

MONTANA AIR QUALITY PROGRAM

LOCAL PROGRAMS AND THE REDESIGNATION PROCESS

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MONTANA AIR QUALITY PROGRAM

TOPIC:

Missoula City-County Health Department (MCCHD) is currently developing two air quality maintenance control plans in support of an anticipated redesignation request from the Governor to the Environmental Protection Agency (EPA). Below is a discussion on the MCCHD program and the process of redesignation.

BACKGROUND:

Nonattainment areas are those portions of the state that have violated state and/or federal ambient air quality standards (standards) based upon monitoring. Monitoring is performed at locations likely to experience high levels of air pollution. Following the discovery of air pollution that violates standards, the federal Clean Air Act (CAA) requires states to initiate a process to bring the area back into attainment with standards. State and local air regulatory controls form the backbone of attainment strategies.

Following the designation of nonattainment and successful implementation of regulatory controls, subsequent ambient monitoring may indicate compliance with standards, although the area continues to be formally designated by EPA as nonattainment.

In order to change a designation status from "nonattainment" to "attainment," federal statutory conditions must be fulfilled that include the development of a maintenance control plan demonstrating compliance to standards into the future. MCCHD has voluntarily initiated the development of the carbon monoxide (CO) and particulate matter (PM-10) maintenance control plans.

Unlike initial designations of nonattainment that require the development of control plans on a defined timeline, neither state nor federal clean air acts require redesignations of areas from nonattainment to attainment. EPA determined that states may wish to retain the stricter permitting requirements for major sources located within nonattainment area boundaries. 48 FR 50691 on November 2, 1983. Therefore, federal rules were not promulgated requiring redesignation.

QUESTIONS AND ANSWERS

LOCAL AIR POLLUTION CONTROL PROGRAMS:

Q1. Under What Authorities are Local Air Pollution Control Programs Created?

A1. CAA requires states to consult with local governments regarding air pollution control activities. CAA also allows states to assign legal authority to local air pollution control programs (Local Programs), provided states do not divest themselves of the ultimate responsibility for air quality protection. The Clean Air Act of Montana (MCAA) provides for the authorization of Local Programs. See Attachment #1.

Federal Authority:

CAA contains many requirements for state and local government consultation. 42 USC §7410(a)(2)(M), 42 USC §7421, and 42 USC §7504 provide for local government agency consultation in the development and implementation of air pollution control activities. Additionally, 42 USC §7410(a)(2)(E) requires states to provide assurances to EPA that any local government agency designated by the state has adequate funding, personnel, and authority to implement any air pollution control regulations.

State Authority:

The MCAA at §§75-2-101, et seq., establishes state authority for implementing state and federal air quality provisions and defines the manner in which program goals will be accomplished at the state and local level. The Legislature created the Board of Environmental Review (Board), and empowered it to delegate authority to Local Programs to regulate eligible sources of air pollution within their jurisdictions. §2-15-3502, §75-2-111, and §§75-2-301, et seq., MCA.

Local Authority:

The Board determined MCCHD's administrative organization, staff, and financial and other resources to be adequate, and determined the Local Program to be consistent with the intent and purpose of MCAA. Findings and Determination, dated November 21, 1969 (1969 Board Order).

Pursuant to the Board's approval, MCCHD has the authority to promulgate rules and implement a permitting program. MCCHD's program has been revised periodically since the 1969 Board Order. Because nearly all MCCHD's air quality rules have been included in the State Implementation Plan (SIP), the MCCHD rules are an integral factor in the attainment and maintenance of standards.

Additionally, in 1978, pursuant to 42 USC §7504, former Governor Tom Judge certified MCCHD as “lead agency” when developing CO nonattainment area control plans. It is consistent practice that MCCHD continues as “lead agency” for the development of maintenance control plans necessary for redesignation, consistent with federal requirements for consultation and Board delegation of authority.

In short, Local Programs may administer their air pollution control programs in a self-determined manner to accomplish the purposes of CAA and MCAA except where expressly prohibited by state and federal statutes or as limited by the Board.

Q2. Does MCCHD Have Authority to Develop a Maintenance Plan?

A2. Yes. MCCHD’s authority as set forth in the 1969 Board Order is broad. The Board expressly limited MCCHD’s authority to perform certain activities. The fact the Board did not expressly prohibit MCCHD from engaging in the development of local control plans means the authority to conduct those activities is appropriately within MCCHD’s purview. MCCHD’s development of maintenance control plans is not the act of redesignation; rather, the effort supports a Governor’s request for redesignation from EPA.

Q3. What is the Department’s Relationship to Local Programs?

A3. The Legislature encourages and supports the creation and operation of Local Programs. Section 75-2-102(3), MCA, directs the support of local and regional air pollution control programs to the extent practicable as *essential* instruments for securing and maintaining appropriate levels of air quality [emphasis added]. Furthermore, §75-2-112(2)(e), MCA, directs the Department of Environmental Quality (Department) to encourage local units of government to handle air pollution problems within their respective jurisdictions on a cooperative basis and to provide technical and consultative assistance.

Section 75-2-301(6), MCA, states the Board may establish a Local Program as the only acceptable alternative to direct state administration. The 1969 Board Order creating the MCCHD Local Program cited provisions of §75-2-301(6), MCA as one of its Findings for approval. See Attachment 2. Functionally, the Department defers to Local Program expertise and depends upon its resources to conduct air pollution control activities for the protection of standards.

REDESIGNATION:

Q4. What are the Requirements for Redesignation?

A4. Pursuant to 42 USC §7407(d)(3)(D), the Governor, at any time, may submit a request to revise the designation of any area or portion of any area.

The conditions for redesignation are set forth at 42 USC §7407(d)(3)(E). A September 4, 1992 memo written by John Calcagni of EPA reiterates and expands upon the five statutory prerequisite criteria that EPA must consider when processing a Governor's request for redesignation:

1. Attainment of standards.
2. Area has fully approved local control plan.
3. Improvement are due to permanent and enforceable emission reductions.
4. Area has an EPA-approved maintenance plan.
5. State meets all statutory requirements for SIP.

Q5. What is the Practical Effect of Redesignation?

A5. Construction or modifications of major sources located within a nonattainment area boundary must comply with Lowest Achievable Emission Rates (LAER) instead of the less-stringent Best Available Control Technology (BACT) requirements. 42 USC §7503(a)(2).

Q6. What is the Functional Process for Redesignation?

A6. Neither the state nor EPA requires redesignating areas from nonattainment to attainment. Therefore, no statutory timelines govern the development of maintenance control plans or the time in which the Governor may submit a request for redesignation to EPA. As previously stated, requests for area redesignation must fulfill five statutory criteria pursuant to 42 USC §7407(d)(3)(E).

Local Process:

Redesignation actions typically originate with Local Programs. However, the Department may collaborate with a Local Program to initiate a redesignation action under local program authority. The Department and Local Program agree upon roles and responsibilities for the development of a maintenance control plan. If the Local Program develops the maintenance control plan, the state supports the local process as necessary until the plan is completed.

State Process:

Only the Governor may request redesignation from EPA. 42 USC 7407(d)(3)(D). Once a Local Program submits a maintenance control plan to the Department, the Board and/or Department holds a public hearing to receive testimony regarding the Governor's submission of the plan and redesignation request to EPA. Following public hearings, the Department formally requests the Governor to consider submitting the maintenance control plan and administrative documentation to EPA in pursuit of redesignation approval.

Federal Process:

Following the Governor's submission of the redesignation request to EPA, CAA at 42 USC §7407(d)(3)(D) requires EPA to approve or deny a submittal within 18 months of receipt. EPA reviews the submission against the required conditions stated above. This process typically exceeds 18 months.

Q7. How can Interested Parties Influence the Redesignation Process?

A7. Local Programs are administered under the authority of local boards and/or elected officials. Thus, the remedy begins locally. Issues involving Local Programs are most appropriately resolved through the local administrative process. If an issue cannot be resolved at the local level, MCAA provides for a Local Program adequacy review process through the Board.

If an interested party alleges a Local Program has failed to fulfill requirements under §75-2-301, MCA, et seq., the interested party may petition the Board to review the program for adequacy.

Section 75-2-301(7), MCA, provides the Board with the authority to conduct a public hearing regarding a Local Program identified as either inadequate to prevent and control air pollution within its jurisdiction or administered in a manner inconsistent with the intent of the statute. Following public hearing, the Board may require corrective measures to be implemented within 60 days. By statute, if the Local Program fails to take corrective action, the Department assumes the administration and enforcement of the Local Program at the Local Program's expense. §75-2-301(9), MCA.

Q8. Who can Challenge a Local Program's Adequacy Before the Board?

A8. Any interested party. The Board may be petitioned for hearing as outlined in §75-2-301(7), MCA.

Q9. What Redesignation Efforts have Been Made to Date?

A9. The Department and Local Programs have completed redesignation plans for Columbia Falls, Great Falls, and Billings nonattainment areas. The Governor submitted these plans for approval by EPA. The Great Falls and Billings Limited Maintenance Plans for CO were approved by EPA on May 9, 2002 at 67 FR 31168 and February 21, 2002 at 67 FR 7966, respectively. The Columbia Falls PM-10 maintenance plan was rescinded by the Governor at EPA's request on September 23, 1998.

The Department recently committed to redesignate Butte upon Local Program concurrence. The Department is also participating in activities supporting redesignation in Laurel for sulfur dioxide.

Q10. What has the Department Provided to MCCHD in Support of its CO and PM-10 Maintenance Plans?

A10. The Department has provided MCCHD with the following technical support:

CO Redesignation:

CO Emission Inventory Preparation Plan (EIPP) submitted to EPA Region 8 (EPA) and MCCHD - August 16, 2002.

CO EIPP approved by EPA - October 8, 2002.

CO Emission Inventory (EI) draft submitted to MCCHD in sections and comments incorporated during process.

Draft CO EI submitted to EPA - June 9, 2003.

CO EI approval by EPA - Pending as of November 12, 2003 (EPA has submitted two comments which have been addressed and approved). Still waiting for confirmation letter. Emailed Tim Russ, EPA Region VIII, week of 12/12/03.

Malfunction Junction CO modeling draft was submitted to MCCHD on August 29, 2003.

MCCHD comments on CO modeling received September 3, 2003.

Draft final CO modeling submitted to MCCHD October 21, 2003.
Submittal of draft CO modeling to EPA - Pending MCCHD final approval as of November 12, 2003.

Work Products Still in Process:

Some modifications will be made to the 2000 Missoula CO E.I. after receiving information from MDT. Expected completion January 2004.

Some modifications will be made to the Malfunction Junction modeling demonstration after receiving information from MDT. Expected completion January 2004.

Final acceptance letter from EPA for the 2000 Missoula CO E.I.

Montana Department of Transportation (MDT) finalization of Missoula transportation plan out to year 2015. Expected completion December 2003.

Calculation of traffic data for future years - MDT 2 to 3 weeks after MCCHD finalizes plan.) Expected completion December 2003.

Final Emission Budgets through 2015 (Analytical Services - 2 to 3 weeks after receipt of traffic data from MDT.) Expected completion mid-February 2004.

PM-10 Redesignation:

PM-10 EIPP submitted to EPA - August 15, 2003.

PM-10 EIPP approved by EPA - Pending as of November 12, 2003.

PM-10 EI submitted to EPA - 8 to 10 weeks after approval of EIPP.

While the Department is waiting for EPA to finalize EIPP approval, work continues with MCCHD to gather activity data on open burning and unpaved parking lots to fill gaps identified in EIPP.

SUMMARY:

The Legislature invested the Board with the authority to conduct statewide rulemaking and the authority to create local regulatory programs. The Board may delegate this authority to a local program for purposes of air pollution regulation consistent with the intent and purposes of MCAA. The Department has no authority to supersede in an area where its jurisdiction has been limited or otherwise proscribed by statute or by the Board's exercise of its authority under §75-2-301, MCA.

Redesignating areas from nonattainment to attainment is not required by either state or federal law. MCCHD has voluntarily initiated the development of maintenance control plans in support of a redesignation request from the Governor. EPA must consider statutory criteria when processing a request for redesignation and must approve or deny the submittal within 18 months of receipt.

ATTACHMENT #1

**Selected Text For Purposes of Discussion Regarding Local Air
Pollution Control Programs and Redesignation**

CLEAN AIR ACT OF MONTANA

Title 75 – Environmental Protection

Chapter 2 - Air Quality

75-2-102. Intent – policy and purpose. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution has enacted the Clean Air Act of Montana. It is the legislature's intent that the requirements of parts 1 through 4 of this chapter provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) It is the public policy of this state and the purpose of this chapter to achieve and maintain levels of air quality that will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state, and facilitate the enjoyment of the natural attractions of this state. This policy must be balanced by the legislature with the policy of protecting the ability of the people to pursue life's basic necessities and to acquire property and to use that property in all lawful ways.

(3) Local and regional air pollution control programs must be supported to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality.

(4) To these ends it is the purpose of this chapter to:

(a) provide for a coordinated statewide program of air pollution prevention, abatement, and control;

(b) provide for an appropriate distribution of responsibilities among the state and local units of government;

(c) facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; and

(d) provide a framework within which all values may be balanced in the public interest.

History: En. Sec. 2, Ch. 313, L. 1967; R.C.M. 1947, 69-3905; amd. Sec. 7, Ch. 361, L. 2003.

* * *

75-2-111. Powers of board. The board shall, subject to the provisions of 75-2-207:

(1) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant to that section;

(2) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who must be present at all hearings and take full stenographic notes of all proceedings, transcripts of which will be available to the public at cost.

(3) issue orders necessary to effectuate the purposes of this chapter;

(4) by rule require access to records relating to emissions;

(5) by rule adopt a schedule of fees required for permits, permit applications, and registrations consistent with this chapter;

(6) have the power to issue orders under and in accordance with 42 U.S.C. 7419.

History: En. Sec. 6, Ch. 313, L. 1967; amd. Sec. 17, Ch. 349, L. 1974; R.C.M. 1947, 69-3909(1) thru (4); amd. Sec. 1, Ch. 560, L. 1979; amd. Sec. 1, Ch. 652, L. 1991; amd. Sec. 7, Ch. 471, L. 1995; amd. Sec. 1, Ch. 231, L. 2003.

* * *

75-2-112. Powers and responsibilities of department. (1) The department is responsible for the administration of this chapter.

(2) The department shall:

(a) by appropriate administrative and judicial proceedings, enforce orders issued by the board;

(b) secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract or otherwise;

(c) prepare and develop a comprehensive plan for the prevention, abatement, and control of air pollution in this state;

(d) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;

(e) encourage local units of government to handle air pollution problems within their respective jurisdictions on a cooperative basis and provide technical and consultative assistance for this. If local programs are financed with public funds, the department may contract with the local government to share the cost of the program. However, the state share may not exceed 30% of the total cost.

(f) encourage and conduct studies, investigations, and research relating to air contamination and air pollution and their causes, effects, prevention, abatement, and control;

(g) determine, by means of field studies and sampling, the degree of air contamination and air pollution in the state;

(h) make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of this state and make recommendations to appropriate public and private bodies with respect to this;

(i) collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution;

(j) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and any interested persons or groups;

(k) consult, on request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof concerning the efficacy of this device or system or the air pollution problems which may be related to the source, device, or system. Nothing in this consultation relieves a person from compliance with this chapter, rules in force under it, or any

other provision of law.

(l) accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States, for the purpose of carrying out this chapter. Funds received under this section shall be deposited in the state treasury to the account of the department.

(3) The department may assess fees to the applicant for the analysis of the environmental impact of an application to redesignate the classification of any area, except those areas within the exterior boundaries of a reservation of a federally recognized Indian tribe, under the classifications established by 42 U.S.C. 7470 through 7479 (prevention of significant deterioration of air quality). The determination of whether or not a fee will be assessed is to be on a case-by-case basis.

History: (1)En. Sec. 4, Ch. 313, L. 1967; amd. Sec. 14, Ch. 349, L. 1974; Sec. 69-3907, R.C.M. 1947; (2)En. 69-3909.1 by Sec. 18, Ch. 349, L. 1974; Sec. 69-3909.1, R.C.M. 1947; R.C.M. 1947, 69-3907, 69-3909.1; (3)En. Sec. 2, Ch. 560, L. 1979.

* * *

75-2-301. Local air pollution control programs – consistency with state and federal regulations – procedure for public notice and comment required. (1) After public hearing, a municipality or county may establish and administer a local air pollution control program if the program is consistent with this chapter and is approved by the board.

(2) If a local air pollution control program established by a county encompasses all or part of a municipality, the county and each municipality shall approve the program in accordance with subsection (1).

(3) (a) Except as provided in subsection (5), the board by order may approve a local air pollution control program that:

(i) subject to subsection (4), provides by rule, ordinance, or local law for requirements compatible with, more stringent than, or more extensive than those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212, 75-2-215, 75-2-217 through 75-2-219, and 75-2-402 and rules adopted under these sections;

(ii) provides for the enforcement of requirements established under subsection (3)(a)(i) by appropriate administrative and judicial processes; and

(iii) provides for administrative organization, staff, financial resources, and other resources necessary to effectively and efficiently carry out the program. As part of meeting these requirements, a local air pollution control program may administer the permit fee provisions of 75-2-220. The permit fees collected by a local air pollution control program must be deposited in a county special revenue fund to be used by the local air pollution control program for administration of permitting activities.

(b) Board approval of a rule, ordinance, or local law that is more stringent than the comparable state law is subject to the provisions of subsection (4).

(4) (a) A local air pollution control program may, subject to approval by the board, adopt a rule, ordinance, or local law to implement this chapter that is more stringent than comparable state or federal regulations or guidelines only if:

(i) a public hearing is held;

(ii) public comment is allowed; and

(iii) the board or the local air pollution control program makes a written finding after the public hearing and comment period that is based on evidence in the record that the proposed local standard or requirement:

(A) protects public health or the environment of the area;

(B) can mitigate harm to the public health or the environment; and

(C) is achievable with current technology.

(b) The written finding required under subsection (4)(a)(iii) must reference information and peer-reviewed scientific studies contained in the record that form the basis for the board's or the local air pollution control program's conclusion. The written finding must also include information from the hearing record regarding costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(c) (i) A person or entity affected by a rule, ordinance, or local law approved or adopted after January 1, 1996, and before May 1, 2001, that the person or entity believes is more stringent than comparable state or federal regulations or guidelines may petition the board or the local air pollution control program to review the rule,

ordinance, or local law.

(ii) If the board or local air pollution control program determines that the rule, ordinance, or local law is more stringent than state or federal regulations or guidelines, the board or local air pollution control program shall either revise the rule, ordinance, or local law to conform to the state or federal regulations or guidelines or follow the process provided in subsections (4)(a) and (4)(b) within a reasonable period of time, not to exceed 6 months after receiving the petition.

(5) Except for those emergency powers provided for in 75-2-402, the board may not delegate to a local air pollution control program the authority to control any air pollutant source that:

(a) requires the preparation of an environmental impact statement in accordance with Title 75, chapter 1, part 2;

(b) is subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75, chapter 20; or

(c) has the potential to emit 250 tons a year or more of any pollutant subject to regulation under this chapter, including fugitive emissions, unless the authority to control the source was delegated to a local air pollution control program prior to January 1, 1991.

(6) If the board finds that the location, character, or extent of particular concentrations of population, air pollutant sources, or geographic, topographic, or meteorological considerations or any combination of these make impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the board may determine the boundaries within which the program is necessary and require it as the only acceptable alternative to direct state administration.

(7) If the board has reason to believe that any part of an air pollution control program in force under this section is either inadequate to prevent and control air pollution in the jurisdiction to which the program relates or is being administered in a manner inconsistent with this chapter, the board shall, on notice, conduct a hearing on the matter.

(8) If, after the hearing, the board determines that any part of the program is

inadequate to prevent and control air pollution in the jurisdiction to which it relates or that it is not accomplishing the purposes of this chapter, it shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

(9) If the jurisdiction fails to take these measures within the time required, the department shall administer within that jurisdiction all of the provisions of this chapter, including the terms contained in any applicable board order, that are necessary to correct the deficiencies found by the board. The department's control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements in the affected jurisdiction. The cost of the department's action is a charge on the jurisdiction.

(10) 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 the local jurisdiction or may be more efficiently and economically performed at the state level, it may direct the department to assume and retain control over that air pollutant source. A charge may not be assessed against the jurisdiction. Findings made under this subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(11) A jurisdiction in which the department administers all or part of its air pollution control program under subsection (9) may, with the approval of the board, establish or resume an air pollution control program that meets the requirements of subsection (3).

(12) A municipality or county may administer all or part of its air pollution control program in cooperation with one or more municipalities or counties of this state or of other states.

(13) Local air pollution control programs established under this section shall provide procedures for public notice, public hearing, public comment, and appeal for any proposed new or revised rules, ordinances, or local laws adopted pursuant to this section. The procedures must comply with the following requirements:

(a) The local air pollution control program shall create and maintain a list of

interested persons who wish to be informed of actions related to rules, ordinances, or local laws adopted by the local air pollution control program.

(b) At least 30 days prior to the adoption, revision, or repeal of a rule, ordinance, or law, the local air pollution control program shall give written notice of its intended action.

(c) The notice required under subsection (13)(b) must include:

(i) a statement of the terms or substance of the intended action or a description of the subjects and issues affected by the intended action;

(ii) an explanation of the procedure for a person to be included on the list of interested persons established pursuant to subsection (13)(a);

(iii) an explanation of the procedures and deadlines for presentation of oral or written comments related to the intended action;

(iv) an explanation of the process for requesting a public hearing as provided in subsection (13)(f); and

(v) the rationale for the intended action. The rationale must:

(A) include an explanation of why the intended action is reasonably necessary to implement the goals and purposes of the local air pollution control program;

(B) specifically address those intended actions for which there are no similar state or federal regulations or guidelines; and

(C) be written in plain, easily understood language.

(d) For the purposes of subsection (13)(c)(v), a statement of authority to adopt a rule, ordinance, or local law does not, standing alone, constitute a showing of reasonable necessity for the intended action.

(e) The local air pollution control program shall mail a copy of the proposed rule, ordinance, or local law to all interested persons on the list established pursuant to subsection (13)(a) who have made timely requests to be included on the list.

(f) If at least 10 of the persons who will be directly affected by the proposed rule, ordinance, or local law request a public hearing, the local air pollution control program shall hold a hearing to hear comments from the public on the intended action.

(g) The local air pollution control program shall prepare a written response to all

comments submitted in writing or presented at the public hearing for consideration prior to adoption, revision, or repeal of the proposed rule, ordinance, or local law.

(h) A person who submits a written comment on a proposed action or who attends a public hearing in regard to a proposed action must be informed of the final action.

History: En. Sec. 16, Ch. 313, L. 1967; amd. Sec. 23, Ch. 349, L. 1974; R.C.M. 1947, 69-3919; amd. Sec. 5, Ch. 560, L. 1979; amd. Sec. 1, Ch. 141, L. 1991; amd. Sec. 19, Ch. 502, L. 1993; amd. Sec. 8, Ch. 471, L. 1995; amd. Sec. 2, Ch. 536, L. 2001.

75-2-302. State and federal aid. (1) Any local air pollution control program meeting the requirements of this chapter and rules made pursuant thereto shall be eligible for state aid in an amount up to 30% of the locally funded annual operating cost thereof.

(2) Federal aid granted to the state for developing or maintaining a local air pollution control program that is subsequently granted to a local program is not considered state aid.

(3) Subdivisions of the state may make application for, receive, administer, and expend any federal aid for the control of air pollution or the development and administration of programs related to air pollution control, provided the program is currently approved by the board under 75-2-301.

History: En. Sec. 17, Ch. 313, L. 1967; R.C.M. 1947, 69-3920; amd. Sec. 2, Ch. 141, L. 1991.

ATTACHMENT #2

November 21, 1969 Board Order Establishing the Missoula City-County Health Department Air Pollution Control Program

BEFORE THE STATE BOARD OF HEALTH OF THE STATE OF MONTANA

In the Matter of the Application :
of the CITY OF MISSOULA and the :
COUNTY OF MISSOULA for Approval by :
the Montana State Board of Health :
of a Proposed Local Air Pollution :
Control Program Coterminus With :
the Boundaries of said County of :
Missoula. :

FINDINGS AND DETERMINATION

The City of Missoula, Montana, and Missoula County, Montana, having applied to the State Board of Health of the State of Montana for approval of a proposed local air pollution control program, pursuant to the provisions of Section 69-3919, Revised Codes of Montana, and the Board having on the 25th day of July, 1969, conducted a hearing upon said application pursuant to the provisions of Sections 69-3919 and 69-3909, Revised Codes of Montana, said hearing being conducted at the meeting room of said Board in the Cogswell Building in the City of Helena, Montana, and said city and county having appeared at such hearing and presented testimony and evidence concerning the nature, character and substantive details of said proposed program, and the Board having adjourned said hearing at the close thereof, after giving all interested parties ample opportunity to be heard thereat and to present evidence upon the matter of such application, and the Board having thereupon taken said matter under advisement, and having thereafter informed itself in the law governing its actions in said matter, and having thoroughly examined all of the evidence available to it, and the Board having further considered the matter of said application at its regular meeting held on the 19th day of September, 1969, and the Board being fully advised in the law and the premises.

NOW, THEREFORE, the Board hereby makes the following Findings and Determination herein:

FINDINGS

1. The location, character and extent of particular concentrations of population and air contaminant sources, and the geographic, topographic and meteorological considerations involved, and combinations of the foregoing, are such as to make impracticable the maintenance of appropriate levels of air quality without an air pollution program whose territorial boundaries shall include the entire county of Missoula, Montana. An appropriate air pollution control program which includes the entire area of said Missoula County is an acceptable alternative to direct state administration, and in view of all of the considerations involved, including those of administration and enforcement, such a program which includes the entire area of Missoula County is the only acceptable alternative to direct state administration.

2. Said proposed local air pollution control program does provide for administrative organization, staff, financial and other resources necessary to effectively and efficiently carry out said program.

3. Said proposed program is consistent with the intent and purposes of the Clean Air Act of the State of Montana, being Chapter 313, Laws of 1967, except that as of the time of the said application for approval of said program by this Board, the local law and provision for enforcement of such local law by appropriate administrative and judicial process had not been actually adopted by said county, that being the legal entity lawfully empowered to adopt the same. Therefore, this Board does not find that such local law and provision for enforcement are now in effect, and the approval of said program hereinafter given is conditional upon the actual adoption by said county of local law

setting forth requirements compatible with, more stringent, or more extensive than those imposed by Sections 69-3913, 69-3915 and 69-3916, Revised Codes of Montana, and the rules issued thereunder by this Board, and the provision for enforcement aforesaid. In other words, it is the intent hereof that upon such adoption of local law and such provision for enforcement, the approval of this Board shall ipso facto become complete as to the whole proposed program, and that the jurisdiction of said local program shall be complete as to the area of the county of Missoula and as to the control of those classes of air contaminant sources over which the Board does not hereinafter retain control.

4. The control of the following classes of air contaminant sources, because of their complexity or magnitude, are beyond the reasonable capability of said local air pollution control program (local jurisdiction), and may be more efficiently and economically performed at the state level, and, therefore, this Board hereby assumes and retains control over the same, to-wit: Those air contaminant sources designated in subsections 1, 2, 3, 4, 7, 9, 10, 11, 13 and 15 of paragraph II of Regulation No. 90-001 of this Board, adopted March 23, 1968.

5. Subject to what is stated in the foregoing findings the Board finds that said proposed local air pollution control program will satisfy the requirements of the Clean Air Act of Montana. The representatives of said city and county at said hearing represented to the Board that the contemplated local law is parallel in its requirements to the Clean Air Act of Montana and the regulations of this Board adopted thereunder.

DETERMINATION

1. The proposed local air pollution control program aforesaid is hereby approved, the same to have jurisdiction over

the entire area of the County of Missoula, Montana.

2. This Board hereby retains control over the following classes of air contaminant sources, to-wit: Those air contaminant sources designated in subdivisions 1, 2, 3, 4, 7, 9, 10, 11, 13 and 15 of Paragraph II of Regulation No. 90-001 of this Board, adopted March 23, 1968.

3. This Board hereby retains such control as it may have under the provisions of the Clean Air Act of Montana by reason of any and all failure or omission on the part of said city and county, and any other body to comply with the provisions of Section 69-3919, Revised Codes of Montana, or any other provisions of law relating to the legality or legal powers of said local air pollution control program.

4. Subject to what is stated hereinabove, this Board hereby approves said local air pollution control program.

Dated this 21st day of November, 1969.

MONTANA STATE BOARD OF HEALTH

By *John W. Anderson*
Executive Officer, by Direction

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