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

In the Matter of the Application of the City of Missoula and the County of Missoula for Approval of Amendments to its Local Air Pollution Control Program	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

BACKGROUND

1. The City and County of Missoula by and through the Missoula City-County Air Pollution Control Board (hereinafter "MCCAPCB") has filed an application with the Board of Health and Environmental Sciences ("Board") seeking approval, pursuant to Section 75-2-301, MCA, of amendments to the Missoula air pollution control program.

2. Pursuant to public notice, and on September 16, 1994, at the Cogswell Building, Helena, Montana, the Board conducted a hearing on the application to amend the Missoula air pollution control program. At the hearing, testimony and evidence on the application were presented by MCCAPCB, the Department of Health and Environmental Sciences ("Department"), and other interested parties. Based upon the record of this proceeding, the Board enters the following Findings of Facts, Conclusions of Law, and Order.

FINDINGS OF FACT

3. On November 2, 1969, and pursuant to Section 69-3919 R.C.M. (now Section 75-2-301, MCA), the Board approved a local air pollution control program for the City of Missoula and County of Missoula. The program has been amended on several occasions since the initial approval by the Board.

4. In the application that is the subject of this proceeding, MCCAPCB is seeking approval of amendments to Missoula's air pollution control program. A copy of those amendments (underlined or strike-out in text) is attached to this Order as Exhibit A and by this reference is incorporated herein.

5. Exhibit A contains amendments to Chapter 16 and to Rules 401, 1401, 1423, 1424 and 1428 of Missoula's air pollution control program. These amendments are summarized as follows:

a. Chapter 16 is amended to more clearly indicate that changes to the local air pollution rules will be approved by the city council and county commissioners, and will become effective upon approval by the State Board.

b. Rule 401 is amended to lower the level at which PM-10 air pollution alerts are called from 100 micrograms/cubic meter to 80 micrograms/cubic meter.

c. Rule 1401 is amended to require paving of new public and private roads, driveways, and parking lots in the Air Stagnation Zone. The Rule 1401 amendments also incorporate existing city street sweeping ordinances into the air pollution control program.

d. Rules 1423 and 1424 are amended to incorporate by reference citation changes in the federal rules.

e. Rule 1428 is amended to require all new installations of solid fuel burning devices in new construction and existing residences to meet an emission rate of 1.0 gram per hour or less. Uncertified wood stoves must be replaced or removed upon the sale of a home or other title transfer. Fines are increased, and time necessary for staff to record a wood stove opacity violation is reduced from 20 minutes to 10.

6. MCCAPCB received public comment on the amendments that are the subject of this application on December 14, 1993, January 27, 1994, and February 17, 1994. MCCAPCB con-

ducted three public hearings on the amendments that are the subject of this application on March 29, 1994, May 10, 1994, and July 7, 1994. The amendments were adopted by the City Council/County Commissioners on July 25, 1994.

7. In previous Orders concerning the Missoula air pollution control program, the Board has found that the location, character, and extent of particular concentrations of population and air contaminant sources, and the geographic, topographic and metecrological considerations involved, and combinations of the foregoing, were such as to make impracticable the maintenance of appropriate levels of air quality without a local air pollution control program such as that administered by the MCCAPCB. The Board reaffirms the appropriateness of these findings, as they relate to the Missoula air pollution control program, as amended.

8. In previous Orders concerning the Missoula air pollution control program, the Board has found that the program provided for administrative organization, staff, financial and other resources necessary to effectively and efficiently carry out the program. The Board reaffirms the appropriateness of these findings as they relate to the Missoula air pollution control program, as amended.

9. In previous Orders concerning the Missoula air pollution control program, the Board has found that the program included the necessary provisions for enforcement by administrative and judicial processes. The Board reaffirms the appropriateness of these findings as they relate to the

Missoula air pollution control program, as amended.

10. Exhibit A to this Order contains the Missoula regulations that constitute the proposed amendments to the Missoula air pollution control program that are the subject of this proceeding. The Board finds that these regulations are compatible with, more stringent, or more extensive than the corresponding requirements under the Montana Clean Air Act, Title 75, Chapter 2, MCA, and regulations adopted thereunder.

11. Implementation of the Missoula air pollution control program, as amended, is not intended to interfere with the retention of jurisdiction by the Department over certain sources located within the County of Missoula, as required by the Board's Order of June 28, 1991.

12. The Department should assume and retain control over any source regulated by the Montana Clean Air Act, Title 75, Chapter 2, MCA, for which MCCAPCB has not provided by ordinance or local law for requirements which are compatible with, more stringent, or more extensive than those imposed by the Montana Clean Air Act or regulations adopted thereunder.

13. The Board finds that, as part of the requisite degree of authority necessary to administer the Missoula air pollution control program, as amended, it is appropriate for MCCAPCB to be responsible for emergency powers as provided in Section 75-2-402, MCA, in regard to those sources and activities governed by the local air pollution control program, as amended. The Department shall retain such emergency powers over all other sources.

CONCLUSIONS OF LAW

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

2. The Missoula air pollution control program, including the amendments that are the subject of this application, meets the requirements set forth by statute for approval by the Board. Section 75-2-301, MCA.

3. The Department should assume and retain control over any source regulated by the Montana Clean Air Act, Title 75, Chapter 2, MCA, for which MCCAPCB has not provided by ordinance or local law for requirements which are compatible with, more stringent than, or more extensive than those imposed by the Montana Clean Air Act or regulations adopted thereunder.

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

prior to January 1, 1991.

5. If the Board finds that the control of a particular air pollutant source, because of its complexity or magnitude, is beyond the reasonable capability of MCCAPCB or may be more efficiently and economically performed at the state level, the Board may direct the Department to assume and retain control over that air pollutant source. Section 75-2-301(9), MCA.

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

ORDER

1. The Board approves the Missoula air pollution control program, as amended by the application in this proceeding.

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

3. Approval herein by the Board of the amendments to the Missoula air pollution control program does not interfere with the retention of jurisdiction by the Department over certain sources located within the County of Missoula, as required by the Board's previous Order of June 28, 1991.

4. The Board directs the Department of Health and Environmental Sciences to assume and retain control over any source regulated by the Montana Clean Air Act, Title 75,

Chapter 2, MCA, for which MCCAPCB has not provided by ordinance or local law for requirements which are compatible with, more stringent than, or more extensive than those imposed by the Montana Clean Air Act or regulations adopted thereunder.

5. The Board orders that MCCAPCB shall be responsible for emergency powers as provided in Section 75-2-402, MCA, in regard to those sources and activities governed by the local air pollution control program, as amended. The Department shall retain such emergency powers over all other sources.

DATED this 16 day of September, 1994.

BOARD OF HEALTH AND
ENVIRONMENTAL SCIENCES

Raymond W Gustafson

RAYMOND W. "RIB" GUSTAFSON
Chairman

EXHIBIT A

MISSOULA CITY-COUNTY AIR POLLUTION CONTROL PROGRAM REGULATIONS

CHAPTER XVI. AMENDMENTS AND REVISIONS.

~~The Missoula Board of County Commissioners may enact any amendments or revisions of this Program which have been approved by the State Department of Health and Environmental Sciences, and which have been approved by the Control Board on public hearing upon due notice. Due notice shall be given by public advertisement once a week for at least three weeks before the public hearing in a weekly or daily newspaper published in Missoula County.~~

Amendments and revisions may be approved by a majority vote of the Control Board after a properly noticed public hearing. Notice shall be given by publication in a newspaper published at least once a week in Missoula County. The notice shall be published two times with at least six days separating each publication. The first publication shall be no more than 21 days prior to the hearing and the last no less than 3 days prior to the hearing. The published notice shall contain the date, time and place at which the hearing will occur; a brief statement of the proposed amendments and revisions and the address and telephone number of the person who can be contacted for further information.

The Board of County Commissioners and the City Council may approve or veto the Control Board's amendments and revisions by resolution at a public meeting.

Upon approval by the City Council and Board of County Commissioners, the amendments or revisions shall be forwarded to the State Board of Health for final approval. Unless otherwise provided for in the amendment or revision, the amendments and revisions shall be effective upon approval of the State Board of Health.

Subchapter 4 - Emergency Procedure

Rule 401 - MISSOULA COUNTY AIR STAGNATION PLAN

(1) Purpose and Intent

The purpose of this subchapter is to provide protection to the community from significant harm during air stagnation periods and prevent violation of the PM-10 ambient standards by reducing stagnation-related PM-10 emissions.

(2) General Provisions

(a) Particulate less than 10 microns (PM-10)

(i) Ambient concentrations of PM-10 will be determined by the Department using a reference method, or functional equivalent air quality monitoring and sampling devices which have been approved in writing by the Department of Health and Environmental Sciences.
(ii) The Department shall call a Stage I ALERT whenever the Department, using available scientific and meteorological data, determines that the ambient concentration of PM-10 can reasonably be expected to exceed 150 ug/M³ averaged over the next 24 hours if a Stage I Alert is not called. A Stage I Alert may be declared by the Department whenever the ambient concentration of PM-10 exceeds ~~100~~ (80) ug/M³ averaged over an eight hour period and when scientific and meteorological data indicate that the average PM-10 concentrations will remain at or above ~~100~~ (80) ug/M³ if a Stage I Alert is not called.
(iii) A Stage II WARNING shall be declared by the Department whenever the following conditions exist: 1) the ambient concentration of PM-10 exceeds 150 ug/M³ averaged over an eight hour period and an Alert is already in effect or when the ambient concentration of PM-10 exceeds 180 ug/M³ averaged over an eight hour period when an Alert has not been called; and, 2) when scientific and meteorological data indicate that the 24 hour average PM-10 concentrations will remain at or above 150 ug/M³ if a Stage II Warning is not called.
(iv) Stage III EMERGENCY and Stage IV CRISIS shall be declared by the Department whenever the PM-10 concentrations equal or exceed the level specified under Sections (9) and (10) for the specified period of time.
(v) Any of the above air pollution control stages for PM-10 may be reduced to the appropriate stage when measurements of the ambient air indicate a corresponding reduction in PM-10 levels.

Rule 1423 - STANDARD OF PERFORMANCE FOR NEW STATIONARY SOURCES

(1) For the purpose of this rule, the following definitions ~~applies~~ apply:

(a) "Administrator", as used in 40 CFR Part 6, July 1, 1992, means the department, except in the case of those duties which cannot be delegated to the local program by the state and the U.S. Environmental Protection Agency.

~~(a)~~(b) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Federal Clean Air Act, 42 U.S.C. ~~§1857~~ 7407, et seq., as amended in ~~1977~~ 1990.

(2) The terms and associated definitions specified in 40 CFR §60.2, July 1, ~~1987~~ 1992, shall apply to this rule, except as specified in subsection (1)~~(a)~~ (b).

(3) The owner and operator of any stationary source or modification, as defined and applied in 40 CFR Part 60, July 1, ~~1987~~ 1992, shall comply with the standards and provisions of 40 CFR Part 60, July 1, ~~1987~~ 1992.

(4) For the purpose of this rule, the board hereby adopts and incorporates by reference 40 CFR Part 60, July 1, ~~1987~~ 1992, which pertains to standards of performance for new stationary sources and modifications. 40 CFR Part 60, July 1, ~~1987~~ 1992, is available for public inspection and copying at the Missoula City-County Health Department, Environmental Health Division, 301 W. Alder, Missoula, MT; at EPA's Public Information Reference Unit, 401 M Street SW, Washington, DC 20460; and at the libraries of each of the ten EPA Regional Offices. Copies are also available as supplies permit from the U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; and copies may be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

Rule 1424 - EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

(1) For the purpose of this rule, the terms and associated definitions specified in 40 CFR §61.02, July 1, ~~1987~~ 1992, shall apply~~.~~ , except that:

(a) "Administrator", as used in 40 CFR Part 6, July 1, 1992, means the department, except in the case of those duties which cannot be delegated to the state by the U.S. Environmental Protection Agency, in which case "administrator" means the administrator of the U.S. Environmental Protection Agency.

(2) The owner or operator of any existing or new stationary source, as defined and applied in 40 CFR Part 61, July 1, ~~1987~~ 1992, shall comply with the standards and provisions of 40 CFR Part 61, July 1, ~~1987~~ 1992.

(3) For the purpose of this rule, the board hereby adopts and incorporates by reference 40 CFR Part 61, July 1, 1992, which pertains to emission standards for hazardous air pollutants. 40 CFR Part 61, July 1, ~~1987~~ 1992, is available for public inspection and copying at the Missoula City-County Health Department, Environmental Health Division, 301 W. Alder, Missoula, MT 59802, at the Air Quality Bureau, Department of Health and Environmental Sciences, P.O. Box 200901, ~~Cogswell Building, 1400 Broadway,~~ Helena, MT 59620-0901; at EPA's Public Information Reference Unit, 401 M Street SW, Washington, DC 20460; and at the libraries of each of the ten EPA Regional Offices. Copies are also available as supplies permit from the U.S. Environmental Protection Agency,

Research Triangle Park, NC 27711; and copies may be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

Subchapter 14 - Emission Standards

Rule 1401 - PREVENT PARTICULATE MATTER FROM BEING AIRBORNE

(1) For purpose of this rule, the following definitions apply:

(a) "Airborne particulate matter" means any particulate matter discharged into the outdoor atmosphere which is not discharged from the normal exit of a stack or chimney for which a source test can be performed in accordance with Method 5 (determination of particulate emissions from stationary sources), Appendix A, Part 60.275 (Test Method and Procedures), Title 40, Code of Federal Regulations [CFR] (Revised July 1, 1977).

(b) "Approved deicer" means a magnesium chloride based product treated with a lignin based corrosion inhibitor. A substitute deicer and corrosion inhibitor shall be considered an approved deicer when approved for use by the City Public Works Department and the Missoula City-County Air Pollution Control Board.

(c) "Best available control technology (BACT)" means an emission limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under the 1990 amendments to the Federal Clean Air Act or the Montana Clean Air Act which would be emitted from any proposed stationary source or modification which the Department, on a case by case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such contaminant. In no event shall application of the best available control technology result in emission of any contaminant which would exceed the emissions allowed by the applicable standard under 40 CFR Part 60 and 61. If the Department determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice or operational standard or combination thereof, to require the application of BACT. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation and shall provide for compliance by means which achieve equivalent results.

(d) "Commercial" means activity related to the purchase, sale, offering for sale, or other transaction involving the handling or disposition of any article, service, or commodity for livelihood, profit, management, or occupancy of an office building, offices, recreational, or amusement enterprises.

(~~d~~e) "Existing source" means a source which was in existence and operating or capable of being operated or had a construction permit from the Department prior to February 16, 1979.

(~~e~~f) "Extraordinary circumstance" means when a law officer calls for sanding of an intersection to eliminate an existing unsafe traffic situation, or when the slope of a roadway or thickness of ice prevent the use of deicing materials as an adequate method of providing a safe driving surface within a reasonable amount of time.

(g) "Industrial" means activity related to the manufacture, storage, extraction, fabrication, processing, reduction, destruction, conversion, or wholesaling of any article, substance or commodity

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or any treatment thereof in such a manner as to change the form, character, or appearance thereof.

(fh) "Lowest achievable emission rate (LAER)" means for any source, that rate of emissions which reflects:

(i) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or
(ii) The most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent. In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance under 40 CFR Part 60 and Part 61.

(gi) "New source" means a source which was constructed, installed or altered on or after February 16, 1979, unless the source had a permit to construct prior to February 16, 1979.

(i) "Parking lot" means an area where operable vehicles are parked for more than 15 days of a calendar year including but not limited to areas that contain vehicles offered for sale.

(k) "Private driveway" means a privately owned access or egress that serves two or fewer residential parcels.

(l) "Private road" means a privately owned access or egress that serves three or more residential parcels or that serves one or more non-residential parcels.

(m) "Public road" means a road that is dedicated to the public, a petitioned road or a prescriptive use road.

(hn) "Reasonably available control technology (RACT)" means a limitation of emissions from any source that is determined on a case by case basis to be reasonably available, taking into account energy, environmental, and economic impacts and other costs. Such an emission limitation shall only be required after consideration of the necessity of imposing such a limitation in order to attain and maintain a national ambient air quality standard (NAAQS) and alternative means of providing for attainment and maintenance of such a NAAQS.

(in) "Reasonable precautions" means any reasonable measure to control emissions of airborne particulate matter. Determination of what is reasonable shall be accomplished on a case by case basis taking into account energy, environmental, economic, and other costs.

(jo) "Required deicing zone" means the area within the City limits, bordered in the north by the northern right-of-way boundary of Interstate 90 and in the south by the southern right-of-way boundary of 39th Street and Southwest Higgins Avenue, but also including those portions of Rattlesnake Drive and Van Buren Street that lie inside the City limits.

(p) "Road" means an open way for purposes of vehicular travel including streets, roads, and alleys.

(q) "Storage area for heavy equipment or semis" means an area where only heavy equipment or semis are parked, and these vehicles are parked there for longer than 48 hour periods. This does not include onloading or unloading areas for semis.

(2) No person shall cause or authorize the production, handling, transportation, or storage of any

material unless reasonable precautions to control emissions of airborne particulate matter are taken. Such emissions of airborne particulate matter from any stationary source shall not exhibit an opacity of twenty (20) percent or greater averaged over six (6) consecutive minutes.

(3) No person shall cause or permit a building or its appurtenances or a road, or a driveway, or an open area to be constructed, used, repaired or demolished without applying all such reasonable precautions as may be required to prevent particulate matter from becoming airborne. The Department may require such reasonable measures as may be necessary to prevent particulate matter from becoming airborne, including but not limited to, paving or frequent cleaning of road, driveways, and parking lots; application of dust-free surfaces; application of water; and the planting and maintenance of vegetative ground cover.

(4) Existing Publicly Owned or Maintained Roads or Parking Areas

(a) By January 1 of each year, the Department may submit to the political subdivision owning or maintaining roads or parking areas, and to the Board, a report on the nature and degree of emissions from existing roads and parking areas within the jurisdiction of said political subdivisions which exceed 50 vehicles per day averaged over any 3-day period, based upon traffic count information as collected by the Department or the political subdivision. Said report shall include suggested control measures for each airborne particulate source.

(b) Said political subdivisions shall submit a plan and progress report to the Department by May 1 of each year which includes a specified time schedule for the control of fugitive dust emissions on roads and parking areas as reported by the Department pursuant to CHAPTER IX, 1401 (4)(a).

(5) The Department may require any person owning or operating a commercial establishment which is located on a publicly owned or maintained road which is used by more than 200 vehicles per day averaged over any 3-day period to submit a plan which provides for paving and restricting traffic to paved surfaces for any areas used by said commercial establishment for access, egress, and parking except where said access, egress, and parking is seasonal and intermittent and the area in which said access, egress and parking is located is not in violation of Ambient Air Quality Standards as listed in ARM 16.8.805 - 16.8.822 (1989). Said plan shall provide drawings and other information that the Department may require to indicate the adequacy of the plan. Said plan shall provide reasonable time for construction of paved roads or structures limiting traffic to paved surfaces, but shall not exceed one year from the date of submittal to the Department.

(6) The Department may require any person owning, leasing, or managing property containing a road or thoroughfare which is used by more than 50 vehicles per day, averaged over any three day period, to submit a plan which provides for paving or for restricting traffic to paved surfaces. Roads located in areas that do not violate the ambient air quality standards (ARM 16.8.805 - 16.8.822 (1989)), and which are used seasonally and intermittently shall be exempt from this requirement. The plan shall provide drawings and other information that the Department may require. A reasonable time will be permitted for the construction of paved roads or structures limiting traffic to paved surfaces, but this time shall not exceed one year from the date of submittal of the plan to the Department unless an extension is granted by the Board.

(7) Paving requirements in the Air Stagnation Zone. New public roads, private roads, private driveways and parking lots built in the Air Stagnation Zone shall be paved as prescribed in these regulations and in accordance with applicable City or County street and road standards. The effective date of this regulation shall be upon approval by the State Board of Health.

(a) Road construction permits. New public roads, private roads, private driveways and parking lots

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planned in the Air Stagnation Zone shall obtain a permit from the Department before construction begins except as provided for in CHAPTER IX, 1401 (7)(c)(iii) and (7)(d). The applicant shall supply plans for the proposed construction at the time of the application for the permit. Plans shall be legibly drawn with permanent ink or printed or reproduced by a process guaranteeing a permanent record. Plans shall include the following information:

(i) A complete legal description of the affected parcels and a location map of the proposed construction area.
(ii) A scaled plan view drawing which includes all existing and proposed property boundaries, structures, roads, parking areas and adjoining exterior roads. Proposed construction shall be clearly labeled as such.
(iii) Width of the proposed road or driveway. Dimensions of proposed parking areas shall be included.
(iv) The thickness of the pavement that shall be used on the proposed construction and the base thickness.
(v) A description of the intended uses of the road, driveway or parking lot, including but not limited to the estimated number and type of vehicles using the road, parking lot or driveway.
(vi) Description of adjoining exterior roads, eg. paved or unpaved, public or private.
(vii) The Department may require additional information from the applicant if necessary to evaluate the application prior to the issuance of a permit.

(b) New public roads shall be paved within 2 years (730 days) of commencement of road construction or final plat approval, whichever comes first. New public parking areas shall be paved prior to occupancy.

(i) Paved public roads and parking areas shall be maintained on a regular basis in order to prevent particulate matter from becoming airborne.

(c) Commercial and industrial private roads, driveways, and parking lots.

(i) New private roads, driveways, or parking lots serving commercial or industrial sites shall be paved prior to occupancy except as provided for in CHAPTER IX, 1401 (7)(c)(iii-iv).
(ii) Paved private roads, driveways, and parking lots shall be maintained on a regular basis to prevent particulate matter from becoming airborne.
(iii) Temporary roads at active construction sites do not need to be paved and do not need to obtain a road construction permit, but may be subject to dust abatement measures to prevent particulate matter from becoming airborne.
(iv) Storage areas for heavy equipment, semi-trucks, recreational vehicle parking, and other long term storage may consist of a suitable base material and a minimum of four inches of 3/4 inch minus gravel. The 3/4 inch minus gravel shall meet the specifications set forth below.

The material shall consist of hard, durable particles or fragments of slag, stone or gravel screened and crushed to the required size and grading specified here.

Sieve Designation	% By Weight Passing
3/4 inch	100%
No. 4	30- 60%
No. 10	20- 50%
No. 200	less than 8%

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That portion of the material passing a No. 40 sieve shall have a plasticity index of not over 4, as determined by AASHTO T-91.

(c) At least 80 lineal feet of paved surface shall be placed between storage areas for heavy equipment and semis and the access road. This 80 lineal feet of paved surface shall be placed and used so that heavy equipment and semis cross 80 feet of paved surface before entering the access road. The paved surface shall commence at the edge of the access road.

(d) Roads meant solely for agricultural or silvicultural purposes are exempt from paving requirements but may be subject to dust abatement measures to prevent particulate matter from becoming airborne. If the use of a road changes so that it is no longer used solely for agricultural or silvicultural purposes, the road will be considered a new road and all paving regulations pertinent to the new uses on the road shall be met.

(e) Other private roads and driveways.

(i) New private roads shall be paved within 2 years (730 days) of commencement of road construction or final plat filing, whichever comes first.
(ii) Private driveways accessing a paved road shall be paved before occupancy of a residential unit to a minimum of twenty (20) feet back from the paved road or to the outside boundary of the right of way, whichever is longer.
(iii) Paved private roads and driveways shall be maintained in a paved condition to prevent particulate matter from becoming airborne.
(iv) Private roads and driveways required to be paved under these rules shall be paved with a minimum of 1.5 inches of asphalt with appropriate cushion or four inches of portland cement concrete. Based upon proposed usage, the Department may require different minimum paving requirements.

(f) Paving permit fees. The Board shall set a fee schedule for paving permits. The total amount of fees collected per budget period shall be sufficient to defray all cost of administrating and assuring compliance with this rule.

(8) Waiver of the right to protest an RSID or an SID for paving improvements in the Air Stagnation Zone. The effective date of this regulation shall be upon approval by the State Board of Health.

(a) No road construction permits shall be issued under this subchapter for new roads or private driveways accessed by an unpaved road unless:

(i) the parcel served by the new road or driveway is subject to a waiver of the right to protest any RSIDs or SIDs for the paving of the unpaved road accessing the parcel; or
(ii) the owner of the real property accessed by the unpaved road executes a deed restriction waiving the right to protest any RSIDs or SIDs for the paving of the unpaved access road using the language set forth in (iii) below.
(iii) I/We, the undersigned, hereby certify that I/we are the owners of the real property located at (legal description) and hereby waive any right to protest an RSID or SID affecting said property for the purpose of financing the design and construction of a public paved road accessing said property. Further, my/our signatures on this waver may be used in lieu of my/our signature(s) on an RSID or SID petition for the creation of one or more RSID's or SID petitions for the purpose of financing the design and construction of a public paved road accessing the above-described property.

This waiver shall run with the land and shall be binding on the transferees, successors, and

assigns of the owners of the land described herein.

All documents of conveyance shall refer to and incorporate this waiver.

(b) In the Air Stagnation Zone, any division of land that contains parcels accessing an unpaved road, or whose primary access is an unpaved road, shall waive their right to protest an RSID or SID that upgrades and paves the road and shall include the language set forth in Rule 1401 (8)(a)(iii) on the plat.

(~~7~~9) (a) No person shall place any sanding or chip sealing materials upon any road or parking lot located inside the area of regulated road sanding materials which has a durability of less than or equal to 80 as defined by AASHTO T-210 procedure B and a silt content passing the #200 sieve of greater than 2.5% as defined by AASHTO T-27 and T-11.

(b) Contingency Measure: The area of regulated road sanding materials defined by Rule 701 (8) is expanded to include Section 1, T12N R20W, Sections 5 and 24, T13N R19W, Sections 19, 24, 25, 30, 31 and 36, T13N R20W. (See Chapter IX Subchapter 3.)

(c) Any political subdivisions maintaining any major arterial shall clean the center line and areas immediately adjacent to the travel lane of the major arterial located inside the area of regulated road sanding materials during the period December 1 to March 31 when the paved road surface is at a temperature above 32°F for longer than four hours. The Board hereby incorporates Chapter 10.50 of the Missoula Municipal Codes which requires street sweeping be performed.

(~~8~~10) Within any area designated non-attainment for either the primary or secondary national ambient air quality standards (NAAQS) any person who owns or operates:

(a) any existing source of airborne particulate matter shall apply reasonably available control technology (RACT);

(b) any new source of airborne particulate matter that has a potential to emit less than 100 tons per year of particulate shall apply best available control technology (BACT);

(c) any new source of airborne particulate matter that has a potential to emit more than 100 tons per year of particulate shall apply lowest achievable emission rate (LAER).

(~~9~~11) No person shall apply street sanding materials other than an approved deicer when the ambient temperature is above 0°F to those public roadways in the required deicing zone, except under extraordinary circumstance.

(~~10~~12) The provisions of this rule shall not apply to emissions of airborne particulate matter originating from any activity or equipment associated with the use of agricultural land or the planting, production, harvesting, or storage of agricultural crops (this exemption does not apply to the processing of agricultural products by a commercial business).

~~(11) The effective date of this regulation shall be upon approval.~~

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Rule 1428 - SOLID FUEL BURNING DEVICES

(1) The intent of this rule is to regulate and control the emissions of air contaminants from solid fuel burning devices in order to further the policy and purpose declared in CHAPTER II.

(2) For the purpose of this rule the following definitions apply:

(a) "Air Stagnation Zone" means the area defined by:
T12N R18W Sections 5,6,7,8,17,18,19;
T12N R19W Sections 1-35;
T12N R20W Sections 1,2,3,4,5,8,9,10,11,12,13,14,15,16,17,21,22,23,24,25,26,27,28,34,35,36;
T13N R18W Sections 4,5,6,7,8,9,16,17,18,19,20,21,28,29,30,31,32,33;
T13N R19W Sections 1-36;
T13N R20W Sections 1,2,3,4,9,10,11,12,13,14,15,16,21,22,23,24,25,26,27,28,33,34,35,36;
T14N R18W Sections 30,31,32;
T14N R19W Sections 13-36;
T14N R20W Sections 13,14,15,21,22,23,24,25,26,27,28,33,34,35,36; and all as shown on the attached map. (see Appendix A)

(b) "Burning season" means that period of time from the first day of July through the last day of June of the following year.

(c) "Certificate of Compliance": Means a certificate issued by the Department verifying that the sale of real property complies with the current regulations concerning the removal, replacement or rendering permanently inoperable all Non-compliant Woodstoves within the property being transferred or conveyed.

(d) ~~(c)~~ "Class of device" means a group of solid fuel burning devices similar in technology utilized, age, heat output, or design which the Department determines to be appropriate for the purpose of setting emission rates. These classes include but are not limited to existing wood stoves, fireplaces and wood furnaces.

(e) ~~(d)~~ "Alert ~~Class I~~ permit" means an emission permit issued by the Department to operate a solid fuel burning device during an air pollution Alert and during periods when the air stagnation plan is not in effect. Solid fuel burning devices must meet Lowest Achievable Emission Rate to qualify for an Alert ~~Class I~~ emissions permit.

(f) ~~(e)~~ "Installation ~~Class II~~ permit" means an emissions permit issued by the Department to install and operate a solid fuel burning device within the Air Stagnation Zone. ~~Solid fuel burning devices must use Reasonably Available Control Technology to qualify for an Class II permit.~~

(g) ~~(f)~~ "EPA method" means 40 CFR Part 60, Subpart AAA, Sections 60.531, 60.534, and 60.535.

(h) ~~(g)~~ "Fireplace" means a solid fuel burning device with an air-to-fuel ratio of greater than thirty which is a permanent structural feature of a building. A fireplace is made up of a concealed masonry or metal flue, and a masonry or metal firebox enclosed in decorative masonry or other building materials.

(i) ~~(h)~~ "High Impact Zone" means the geographical area designated as such by a map adopted by the Missoula City-County Air Pollution Control Board on August 25, 1983. Attached hereto and by this reference made a part hereof. (see Appendix A)

(i) ~~(i)~~ "Lowest Achievable Emission Rate (LAER)" means an emission limitation for any one or more of the following: Visible emissions, TSP, PM-10, CO. This rate shall represent the most stringent limitation achieved in practice by a class of devices as set forth in CHAPTER IX, 1428 (4)(a)(ii).

(k) ~~(j)~~ "New Solid Fuel Burning Device" means any solid fuel burning device installed for use after July 1, 1986.

(l) "Non-compliant Woodstoves": Means any free standing woodstove or any fireplace insert with emissions exceeding 6.0 grams per hour weighted average when tested in conformance with the Oregon method, or 5.5 grams per hour weighted average when tested using the EPA method. Non-compliant Woodstoves shall not include fireplaces or any commercially manufactured pellet stove.

(m) "Notice of Exemption": Means a statement containing the notarized signatures of the buyer, seller and listing agent, if any, attesting to the absence of Non-compliant Woodstoves on any real property intended for title transfer or conveyance.

(n) ~~(k)~~ "Oregon method" means Oregon Department of Environmental Quality "Standard Method for Measuring the Emissions and Efficiencies of Woodstoves", Sections 1 through 8 and O.A.R. Chapter 340. Division 21 Sections 100, 130, 140, 145, 160, 161, 163, 164, 165.

(o) ~~(l)~~ "Pellet stove" means a solid fuel burning device designed specifically to burn pellets or other nonfossil biomass pellets which is commercially produced, incorporates induced air flow, is installed with an automatic pellet feeder, and which is a free standing room heater or fireplace insert.

~~(m) "Reasonably Available Control Technology (RACT)" means a limitation of emissions from any source that is determined on a case by case basis to be reasonably available, taking into account energy, environmental, and economic impacts and other costs. Such an emission limitation shall only be required after consideration of the necessity of imposing such a limitation in order to attain and maintain a National Ambient Air Quality Standard (NAAQS).~~

(p) ~~(n)~~ "Solid Fuel Burning Device" means any fireplace, fireplace insert, woodstove, wood burning heater, wood fired boiler, coal-fired furnace, coal stove, or similar device burning any solid fuel used for aesthetic, cooking, or heating purposes, which burns less than 1,000,000 BTU's per hour.

(q) ~~(o)~~ "Sole Source of Heat" means one or more solid fuel burning devices which constitute the only source of heat in a private residence for purpose of space heating. No solid fuel burner or burners shall be considered to be the sole source of heat if the private residence is equipped with a permanently installed furnace or heating system, designed to heat the residence connected or disconnected from its energy source, utilizing oil, natural gas, electricity, or propane. A sole source permit may be issued by the Department when the heating system is only minimally sufficient to keep the plumbing from freezing. Only residences equipped with a woodstove which qualifies for an Alert ~~Class I~~ permit may obtain a new sole source of heat permit after July 1, 1985, unless a sole source of heat permit was issued before July 1, 1985, in which case such a permit may be renewed.

(r) ~~(p)~~ "Woodstove" means a wood fired appliance with a heat output of less than 40,000 BTU per hour with a closed fire chamber which maintains an air-to-fuel ratio of less than 30 during the burning of 90 percent or more of the fuel mass consumed in a low firing cycle. The low firing cycle means less than or equal to 25 percent of the maximum burn rate achieved with doors closed or the minimum burn achievable, whichever is greater. Wood fired forced air combustion furnaces that primarily heat living space, through indirect heat transfer using forced air duct work or pressurized water systems are excluded from the definition of "woodstove".

(3) Visible emission standards for solid fuel burning devices:

(a) Within the Air Stagnation Zone, no person owing or operating a solid fuel burning device shall cause, allow, or discharge emissions from such device which are of an opacity greater than forty (40) percent.
(b) The provisions of this section shall not apply to emissions during the building of a new fire, for a period or periods aggregating no more than ten (10) ~~fifteen (15)~~ minutes in any four (4) hour period.

(4) Emission standards and certification for new installations:

(a) Emissions certification

(i) The Board hereby adopts the Oregon method as applicable for the sole purpose of establishing an uniform procedure to evaluate the emissions and efficiencies of woodstoves for compliance with the emission limitation imposed in CHAPTER IX 1428, (4)(b) and (c). Beginning January 1, 1988 the Department shall also use the EPA method for the purpose of establishing a uniform procedure to evaluate the emissions and efficiencies of woodstoves. Devices exempted from the definition of: "woodstove" listed in the Oregon method or "wood heater" listed in the EPA method may not be issued Alert class ~~Class I~~ or Installation class ~~Class II~~ emissions certification unless tested to either method using modifications in the test procedure approved by the Department,, ~~except that pellet stoves which have not been emissions tested, may be certified as Class II devices.~~

(ii) The Department shall accept as evidence of compliance with the emission limitation imposed in CHAPTER IX, 1428, (4)(b) and (c), labels affixed to the stove in compliance with OAR 340-21-150, 40 CFR Part 60, Subpart AAA, Section 60.536, or documentation which, in the opinion of the Department, is sufficient to substantiate that the specific model, design, and specifications of the woodstove for which a permit is required meet standards specified in CHAPTER IX, 1428, (4)(b) and (c).
(iii) The Department shall issue an Alert ~~Class I~~ or an Installation ~~Class II~~ permit when the applicant has submitted information, on forms supplied by the Department, which indicates compliance with CHAPTER IX, 1428 (4)(b) and (c), local building codes, and other applicable provisions of this Program.

(b) Alert ~~Class I~~ Permits.

(i) The Department may issue an Alert ~~Class I~~ permit to woodstoves for which a permit application was received during the period July 1, 1985 through June 30, 1988 if the emissions do not exceed: 6.0 grams per hour weighted average when tested in conformance with the Oregon method, or 5.5 grams per hour weighted average when tested using the EPA method. The Department may issue an Alert ~~Class I~~ permit to woodstoves for which a permit application was received on or after July 1, 1988 if the emissions do not exceed: 4.0 grams per hour weighted average when tested using the Oregon method, or 4.1 grams per hour weighted average when tested using the EPA method. The Department shall issue an Alert permit to pellet stoves for which a permit application was received on or after October 1, 1994 if the emissions do not exceed 1.0 grams per hour weighted average when tested in conformance with the EPA method. In order to qualify for an Alert ~~Class I~~ permit, catalyst equipped woodstoves must be equipped with a permanent provision to accommodate a commercially available temperature sensor which can monitor combustor gas stream temperature within or immediately downstream (within 1.0 inch or 2.5 cm) of the combustor surface.

(ii) Alert ~~Class I~~ permits issued for woodstoves which may be operated during an air pollution Alert shall be valid for a period of two years for any woodstove which uses a catalyst or other nondurable part as an integral part, and five years for other devices. They shall not be transferable from person to person or from place to place unless reissued by the Department. After an Alert ~~Class I~~ permit expires, the Department may require information to determine if the woodstove is capable of meeting emission requirements before issuing another permit. If an inspection of the appliance during operation is not allowed by the applicant, the Department shall require evidence that any non-durable parts (e.g. catalytic combustor, gaskets, by-pass mechanisms) have been replaced as necessary to meet applicable emission limitations.

(c) Installation ~~Class II~~ Permits.

(i) After July 1, 1986 no person or persons shall install or use any new solid fuel burning device in any existing ~~or new~~ structure within the Air Stagnation Zone without having an Installation ~~Class II~~ permit.

(ii) The Department may issue an Installation ~~Class II~~ permit for the installation of a new woodstove inside the Air Stagnation Zone for which a permit application was received during the period July 1, 1986 through June 30, 1988 if the emissions do not exceed: 15.0 grams per hour weighted average when tested in conformance with the Oregon method, or 8.5 grams per hour weighted average when tested using the EPA method. The Department may issue an Installation ~~Class II~~ permit to woodstoves for which a permit application was received on or after July 1, 1988 and before June 30, 1990 if the emissions do not exceed: 9.0 grams per hour weighted average when tested using the Oregon method, or 8.5 grams per hour weighted average when tested using the EPA method. The Department may issue an Installation ~~Class II~~ permit to woodstoves for which a permit application was received on or after July 1, 1990 through September 30, 1994 if the emissions do not exceed: 9.0 grams per hour weighted average when tested using the Oregon method, or 7.5 grams per hour weighted average when tested using the EPA method. After October 1, 1994 the Department shall issue an Installation permit for pellet stoves with emissions not greater than 1.0 grams per hour weighted average when tested in conformance with the EPA method. An Installation ~~Class II~~ permit shall expire 180 days after issuance unless a final inspection is conducted or unless the Department receives documentation which is adequate to insure the type of device, and installation are in compliance with the provisions of this Program.

(iii) Fireplaces which have not been tested in conformance with Section (4)~~(e)~~ (b) may be issued an Installation ~~Class II~~ permit when installed with a natural gas or propane fuel source and upon the stipulation that only natural gas or propane may be used in the fireplace. No person shall cause or allow any visible emissions whatsoever from a fireplace which has been issued an Installation ~~Class II~~ permit pursuant to this paragraph.

(iv) Catalyst equipped woodstoves must be equipped with a permanent provision to accommodate a commercially available temperature sensor which can monitor combustor gas stream temperature within or immediately downstream (within 1.0 inch or 2.5 cm) of the combustor surface.

(v) New Solid Fuel Burning Devices may not be installed or used with a flue damper unless the device was so equipped when tested in accordance with Section (4)~~(e)~~ (b).

~~(vi) Pellet stoves exempted from Oregon or EPA certification on the basis of air to fuel ratio and not tested for emissions shall be considered eligible for Class II certification.~~

(5) Prohibition of visible emissions during air pollution Alerts and Warnings.

(a) Within the High Impact Zone, no person owning, operating or in control of a solid fuel burning device shall cause, allow, or discharge any visible emission from such device during an air pollution Alert declared by the Department pursuant to CHAPTER IX, 401 (7) unless a sole source of heat permit, dealer's demonstration permit, special need, or Alert ~~Class I~~ permit has been issued for such device pursuant to CHAPTER IX, 1428 (7).

(b) Within the High Impact Zone, no person owning, operating or in control of a solid fuel burning device for which a sole source of heat permit, dealer's demonstration permit, or special need permit has been issued shall cause, allow, or discharge any emissions from such device which are of an opacity greater than twenty (20) percent during an air pollution Alert declared by the Department pursuant to CHAPTER IX, 401 (7). The provisions of this paragraph shall not apply to emissions during the building of a new fire or for refueling for a period or periods aggregating no more than ten (10) ~~twenty (20)~~ minutes in any four (4) hour period.

(c) Within the High Impact Zone, no person owning, operating, or in control of a solid fuel burning device for which an Alert ~~Class I~~ permit has been issued shall cause, allow, or discharge any emissions from such device which are of an opacity greater than ten (10) percent during an air pollution Alert declared by the Department pursuant to CHAPTER IX, 401 (7). The provisions of this subsection shall not apply to emissions during the building of a new fire, or for refueling for a period or periods aggregating no more than ten (10) ~~twenty (20)~~ minutes in any four (4) hour period.

(d) Contingency Measure: Rule 1428 (5)(a), and (7)(d) is modified to delete Alert ~~Class I~~ and dealer demonstration permitted devices, and Rule (5)(c) is void. (See Chapter IX Subchapter 3.)

(e) The Department has a duty, when declaring an air pollution Alert to be in effect, to take reasonable steps to publicize that information and to make it reasonably available to the public at least three (3) hours before initiating any enforcement action for a violation of this section.

(f) Every person operating or in control of a solid fuel burning device within the High Impact Zone has a duty to know when an air pollution Alert has been declared by the Department.

(g) Any adult resident or owner if there is no resident, of property on which a solid fuel burning device is located is absolutely liable for any violation of CHAPTER IX, 1428 regardless of her or his mental state. Any such resident or owner is also accountable for any violations of CHAPTER IX, 1428 by others persons allowed access to the property.

(h) Within the High Impact Zone, no person owning, operating, or in control of a solid fuel burning device shall cause, allow, or discharge any visible emissions from such device during an air pollution Warning declared by the Department pursuant to CHAPTER IX, 401 (8) unless such device has a sole source of heat permit. Within the High Impact Zone, no person owning, operating or in control of a solid fuel burning device for which a sole source of heat permit has been issued shall cause, allow, or discharge any emissions from such device which are of an opacity greater than twenty (20) percent during an air pollution Warning declared by the Department pursuant to CHAPTER IX, 401 (8). The provisions of this paragraph shall not apply to emissions during the building of a new fire, for a period or periods aggregating no more than ten (10) ~~twenty (20)~~ minutes in any four (4) hour period.

(6) Fuel:

Within Missoula County no person shall burn any material in a solid fuel burning device except

uncolored newspaper, untreated wood and lumber, and products manufactured for the sole purpose of use as fuel. Products manufactured or processed for use as fuels must conform to any other applicable provision of this Program.

(7) Permits:

(a) Within the High Impact Zone, no person owning, operating, or in physical control of a solid fuel burning device which is the sole source of heat shall cause, allow, or discharge any visible emissions from such device during an air pollution Alert declared by the Department unless a sole source of heat permit has been issued for the device by the Department.

(b) Contingency Measure: All portions of these rules which allow ~~permitted~~ Alert permits ~~Class I devices~~ and woodstove dealers to burn during alerts or warnings are hereby rescinded. Rule 1428 (5)(a) and (7)(d) is modified to delete Alert ~~Class I~~ and dealer demonstration permitted devices and Rule 1428 (5)(c) is void. (See Chapter IX Subchapter 3.)

(c) Within the High Impact Zone, no person owning, operating, or in physical control of a solid fuel burning device which is a demonstration model in an authorized dealer's showroom shall cause, allow, or discharge any visible emissions from such device during an air pollution Alert declared by the Department unless a dealer's demonstration permit has been issued by the Department. (The intent of this subsection is to allow authorized dealers to demonstrate solid fuel burning devices during Alerts.) A dealer demonstration permit shall be valid for five years.

(d) Within the High Impact Zone, no person owning, operating, or in physical control of a solid fuel burning device which is eligible for an Alert ~~Class I~~ permit shall cause, allow, or discharge any visible emissions from such device during an air pollution Alert declared by the Department unless an Alert ~~Class I~~ permit has been issued for the device by the Department. The Department shall issue Alert ~~Class I~~ permits to qualified applicants beginning July 1, 1985.

(e) Special need permit eligibility:

(i) A person who demonstrates an economic need to burn solid fuel for space heating purposes by qualifying for energy assistance according to economic guidelines established by the U.S. Office of Management and Budget under the Low Income Energy Assistance Program (L.I.E.A.P.), as administered in Missoula County by the District XI Human Resources Development Council, is eligible for a special need permit which shall be issued by the Department.

(ii) Application for a special need permit may be made to the Department at any time, and a special need permit shall be valid for a period of not more than one (1) year from the date it is issued. Special need permits may be renewed providing the applicant meets the applicable need and economic guidelines at the time of application for renewal. Special need permits shall be issued at no cost to the applicant. A special need permit is not transferable from place to place and is not transferable to a person other than the person to whom it is issued.

(iii) A person may apply to the Department for a temporary special need or temporary sole source permit if not qualified for a permit under CHAPTER IX, 1428, (7)(a) or (d). The Department may issue a temporary permit if it finds that; the emissions proposed to occur do not constitute a danger to public health or safety; and compliance with the air stagnation plan would produce hardship without equal or greater benefits to the public; and that compliance with the air stagnation plan would create unreasonable economic hardship to the applicant or render the residence as equipped severely uncomfortable for human habitation, or cause damage to the building or its mechanical or plumbing systems. The Department

may place conditions on a temporary permit which are adequate to insure that the permittee is in compliance with the Program when the permit expires. The Department shall arrange for an applicant interview to be conducted within five (5) working days of receipt of a written request for a temporary permit and shall render its decision within ten (10) working days of receipt of the written request. Application to and denial by the Department for a temporary permit shall not prevent the applicant from applying to the Board for a variance under the appropriate provisions of this Program. Temporary permits issued pursuant to this section shall be valid for a period determined by the Department, but shall not exceed one (1) year and shall not be renewable.

(iv) In an emergency situation the Department may issue a temporary special need permit above to a person who has applied for a special need permit variance pursuant to (7)(d)(i). The temporary special need permit shall be valid until the Board issues a decision on the application for a variance. An emergency situation shall include but is not limited to a situation where a person demonstrates that his furnace or central heating system is inoperable other than through his own actions or the situation where the furnace or central heating system is involuntarily disconnected from its energy source by a public utility or other fuel supplier.

(f) A person who demonstrates a special need to burn solid fuel for space heating purposes in a private residence but who does not qualify for a sole source of heat permit, dealer demonstration permit, Alert ~~Class I~~ permit, special need permit, or emergency special need permit, may apply to the Board for a special need permit variance under the provisions of CHAPTER X of this Program. The Board shall consider applications for a special need permit variance on a case by case basis and may issue such variance when the criteria in CHAPTER X, (1) are established. The Board shall consider economic hardship and special circumstances when considering an application for a special need permit variance. The Board shall conduct a hearing and issue it's decision on an application for a special need permit variance within thirty (30) days after receiving a written application.

(g) Unless otherwise provided in this Program, sole source of heat permits, dealers demonstration permits, special need permits, Alert ~~Class I~~ permits and Installation ~~Class II~~ permits for solid fuel burning devices shall be issued, denied, suspended, and revoked, in accordance with CHAPTER IX, Subchapter 11 of this Program.

(h) All Alert ~~Class I~~, sole source, special need, dealer demonstration permits shall be valid for the appropriate multiple of the period July 1st through the last day of June the following year. The Department may begin issuing permits for the upcoming burning season on March 1st of each year. The period of validity for these permits is one (1) year for special need and sole source permits, two (2) years for Alert class ~~Class I~~ devices with non-durable parts, and five (5) years for dealer demonstration permits and other Alert class ~~Class I~~ devices.

(i) A sole source of heat permit shall not be eligible for renewal when the ownership of the property is transferred from person to person.

(8) Replacement of Non-compliant Woodstoves upon sale of the property.

(a) After October 1, 1994, within the Air Stagnation Zone, it is unlawful for any person to complete, or allow the completion of the sale, transfer or conveyance of any real property unless the property has been certified by the Department as being in compliance with the Solid Fuel Burning Device permit requirements of these regulations, or has a completed Notice of Exemption form filed with the Department.

(b) Non-compliant Woodstoves contained on the property to be sold shall be removed from the property, rendered permanently inoperable, or replaced with a device meeting the emissions limitations described by these regulations.

(c) City Building Department inspectors and persons certified by the Department to inspect and certify that Non-compliant Woodstoves on the real property meet the emissions limitations described by these regulations shall sign and submit a Certificate of Compliance to the Department.

(d) A Certificate of Compliance issued pursuant to this section shall remain valid until such time as the real property is transferred or conveyed to a new owner. At that time, another Certificate must be obtained.

(e) The Certificate of Compliance does not constitute a warranty or guarantee by the Department or certified inspectors that the Solid Fuel Burning Device on the property meets any other standards of operation, efficiency or safety, except the emission standards contained in these regulations.

(f) A Notice of Exemption containing the notarized signatures of the buyer, seller, and listing real estate agent, if any, attesting to the absence of any Non-compliant Woodstoves shall be filed with the Department on any real property proposed for sale, transfer or conveyance which do not contain Non-compliant Woodstoves.

(g) The Department shall issue a Certificate of Compliance for any property proposed for sale, transfer or conveyance which contain Solid Fuel Burning Devices if the emissions do not exceed: 6.0 grams per hour weighted average when tested in conformance with the Oregon method, or 5.5 grams per hour weighted average when tested using the EPA method. Commercially manufactured pellet stoves which have not been emissions tested and installed prior to October 1, 1994 shall be issued a Certificate of Compliance in accordance with this rule.

~~(8)~~(9) Enforcement of requirements relating to solid fuel burning devices.

(a) Unless otherwise provided in these regulations, the provisions of CHAPTERS XI, XII, and XIII, shall govern enforcement of the requirements of CHAPTER IX, 1428 thereof.

(b) For a violation of CHAPTER IX, 1428 (3),(5), or (6) during any burning season, the Department may initiate any enforcement action authorized by the Montana Clean Air Act and this Program. The civil penalty or criminal fine for violations of the same provision of CHAPTER IX, 1428 (3),(5), or (6) during any burning season shall be:

First Violation - Fifty ~~Twenty Dollars ($20)~~
Second Violation - Two Hundred Fifty ~~Fifty Dollars ($50)~~
Third or Subsequent Violation - Five Hundred ~~One Hundred Dollars ($100)~~

(c) Within the Air Stagnation Zone no person or persons shall operate any Solid Fuel Burning Device in residential structures built after October 1, 1986 unless an installation permit was issued. Penalties for operation of the device or devices shall not be less than five hundred dollars ($500.00), with each day constituting a separate offense.

(d) ~~(c)~~ The Department shall not issue any written notice of violation or order to take corrective action, or take any other enforcement action, against any person in violation of the provisions of CHAPTER IX, 1428 (5) prohibiting the discharge of any visible emissions, or emissions exceeding the maximum allowable opacity, from a solid fuel burning device within the High Impact Zone during an air

pollution Alert declared by the Department, unless the Department has first made the fact that an air pollution Alert has been declared to be in effect reasonably available to the public for at least three (3) hours prior to initiating enforcement action, as provided in CHAPTER IX, 1428 (5)(d).

(c) ~~(d)~~ Whenever the Department issues notice of violation and order to take corrective action or a notice to appear in court to a person for a first violation of any provision of CHAPTER IX, 1428 during any one burning season, the Department shall provide such person with a summary of CHAPTER IX, 1428.

(f) ~~(e)~~ Anyone against whom an enforcement action is taken by the Department under the provisions of CHAPTER IX, 1428 may ask the Department for an administrative review after which the Department may rescind, modify, or affirm the enforcement action. A request for an administrative review shall not prevent a person against whom an enforcement action is taken from pursuing any other appeals process provided by this Program or by law.

STATE OF MONTANA AIR QUALITY CONTROL IMPLEMENTATION PLAN	Subject: Missoula County Air Quality Control Program

JOINT CITY-COUNTY RESOLUTION

CITY RESOLUTION NUMBER 5616
COUNTY RESOLUTION NUMBER 94-075

A RESOLUTION AMENDING THE MISSOULA CITY-COUNTY AIR POLLUTION CONTROL PROGRAM CHAPTER XVI AND RULE 1401(7).

WHEREAS, it is the public policy of the City and County of Missoula to preserve, protect, improve and maintain such levels of air quality in the City and County of Missoula, as will protect human health and safety, and, to the greater degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the inhabitants of the City and County of Missoula, and to promote the economic and social development of the City and County of Missoula. To this end, it is the policy of the City and County of Missoula to require the use of all practicable methods to reduce, prevent and control air pollution in the City and County of Missoula, and

WHEREAS, on April 3, 1978, Governor Thomas Judge designated the Missoula City-County Air Pollution Control Board as the lead agency for air quality maintenance planning in Missoula County, and

WHEREAS, on October 22, 1969 the Air Pollution Control Board passed and adopted the "Missoula City-County Air Pollution Control Program" pursuant to Section 76-2-301 MCA as the local law for requirements imposed by the Clean Air Act of Montana, effective December 1, 1969; and

WHEREAS, the Air Pollution Control Board has proposed revisions and amendments to CHAPTER XVI and Rule 1401(7) of the Missoula City-County Air Pollution Control Program regulations, and after due notice conducted a public hearing on said amendments and approved and passed said amendments July 7, 1994; and

WHEREAS, the Missoula City Council and Missoula Board of County Commissioners held a joint public hearing on said amendments and approved and passed said amendments at a public hearing on July 26, 1994; and

NOW THEREFORE, BE IT RESOLVED that the Missoula City Council and the Missoula Board of County Commissioners, hereby approve and adopt the proposed revisions and amendments to CHAPTER XVI, and Rule 1401(7) of the Missoula City-County Air Pollution Control Program which are attached hereto and by this reference incorporated herein as a part of this Resolution, to be effective upon approval by the State Board of Health and Environmental Sciences.

DATED this 25th day of July, 1994

ATTEST:

FERN HART, Chairman
Missoula County Commissioner

Clerk and Recorder

APPROVED AS TO FORM AND CONTENT:

BARBARA EVANS
Missoula County Commissioner

Deputy County Attorney

ANN MARY DUSSAULT
Missoula County Commissioner

DANIEL KEMMIS
Mayor, City of Missoula

CHARLES C. STEARNS
Finance Officer/City Clerk

Replaces:	Dated:

JOINT CITY-COUNTY RESOLUTION

CITY RESOLUTION NUMBER 5617
COUNTY RESOLUTION NUMBER 94-076

A RESOLUTION REVISING THE MISSOULA CITY-COUNTY AIR POLLUTION CONTROL PROGRAM RULES 401, 1401, 1423, 1424 AND 1428.

WHEREAS, it is the public policy of the City and County of Missoula to preserve, protect, improve and maintain such levels of air quality in the City and County of Missoula, as will protect human health and safety, and, to the greater degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the inhabitants of the City and County of Missoula, and to promote the economic and social development of the City and County of Missoula. To this end, it is the policy of the City and County of Missoula to require the use of all practicable methods to reduce, prevent and control air pollution in the City and County of Missoula, and

WHEREAS, on April 3, 1978, Governor Thomas Judge designated the Missoula City-County Air Pollution Control Board as the lead agency for air quality maintenance planning in Missoula County, and

WHEREAS, on October 22, 1969 the Air Pollution Control Board passed and adopted the "Missoula City-County Air Pollution Control Program" pursuant to Section 75-2-301 MCA as the local law for requirements imposed by the Clean Air Act of Montana, effective December 1, 1969; and

WHEREAS, the Air Pollution Control Board has proposed revisions and amendments to Rules 1401, 1423, 1424 and 1428 of the Missoula City-County Air Pollution Control Program regulations, and after due notice conducted a public hearings on said amendments on March 29, 1994 and on May 10, 1994 and approved and passed said amendments April 28, 1994 and May 10, 1994; and

WHEREAS, the Missoula City Council and Missoula Board of County Commissioners held a joint public hearing on said amendments and approved and passed said amendments at a public hearing on July 26, 1994; and

NOW THEREFORE, BE IT RESOLVED that the Missoula City Council and the Missoula Board of County Commissioners, hereby approve and adopt the proposed revisions and amendments to, Rules 401, 1401, 1423, 1424 and 1428 of the Missoula City-County Air Pollution Control Program which are attached hereto and by this reference incorporated herein as a part of this Resolution, to be effective upon approval by the State Board of Health and Environmental Sciences.

DATED this 25th day of July, 1994

ATTEST:

FERN HART, Chairman
Missoula County Commission

Clerk and Recorder

BARBARA EVANS
Missoula County Commissioner

APPROVED AS TO FORM AND CONTENT:
Deputy County Attorney

ANN MARY DUSSAULT
Missoula County Commissioner

DANIEL KEMMIS
Mayor, City of Missoula

CHARLES C. STEARNS
Finance Officer/City Clerk