

STATE OF MONTANA  
AIR QUALITY CONTROL  
IMPLEMENTATION PLAN

Subject: Lewis and Clark Co.  
Air Pollution  
Control Program

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the Matter of the Application of )  
the Department of Environmental )  
Quality for Revision of the Montana )  
State Air Quality Control Implementation )  
Plan relating to Control of Lead Emissions )  
in the East Helena Nonattainment Area, )  
Affecting the Following Industries: )  
Asarco, Inc. )

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER  
ADOPTING STIPULATION  
OF DEPARTMENT AND  
ASARCO**

The Department of Environmental Quality ("Department") has requested an Order from the Board of Environmental Review ("Board") adopting revisions to the lead emission control plan for Asarco. As amended by the revisions contained herein, the control plan is intended to attain and maintain the lead National Ambient Air Quality Standards ("NAAQS") in the East Helena Nonattainment area.

Pursuant to public notice, on September 15, 2000, the Board conducted a hearing in Billings, Montana, on the proposed revisions to the control plan. At the hearing an opportunity for comment was provided to the Department, Asarco, and interested members of the public. Based on the record in this proceeding, the Board enters the following Findings of Fact, Conclusions of Law and Order in regard to this matter:

FINDINGS OF FACT

1. On June 11, 1996, the Department and Asarco executed a document entitled "Stipulation of Department and Asarco," which included an Exhibit A and seven attachments (collectively "1996 Stipulation"). The 1996 Stipulation contained the lead control plan for Asarco, as part of the state's efforts to revise the State Implementation Plan for the control of lead emissions in the East Helena Nonattainment Area.

2. The express purpose of the 1996 Stipulation was to assure "attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) for lead." (1996 Stipulation, para. 1). As part of the 1996 Stipulation, Exhibit A contained emission

(Findings of Fact, Conclusions of Law and Order)

Replaced Pages:

September 15, 2000

Dated:

Page 2 of 12

STATE OF MONTANA  
AIR QUALITY CONTROL  
IMPLEMENTATION PLAN

Subject: ~~Lewis and Clark Co.~~  
Air Pollution  
Control Program

limitations and other conditions, including but not limited to: methods for determining compliance with emission limitations, and requirements by which such emission limitations are made quantifiable and enforceable by the Department. The attachments addressed a variety of issues, ranging from sampling and analysis of road dust samples to a baghouse maintenance plan. The 1996 Stipulation was approved and made enforceable by Board Order, dated June 26, 1996 ("1996 Board Order").

3. On August 13, 1998, the Department and Asarco executed a "Stipulation of Department and Asarco," which modified the 1996 Stipulation. ("1998 Stipulation"). The 1998 Stipulation was approved and made enforceable by Board Order, dated August 28, 1998 ("1998 Board Order").

4. The 1996 Stipulation required Asarco to install and operate a furnace lead granulation system within the Dross Building. Asarco installed and attempted to operate this system, but despite Asarco's best efforts, operation of this system presented insurmountable technical and operating problems. The use of granulated lead in the smelting process has resulted in a fouled product which cannot be sold, and numerous attempts to solve this problem have been unsuccessful. Use of the lead granulator has proven to be technically infeasible, and Asarco has returned to the conventional drossing process. However, the return to the conventional drossing process is not expected to increase ambient concentrations of lead in the East Helena area, based on the following considerations:

- a. The subject drossing activities are conducted entirely within the Dross Plant building;
- b. The Dross Plant building is completely enclosed and ventilated to the Dross Plant baghouse;
- c. There will be no change in the fugitive emission rate for the Dross Plant building;
- d. There will be no change in emissions from the Dross Plant baghouse stack.

5. In addition to deleting the requirement that Asarco install and operate a furnace lead granulation system within the Dross Building, revisions to the lead control plan for Asarco are also made to better reflect the current configuration of Asarco's East Helena facility. The revisions to the lead control plan for Asarco are contained in the Stipulation

(Findings of Fact, Conclusions of Law and Order)

2

Replaced Pages:

September 15, 2000

Dated:

Page 3 of 12

STATE OF MONTANA  
AIR QUALITY CONTROL  
IMPLEMENTATION PLAN

Subject: Lewis and Clark Co.  
Air Pollution  
Control Program

between Department and Asarco, dated July 18, 2000, that is attached to this Order and incorporated herein by reference. The Board has examined the findings in the attached Stipulation and hereby ratifies and adopts them as the Board's findings in this matter.

6. Unless expressly stated otherwise, this Order, including the attached Stipulation, does not in any way supercede or alter the provisions of the 1996 or 1998 Board Orders (or the 1996 or 1998 Stipulations adopted therein). Except as expressly revised herein, the 1996 Stipulation (including Exhibit A and the attachments 1-7), the 1998 Stipulation, and the 1996 and 1998 Board Orders adopting those stipulations, remain in full force and effect, as part of the Department's control plan for lead emissions in the East Helena Nonattainment Area.

7. It is the intent of the parties that this Stipulation, after adoption and incorporation by Board Order, shall be submitted to EPA for review and approval as revisions to the Asarco control strategy for the attainment and maintenance of the lead NAAQS in the East Helena Nonattainment area, as part of the State Implementation Plan.

8. The Department has issued public notice of the proposed revisions to the lead control plan. Notice was published, at least 30 days prior to the date of the hearing in this matter, by prominent advertising in the affected area. A copy of the proposed revisions was made available for public inspection.

#### CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board hereby enters the following Conclusions of Law:

1. The public has been provided with appropriate notice and an opportunity to participate in this matter. Title 2, Chapters 3 and 4, MCA. The federal requirements for notice and hearing prior to adoption and submittal of SIP revisions have been met. 40 CFR § 51.102.
2. The Department is required to prepare and develop a comprehensive plan for the prevention, abatement, and control of air pollution in this state. Section 75-2-112(2)(c), MCA.

(Findings of Fact, Conclusions of Law and Order)

3

Replaced Pages:

September 15, 2000

Dated:

Page 4 of 12

STATE OF MONTANA  
AIR QUALITY CONTROL  
IMPLEMENTATION PLAN

Subject: Lewis and Clark Co.  
Air Pollution  
Control Program

3. The Board has authority to issue orders necessary to effectuate the purposes of Title 75, Chapter 2, MCA. Section 75-2-111(3), MCA.
4. A Board Order adopting the attached Stipulation of the Department and Asarco, dated July 18, 2000, is appropriate to comply with the October 1, 1988, EPA request to revise the State Implementation Plan for East Helena.
5. All Findings of Fact are hereby incorporated in these Conclusions of Law.

**ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED THAT:

1. The revisions to the lead control plan for Asarco set forth in the attached Stipulation of the Department and Asarco, dated July 18, 2000, are adopted by the Board and incorporated herein as part of this Order.
2. This Order shall be enforceable by the Department.
3. Unless expressly stated otherwise in the Stipulation of the Department and Asarco, dated July 18, 2000, this Order does not in any way supercede or alter the provisions of the 1996 and 1998 Board Orders (and the 1996 and 1998 Stipulations adopted therein), and the 1996 and 1998 Board Orders remain in full force and effect, as part of the Department's control plan for lead emissions in the East Helena Nonattainment area.
4. Modifications of this Order shall only be by initiation of the Board or by petition to the Board and the issuance of a subsequent order revising this Order.

DATED this 15<sup>th</sup> day of September, 2000.

By:

  
JOE GERBASE  
Chair  
Board of Environmental Review

(Findings of Fact, Conclusions of Law and Order)

4

Replaced Pages:

Dated:

September 15, 2000

Page 5 of 12