the county and each municipality must approve the program
18 after public hearing. Section 75-2-301(2), MCA.

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

21
22 Order

23 1. The Board approves the Flathead Air Pollution Con-
24 trol Program proposed by the Cities of Columbia Falls and
25 Kalispell and the County of Flathead, as contained in the

(FINDINGS, CONCLUSIONS AND ORDER)

-7-

Replaces Pages:

November 15, 1991

Dated:

Page: 8 of 10

1 application initiating this proceeding.

2 2. The Flathead Air Pollution Control Program is not
3 approved for implementation within the limits of any municipi-
4 palities located within Flathead County, except for the
5 municipalities of Columbia Falls and Kalispell.

6 3. The Board directs the Department of Health and
7 Environmental Sciences to assume and retain control over
8 those sources listed in Section 75-2-301(4), MCA.

9 4. The Board directs the Department of Health and
10 Environmental Sciences to assume and retain control over
11 those sources of air contaminants which are not intended to
12 be covered by the approved local air pollution control pro-
13 gram, as described in Paragraph 14 of the Findings of Fact
14 herein.

15 5. The Board directs the Department of Health and
16 Environmental Sciences to assume and retain control over any
17 source regulated by the Montana Clean Air Act, Title 75,
18 Chapter 2, MCA, for which the Applicants have not provided by
19 ordinance or local law for requirements which are at least
20 compatible with those imposed by the Montana Clean Air Act or
21 regulations adopted thereunder.

22 6. The Board Orders that the Applicants shall be
23 responsible for emergency powers as provided in Section
24 75-2-402, MCA, in regard to those sources and activities
25 governed by the approved local air pollution control program.

(FINDINGS, CONCLUSIONS AND ORDER)

-8-

Replaces Pages:

November 15, 1991

Dated:

Page: 9 of 10

Volume II
Chapter 15

STATE OF MONTANA
AIR QUALITY CONTROL
IMPLEMENTATION PLAN

Subject: Flathead County
Air Quality Control
Program

1 The Department should retain such emergency powers over all
2 other sources.

3 DATED this 15 day of November, 1991.

4 David W. Simpson
5 David W. Simpson
6 Chairman
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(FINDINGS, CONCLUSIONS AND ORDER)

-9-

Replaces Pages:

November 15, 1991

Dated:

Page: 10 of 10

Page 15.2.2 (10)