

RESOLUTION NO. 1660

RESOLUTION BY THE CITY COUNCIL OF THE CITY OF LIBBY, MONTANA
APPROVING AND ADOPTING REVISIONS TO
THE LINCOLN COUNTY AIR POLLUTION CONTROL PROGRAM

WHEREAS, pursuant to 75-2-301(4), the City of Libby wishes to adopt revisions to the Lincoln County Air Pollution Control Program regarding outdoor burning which are more stringent than comparable state or federal standards and the Libby City Council finds that, based on information, peer-reviewed scientific studies, and other evidence submitted into the record in proceedings deliberating this matter, the proposed revisions would:


- Better Protect public health and the environment in the City of Libby in Lincoln County;
- Mitigate harm to the public health and the environment in the City of Libby; and
- Are achievable with current technology; and

WHEREAS, The Libby City Council also acknowledges information submitted into the record regarding costs to the City of Libby that are directly attributable to the proposed revisions.

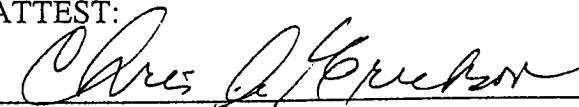
NOW THEREFORE, BE IT HEREBY RESOLVED that the City Council of the City of Libby, Montana approves and adopts the revisions to the Lincoln County Air Pollution Control Program which are attached hereto and made a part of this Resolution and directs the same to be submitted, together with all pertinent evidence as required by 75-2-301, MCA, to the Lincoln County Commission for its consideration.

BE IT FURTHER RESOLVED that the City Council of the City of Libby, Montana submits the revisions to the Lincoln County Air Pollution Control Program for inclusion into the Montana state implementation plan.

Passed and approved this 27th day of February 2006.


Charlene Leckrone, City Council President

ATTEST:


Chris A. Erickson, City Clerk

HEALTH AND ENVIRONMENT REGULATIONS
CHAPTER 1: Control of Air Pollution
Subchapter 1: General Provisions

(Revised 27 February 2006)

75.1.101 **INTENT:** The purpose of this chapter is to achieve and maintain such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property, and facilitate the enjoyment of the natural attractions of Lincoln County.

75.1.102: **SCOPE:** Unless otherwise indicated, the rules of Chapter 1 apply to activities and sources within the Air Pollution Control District.

75.1.103 **DEFINITIONS:** As used in this chapter, unless indicated otherwise, the following definitions apply:

- (1) "Air Contaminant" means dust, ash, fumes, gas, mist, smoke, vapor or any particulate matter or a combination thereof present in the outdoor atmosphere.
- (2) "Air Pollution Control District" means the geographical area designated on the attached map and as defined by the following Universal Transverse Mercator (UTM) coordinates:

Begin, 600000mE, 5370000mN; east to 620000mE, 5370000mN; south to 620000mE, 5340000mN; west to 600000mE, 5340000mN; north to 600000mE, 5370000mN.

- (3) "Department" means the Lincoln County Environmental Health Department.
- (4) "DEQ" means the Montana Department of Environmental Quality.
- (5) "Emission" means a release into the outdoor atmosphere of an air contaminant.
- (6) "EPA" means the US Environmental Protection Agency.
- (7) "MAAQS" means Montana Ambient Air Quality Standards.
- (8) "NAAQS" means National Ambient Air Quality Standards.
- (9) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or private corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the federal government or an agency of the federal government, or any other legal entity and includes persons resident in Canada.
- (10) "PM10" means particulate matter with an aerodynamic diameter of less than or equal to a nominal 10 micrometers.
- (11) "PM2.5" means particulate matter with an aerodynamic diameter of less than or equal to a nominal 2.5 micrometers.

75.1.104 **SELECTION & IMPLEMENTATION OF CONTINGENCY MEASURE PROGRAMS:**

- (1) Upon notification by DEQ or EPA that the Air Pollution Control District has failed to attain NAAQS/MAAQS or make reasonable further progress in reducing emissions, the Department shall determine the source(s) contributing to the violation and designate the associated contingency measure(s) to be implemented. The Department shall identify sources of contribution based upon documented observations of emission sources and corresponding EPA reference method monitoring data.
- (2) Unless otherwise prohibited by Section 75.1.104(2)(d), and within 60 days of notification from DEQ or EPA, the Department shall implement the following contingency measure(s) to reduce emissions from a source(s) identified as a contributor.
 - (a) If residential wood burning is determined to be a contributing source, the Department shall implement Section 75.1.208.

- (b) If re-entrained dust is determined to be a contributing source, the Department shall implement Section 75.1.307.
 - (c) If industrial facility emissions are determined to be a contributing source, DEQ shall initiate contingency measures to reduce emissions.
 - (d) The Department shall address failure to attain NAAQS or to make reasonable further progress in reducing emissions attributable to natural events or impacts generating activities occurring outside state or local jurisdictional control according to EPA policy while initiating interim contingency measures at the local level.
 - (e) If no emission source(s) can be identified as a contributor, the Department shall conduct a comprehensive review, including chemical and microscopic filter analysis. Until such time as the review and analyses have been completed, the Department shall implement at least one of the above contingency measures on an interim basis. Any selected interim contingency measure(s) shall remain in effect until the Department completes a comprehensive review and determines whether a permanent contingency measure is necessary.
- (3) Early voluntary implementation of a contingency measure shall not result in a requirement to develop additional moderate area contingency measures if the area later fails to attain the NAAQS/MAAQs or make reasonable further progress in reducing emissions. However, redesignation could necessitate additional control measures including Best Available Control Measures (BACM), Best Available Control Technology (BACT) and/or additional contingency measures.

75.1.105 ENFORCEABILITY:

The provisions of the regulations in this ordinance are enforceable by the Lincoln County Environmental Health Department authorities and/or appropriate law enforcement officials.

75.1.106 CONFLICT OF ORDINANCES:

- (1) In any case where a provision of these regulations is found to be in conflict with a provision of any zoning, building, fire, safety or health ordinance or code of any City of, Town of, or of the County of Lincoln, the provision which, in the judgment of the Health Officer, established the higher standard for the promotion and protection of the health and safety of the people shall prevail.
- (2) If any portion of these regulations should be declared invalid for any reason whatsoever, such decision shall not affect the validity of the remaining portion(s) of the ordinance and such portions shall remain in full force and effect.

SUBCHAPTER 2: SOLID FUEL BURNING DEVICE REGULATIONS

75.1.201 INTENT:

- (1) A regulation reducing the levels of particulate air pollutants to or below levels of the NAAQS/MAAQs.
- (2) This regulation is necessary to preserve, protect, improve, achieve and maintain such levels of air quality as will protect the health and welfare of the citizens of Lincoln County.

75.1.202 SCOPE AND EFFECTIVE DATE:

- (1) This regulation applies to all persons, agencies, institutions, businesses, industries or government entities living in or located within the Air Pollution Control District except for sources exempt from local regulation under 75-2-301(5), MCA.
- (2) The effective date of this sub-chapter is January 1, 2007.

75.1.203 DEFINITIONS: As used in this subchapter, unless indicated otherwise, the following definitions apply:

- (1) "Opacity" means a measurement of visible emissions defined as the degree expressed in percent to which emissions reduce the transmission of light and obscure the view of an object in the background.
- (2) "Operating Permit" means a permit issued by the Department that allows the use of a solid fuel burning device within the boundaries of the Air Pollution Control District.
- (3) "Pellet Fuel Burning Device" means a solid fuel burning device that burns only automatically fed biomass, pelletized fuels.
- (4) "Solid Fuel Burning Device" means any fireplace, fireplace insert, wood stove, pellet stove, pellet furnace, wood burning heater, wood-fired boiler, wood or coal-fired furnace, coal stove, or similar device burning any solid fuel used for aesthetic, cooking or heating purposes which has a rated capacity of less than 1,000,000 BTU's per hour.
- (5) "Standard Catalytic Device" means a solid fuel burning device with a catalytic emissions control system that has been certified by EPA test method as having emissions <4.1 grams/hour.
- (6) "Standard Non-Catalytic Device" means a solid fuel burning device with a non-catalytic emissions control system that has been certified by EPA test method as having emissions <7.5 grams/hour.

75.1.204 OPERATING & EMISSION LIMITS:

- (1) No person may install or operate any type of solid fuel burning device without a valid Operating Permit issued by the Department.
- (2) No person may 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 a solid fuel. Products manufactured or processed for use as solid fuels must conform to any other applicable provisions of this subchapter.
- (3) In the absence of an Air Pollution Alert, no person operating a solid fuel burning device may cause or allow the discharge of visible emissions greater than twenty percent opacity. The provisions of this section do not apply to visible emissions during the building of a new fire, for a period or periods aggregating no more than twenty minutes in any four-hour period.
- (4) During an Air Pollution Alert, no person operating a solid fuel burning device that is permitted for use during an Alert may cause or allow the discharge of visible emissions greater than ten percent opacity. The provisions of this subsection shall not apply during the building of a new fire, for a period or periods aggregating no more than twenty minutes in any four-hour period. No person may operate a standard catalytic or non-catalytic solid fuel burning device during an Air Pollution Alert.

75.1.205 SOLID FUEL BURNING DEVICE PERMITS:

- (1) Prior to installing or operating a solid fuel burning device in any residential or commercial property, a person shall apply to the Department for a permit and provide the following information:
 - (a) the owner/operator of the device;
 - (b) contact information for the device owner/operator;
 - (c) location of the device;
 - (d) device manufacturer & model;
 - (e) type of device (rating); and
 - (f) any other relevant information for the Department to determine whether it satisfies the requirements of this regulation.
- (2) The Department may issue Operating Permits for the following types of solid fuel burning devices:
 - (a) **Standard catalytic devices.** The Department may issue an Operating Permit for a catalytic solid fuel burning device. Standard catalytic devices may not be operated during an Air Pollution Alert. Implementation

of the contingency measure in 75.1.208 would automatically invalidate the operating permit for this type of device.

(b) **Standard non-catalytic devices.** The Department may issue an Operating Permit for a non-catalytic solid fuel burning device. Standard non-catalytic devices may not be operated during an Air Pollution Alert. Implementation of the contingency measure in 75.1.208 would automatically invalidate the operating permit for this type of device.

(c) **Pellet fuel burning devices.** The Department may issue an operating permit for a biomass pellet fuel burning device. Pellet fuel burning devices may be operated during an Air Pollution Alert. Implementation of the contingency measure in 75.1.208 would not invalidate the operating permit for this type of device.

(3) Unless otherwise invalidated by implementation of a contingency measure or future changes in solid fuel burning device regulations, Operating Permits are valid until the named owner/operator changes or the device is removed or modified in any way. Permits may not be transferred from person to person or from place to place.

(4) An Operating Permit for a solid fuel burning device may be revoked by the Department for non-compliance with these regulations or Operating Permit conditions.

75.1.206 AIR POLLUTION ALERTS:

(1) The Department may declare an Air Pollution Alert to be in effect whenever ambient PM concentrations, as averaged over a four hour period, exceed a level 20 percent below any state or federal ambient 24-hour standard established for particulate matter; and when scientific and meteorological data indicate the average concentrations will remain at or above these levels over the next 24 hours.

(2) The Department may also declare an Air Pollution Alert to be in effect whenever scientific and meteorological data indicate that the ambient PM concentrations over any four-hour period within the next twenty-four hours may reasonably be expected to exceed a level 20 percent below any state or federal ambient 24-hour standard established for particulate matter.

(3) No person shall be subject to any violation of 75.1.204(4) for three hours after the Department declares an Air Pollution Alert and makes that information reasonably available to the public.

75.1.207 PENALTY ASSESSMENTS:

(1) The Department shall issue a "Notice of Violation" for any documented violation. The first notice of violation issued is a warning to the violator and will include educational and compliance information on air pollution regulations.

(2) For a second and any subsequent violations, the Department shall process each notice of violation for a Civil Penalty Assessment of \$25.00 per violation.

(3) No person or entity may be cited for a violation more than once in any calendar day. However, the Department may issue a notice of violation for each calendar day of violation and each such notice is considered as a separate violation.

75.1.208 CONTINGENCY MEASURES:

(1) If compliance with NAAQS/MAAQS are not achieved or compliance levels are not maintained, and the Department determines that solid fuel burning device emissions are a contributor to non-compliance, the Department shall implement the following control measure:

(a) No person may operate a solid fuel burning device except a biomass pellet fuel burning device with a valid operating permit issued by the Department.

SUBCHAPTER 3: DUST CONTROL REGULATIONS:

Control Measures For Roads, Parking Lots And Commercial Lots

75.1.301 INTENT: Regulations enacting an emission control plan within the Air Pollution Control District to meet NAAQS for particulate matter by requiring dust abatement and control.

75.1.302 SCOPE & EFFECTIVE DATE:

- (1) This regulation applies to all persons, agencies, institutions, businesses, industries or government entities living in or located within the "Regulated Road Sanding and Sweeping District."
- (2) The effective date of this subchapter is January 1, 2007.

75.1.303 DEFINITIONS: As used in this subchapter, unless indicated otherwise, the following definitions apply:

- (1) "Areas of Public Safety Concern" means specific areas that may include, but are not necessarily limited to: roadways with steep grade hills; roadways around public school facilities; and parking areas for medical, senior or public school facilities.
- (2) "Commercial Yard/Lot" means a parcel of land located off the public right-of-way with uses that may include, but are not necessarily limited to, logging yards, bus lots, store and shopping parking areas, construction firms, trucking/transportation firms, and industrial facility sites.
- (3) "Emergency Situation" means a situation when:
 - (a) Liquid de-icing agents and/or de-icing salts become unavailable due to circumstances beyond the control of the person, government or private entity maintaining a roadway, alley, parking lot or commercial yard/lot or;
 - (b) due to extreme weather conditions, or hazardous roadways, liquid de-icing agents and/or de-icing salts do not provide adequate traction for public safety.
- (4) "Parking Lot" means a parcel of land located off of the public right-of-way which is not less than 5,000 square feet in size and which is primarily used for the temporary storage of motor vehicles. A parking lot as used in this regulation does not include lots for the storage of special mobile equipment as defined in 61-1-101(59), MCA.
- (5) "Prioritized Street Sweeping and Flushing" means a schedule of street sweeping and/or flushing which cleans streets with the highest traffic volumes first and proceeds in descending order of traffic volume to streets with the lowest traffic volume. When all ice-free streets have been cleaned the cycle is immediately repeated.
- (6) "Reasonably Available Control Technology" means
 - (a) During winter, prioritized street sweeping and flushing of streets with accumulated carry-on or applied materials shall commence on the first working day after the roadbed becomes ice-free and temperatures remain above freezing.
 - (b) During summer, street sweeping and/or flushing which is accomplished on an as-needed basis to remove any accumulated carry-on or applied materials, with priority given to streets with the highest traffic volumes.
- (7) "Regulated Road Sanding and Sweeping District" means the geographical area designated by the attached map, wherein the regulations of this sub-chapter apply, and defined as follows:
Point of beginning: intersection of Pipe Creek Road and Highway 37 North, follow Highway 37 south to Thomas Road then west-northwest along the Kootenai River to the west end of Jay-Effar Road; then west-southwest across Highway 2 to Parsnix

Way; then south-southeast along the base of the foothills, crossing Flower Creek Road and Main Avenue, to Reese court; then south along Cabinet Heights Road and Westgate to Snowshoe Road; then North-northeast on Shaughnessy Road to Highway 2; then east to Libby Creek; then north following the streambank of Libby Creek to the Kootenai River; then west-northwest along the Kootenai River to Highway 37; then north on Highway 37 to the point of beginning.

(8) "Road" means any road or alley which is greater than 50-feet in length and which has or is projected to have an average traffic volume greater than 50 vehicles per day.

(9) "Summer" means the months of May, June, July, August, September and October.

(10) "Winter" means the months of November, December, January, February, March and April.

75.1.304 LIMITATION ON USE AND ON APPLICATION OF MATERIALS:

(1) No person may allow vehicular operation on any road, parking lot or commercial yard/lot that is not paved or otherwise surfaced or treated to prevent vehicular carry-on and wind-borne entrainment of dust.

(a) If an emergency situation arises that requires vehicular operation in/on an untreated area, the Department may authorize utilization of the area during the course of the emergency provided alternative methods are implemented to minimize carry-on or entrainment.

(2) With the exception of "Emergency Situations" and "Areas of Public Safety Concern", sanding materials may not be applied. Only liquid de-icing agents and/or de-icing salts may be used on roads, parking lots and commercial yards/lots.

(3) No person may place any sanding or chip seal material on any road, parking lot or commercial yard/lot which has a durability, as defined by the Montana Modified LA Abrasion Test, of greater than 7, and a fines content of material smaller than 200 mesh, as determined by standard wet sieving methods, that exceeds 3 percent oven dry weight.

(4) A person, prior to application, shall test materials proposed for use as sanding or chip seal material and provide the Department laboratory test data demonstrating that the material meets the specified requirements for durability and fines content.

75.1.305 STREET SWEEPING & FLUSHING:

(1) Any person responsible for the maintenance of a road shall implement and maintain a schedule of prioritized street sweeping and flushing.

(2) Reasonably available control technology shall be utilized to assure timely removal of carry-on or applied accumulations from all roads.

75.1.306 SPECIFIC MEASURES FOR COMMERCIAL YARDS/LOTS:

(1) Operators of all commercial yards/lots shall implement measures to prevent the collection and deposition of dust from equipment wheels and chassis.

(2) Operators of all commercial yards/lots shall implement dust suppression measures (chemical dust suppressants, dust oiling, watering, etc.) in bare, undeveloped areas of the property(ies) to eliminate fugitive air-borne dust.

(3) Operators of all commercial yards/lots shall clean carry-on material generated from their facility from adjoining roadways in a timely manner.

75.1.307 CONTINGENCY MEASURES:

(1) If compliance with NAAQS is not achieved or compliance levels are not maintained, and the Department determines that re-entrained dust emissions contribute to non-compliance, the Department shall implement the following control measure:

- (a) The Regulated Road Sanding and Sweeping District shall be extended to the boundaries of the Air Pollution Control District.
- (b) Control measures in place for the Regulated Road Sanding and Sweeping District shall apply throughout the entire Air Pollution Control District.

75.1.308 MATERIALS APPLICATION OUTSIDE THE DISTRICT:

- (1) For all areas of the Air Pollution Control District that lie outside of the Regulated Sanding and Sweeping District, each person or government or private entity is strongly encouraged to reduce the amount of sanding materials applied, taking into consideration public safety and air quality.
- (2) Outlying areas and low traffic volume roads should have a low priority.
- (3) Residential areas may receive less sanding material because of lower speeds.
- (4) Adding salt compounds to conventional sanding materials reduces the total amount of sand applied.
- (5) Vehicles used for winter driving should be equipped with winter tires or traction devices.

SUBCHAPTER 4: OUTDOOR BURNING REGULATIONS

75.1.401 INTENT:

- (1) Local geographic features and concentrations of populations in Libby and the immediate surrounding area necessitate rules and regulations concerning the outdoor burning of waste materials.
- (2) Experience has demonstrated that air quality degradation and public health problems are often associated with the improper burning of waste materials in both urban and suburban areas.
- (3) The purpose of this regulation is to improve air quality and meet NAAQS/MAAQS for particulate matter by restricting non-essential outdoor burning, promoting alternative disposal methods and recycling, and setting standards to minimize emissions when outdoor burning is required.

75.1.402: SCOPE AND EFFECTIVE DATE:

- (1) This regulation applies to all persons, agencies, institutions, businesses, industries or government entities living in or located within the boundaries of the Air Pollution Control District and Impact Zone L and to all licensed landfills within the boundaries of Lincoln County.
- (2) The effective date of this sub-chapter is April 15, 2006.

75.1.403 DEFINITIONS:

- (1) "Best Available Control Technology" (BACT) means those techniques and methods of controlling emissions of pollutants from an existing or proposed outdoor burning source which limit those emissions to the maximum degree which the Department determines, on a case-by-case basis, is achievable for that source, taking into account impacts on energy use, the environment, and the economy, and any other costs, including cost to the source.
Such techniques and methods may include the following: scheduling of burning during periods and seasons of good ventilation; applying dispersion forecasts; utilizing predictive modeling results performed by and available from DEQ to minimize smoke impacts; limiting the amount of burning to be performed during any one time; using ignition and burning techniques which minimize smoke production; selecting fuel preparation methods that will minimize dirt and moisture content; promoting fuel configurations which create an adequate air to fuel ratio; prioritizing burns as to air quality impact and assigning control techniques accordingly;

promoting alternative treatments and uses of materials to be burned; and selecting sites that will minimize smoke impacts. BACT for all residential and management outdoor burning includes burning only as authorized by and during the time periods specified by the Department.

(2) "Bonfire" means a ceremonial fire or small recreational fire, in which the materials burned are cordwood or clean untreated dimensional wood and which is conducted by an educational, fraternal or religious organization for the purpose of celebrating a particular organization-related event or for a social gathering, picnic, campout, fireside singalong, etc.

(3) "Christmas Tree Waste" means wood waste from commercially grown Christmas trees left in the field where the trees were grown, after harvesting and on-site processing.

(4) "Conditional Open Burning Permit" means a permit issued to conduct outdoor burning at a licensed landfill.

(5) "Emergency outdoor burning" means an event beyond individual control that necessitates the use of outdoor burning in order to dispose of a substance that poses an immediate threat to public health and safety, or plant or animal life, and for which no alternative method of disposal is reasonably available.

(6) "Impact Zone L" means all of the land within the following boundaries: Beginning at Kootenai Falls, going southeast to Scenery Mountain, then south to Indian Head, then south to Treasure Mountain, then south to Mount Snowy, then east to Double N Lake, then across Highway 2 going northeast to McMillan Mountain, then north to Swede Mountain, then northeast across Highway 37 to the Vermiculite Mine, then west to Sheldon Mountain, then west-northwest to Flagstaff Mountain, then southwest to Kootenai Falls, the point of beginning.

(7) "Libby Outdoor Burning Control Area" means all of the land included with the boundaries of the Air Pollution Control District and Impact Zone L, including the City of Libby.

(8) "Licensed Landfill" means a solid waste disposal site that is licensed for operation by DEQ.

(9) "Licensed Landfill Outdoor Burning" means burning at a licensed landfill pursuant to a conditional outdoor burning permit.

(10) "Major Open Burning Source" means any person, agency, institution, business or industry conducting any outdoor burning that, on a statewide basis, will emit more than 500 tons per calendar year of carbon monoxide or 50 tons per calendar year of any other pollutant regulated under ARM 17.8.101 et seq., except hydrocarbons.

(11) "Management Burning" means any person, agency, institution, business or industry conducting any outdoor burning for any purpose except residential burning, including forestry/wildlife management, licensed landfill management, firefighter training exercises, commercial film productions, or fuel hazard reduction which is designated as necessary by a fire protection agency.

(12) "Outdoor Burning" means the combustion of any material directly in the open air without a receptacle, or in a receptacle other than a furnace, multiple chambered incinerator, or wood waste burner, with the exception of unexploded ordnance, small recreational fires (including bonfires), construction site heating devices used to warm workers, or safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants or elemental phosphorus plants.

(13) "Residential Burning" means any outdoor burning conducted on a residential, farm or ranch property to dispose of vegetative wastes.

(14) "Salvage operation" means any operation conducted in whole or in part to salvage or reclaim any product or material, except the silvicultural practice commonly referred to as a salvage cut.

(15) "Trade wastes" means solid, liquid or gaseous material resulting from construction or operation of any business, trade, industry or demolition project.

Wood product industry wastes such as sawdust, bark, peelings, chips, shavings, branches, limbs and cull wood are considered trade wastes. Trade wastes do not include Christmas tree waste or wastes generally disposed of by residential outdoor burning or management outdoor burning, as defined in these regulations.

75.1.404 OUTDOOR BURNING CONTROL AREAS:

- (1) Outdoor burning regulations shall apply to all outdoor burning activities within the boundaries of the Air Pollution Control District and/or Impact Zone L. The Department may issue restrictions and prohibit outdoor burning activities within these boundaries.
- (2) Restrictions and permitting regulations for Licensed landfills shall apply throughout the boundaries of Lincoln County.

75.1.405 PROHIBITED MATERIALS & ACTIVITIES:

- (1) 40 Code of Federal Regulations (CFR) Part 261, which identifies and defines hazardous wastes, is hereby incorporated by reference.
- (2) Except as specifically provided under ARM 17.8.604 for firefighter training, commercial film production and licensed landfills; the following materials may not be disposed of by outdoor burning:
 - (a) any waste moved from the premises where it was generated;
 - (b) food wastes;
 - (c) styrofoam and other plastics;
 - (d) wastes generating noxious odors;
 - (e) wood and wood by-products that have been treated, coated, painted, stained, or contaminated by a foreign material, such as papers, cardboard, or painted or stained wood;
 - (f) poultry litter;
 - (g) animal droppings;
 - (h) dead animals or dead animal parts;
 - (i) tires;
 - (j) rubber materials;
 - (k) asphalt shingles;
 - (l) tar paper;
 - (m) automobile or aircraft bodies and interiors;
 - (n) insulated wire;
 - (o) oil or petroleum products;
 - (p) treated lumber and timbers;
 - (q) pathogenic wastes;
 - (r) hazardous wastes as defined by 40 CFR Part 261;
 - (s) trade wastes;
 - (t) any materials resulting from a salvage operation;
 - (u) chemicals;
 - (v) Christmas tree waste;
 - (w) asbestos or asbestos-containing materials;
 - (x) standing or demolished structures; and
 - (y) paint.
- (3) The burning of stumps, the burning of grass clippings and leaves, and overnight smoldering of burns is prohibited.
- (4) Burning on any city or county street, road or alley is prohibited.
- (5) The use of burn barrels, or other unapproved devices, is prohibited.

75.1.406 OUTDOOR BURNING PERIODS: Various types of outdoor burning activities are limited to the following time periods:

- (1) **Residential burning – April 1 through April 30:**
 - (a) Residential Outdoor Burning may be conducted during the month of April.

- (b) In the event of unduly wet or wintry weather conditions during the month of April, the Department may extend the residential burning season into the month of May.
- (c) No person may conduct residential outdoor burning at any other time during the year.
- (2) **Management Burning – April 1 through October 31:**
 - (a) Management burns may be conducted throughout the management burning season of April 1 through October 31.
- (3) **Closed Burning Periods – November 1 through March 31:**
 - (a) No person may conduct outdoor burning during the months of November, December, January, February and March.
 - (b) The Department may authorize exceptions for emergency outdoor burning after receiving the following information:
 - (i) facts establishing that alternative methods of disposing of the substance are not reasonably available;
 - (ii) facts establishing that the substance to be burned poses an immediate threat to human health and safety or plant or animal life;
 - (iii) the legal description or address of the site where the burn will occur;
 - (iv) the amount of material to be burned;
 - (v) the date and time of the proposed burn; and
 - (vi) the date and time that the spill or incident giving rise to the emergency was first noticed.
 - (c) Management burning in closed burning periods may be conducted based on a written demonstration of need from a fire protection agency and approval from the Department prior to each ignition.

75.1.407 GENERAL COMPLIANCE & PERMITTING REQUIREMENTS:

- (1) Outdoor burning is allowed only on days with good ventilation/dispersion forecasts. The Department will make this determination based on available interagency meteorological information and local ambient particulate concentrations.
- (2) All residential burners shall apply for and receive an Air Quality Permit from the Department prior to initiating any outdoor burn.
- (3) All burners shall apply for and receive any necessary fire permit(s) from the jurisdictional fire protection agency prior to initiating any burn.
- (4) All burners shall use alternative disposal methods when reasonably available.
- (5) All burners shall utilize BACT.
- (6) All residential burners shall call the Air Quality Hotline at 293-5644 prior to ignition and comply with established burning hours and any burning bans or other announced restrictions.
- (7) All management burners shall contact the Department and receive approval prior to ignition of a planned burn. The Department may authorize, restrict, or prohibit proposed burns after reviewing meteorological dispersion forecasts and local conditions.
- (8) Prior to conducting any outdoor burning, all major open burning sources shall apply for and receive an air quality major open burning permit pursuant to ARM 17.8.610.

75.1.408 SPECIAL COMPLIANCE & PERMITTING REQUIREMENTS:

- (1) **Firefighter Training:**
 - (a) Prior to conducting outdoor burning sessions as part of their training program, Fire Departments shall apply for and receive a Firefighter Training Permit issued by DEQ.
 - (b) Any person planning Firefighter Training outdoor burning shall contact the Department and receive approval prior to conducting the training

burn. The Department may authorize, restrict, or prohibit proposed burns after reviewing meteorological dispersion forecasts and local conditions.

(c) Any person planning Firefighter training outdoor burning shall provide at least three weeks advance notice to all residents within a 1/4-mile or four-block radius of the proposed training site. The Department and County Health Officer shall evaluate any concerns about environmental or health impacts presented by surrounding residents prior to authorization or denial of the outdoor burning.

(2) **Commercial Film Production Burns:**

(a) Anyone planning to conduct Commercial Film Production outdoor burning shall apply for and receive a Commercial Film Production Permit issued by DEQ.

(b) Anyone planning Commercial Film Production outdoor burning shall contact the Department and receive approval prior to conducting outdoor burning. The Department may authorize, restrict, or prohibit proposed burns after reviewing meteorological dispersion forecasts and local conditions.

(3) **Fuel Hazard Reduction:**

(a) Any proposed burn for fuel hazard reduction must be designated as necessary by a fire protection agency.

(b) Anyone planning Fuel Hazard Reduction outdoor burning shall contact the Department and receive approval prior to conducting outdoor burning. The Department may authorize, restrict, or prohibit proposed burns after reviewing meteorological dispersion forecasts and local conditions.

(4) **Licensed Landfill Burns**

(a) All licensed landfills within the boundaries of Lincoln County must:

(i) Have an approved burn site, as designated in the solid Waste Management System License issued by the DEQ, pursuant to ARM Title 17, chapter 50, subchapter 5, before a Conditional Air Quality Open Burning permit may be issued.

(ii) Obtain a Conditional Air Quality Outdoor Burning Permit from the Department before burning. A new permit must be obtained for each burn.

(iii) Comply with all conditions of the permit.

(b) No licensed landfill within the boundaries of Lincoln County shall cause or allow the burning of untreated wood waste unless they have first applied for and received a permit for such outdoor burning from the Department.

(c) The Department may issue a conditional air quality open burning permit if the Department determines that:

(i) alternative methods of disposal would result in extreme economic hardship to the applicant; and

(ii) emissions from open burning will not endanger public health or welfare or cause or contribute to a violation of any NAAQS/MAAQS.

(d) The Department must be reasonable when determining whether alternative methods of disposal would result in extreme economic hardship to the applicant.

(e) Conditional outdoor burning must conform with BACT.

(f) The Department may issue a conditional air quality outdoor permit to dispose of untreated wood waste at a licensed landfill site, if the Department determines that:

(i) the proposed open burning will occur at an approved burn site as designated in the solid waste management system license issued by DEQ pursuant to ARM title 17, chapter 50, subchapter 5; and

(ii) prior to the issuance of the air quality open burning permit, the wood waste pile is inspected by the Department or its designated representative and no prohibited materials listed in 75.1.405(2), other than wood waste, are present.

(g) A permit issued under this rule is valid for a single burn of untreated wood waste at licensed landfill sites. A new permit must be obtained for each burn.

(h) The Department may place any reasonable requirements in a conditional air quality open burning permit that it determines will reduce emissions of air pollutants or minimize the impact of emissions and the recipient of a permit must adhere to those conditions.

(i) An application for a conditional air quality open burning permit must be made on a form provided by the Department. The applicant shall provide adequate information to enable the Department to determine whether the application satisfies the requirements for a conditional air quality open burning permit contained in this rule. Proof of publication of public notice, as required in section (j) of this rule, must be submitted to the Department before an application will be considered complete.

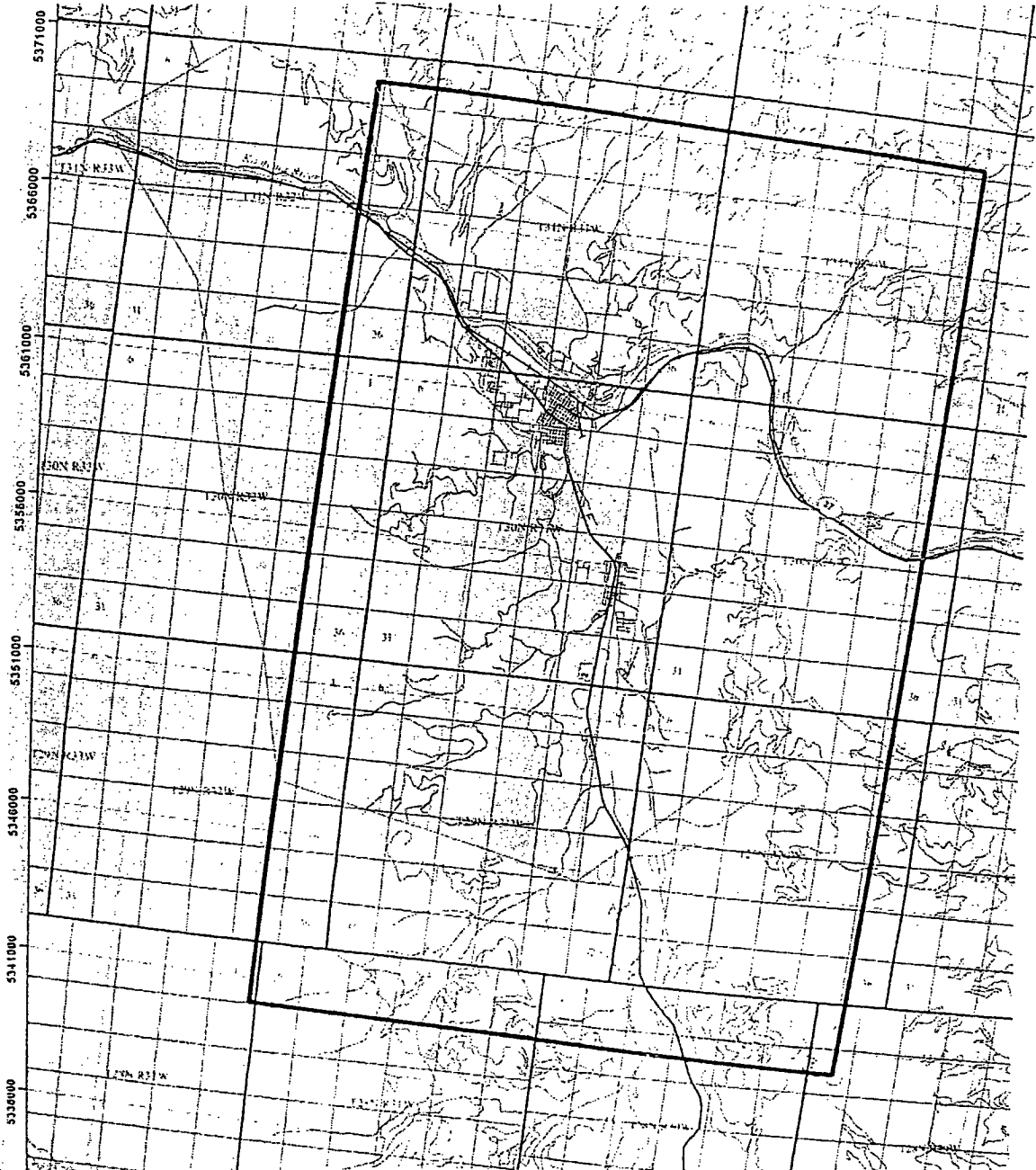
(j) An applicant for a conditional air quality open burning permit shall notify the public of the application by legal publication, at least once, in a newspaper of general circulation in the area affected by the application. The notice must be published no sooner than 10 days prior to submittal of an application and no later than ten days after submittal of an application. Form of the notice must be provided by the Department and must include a statement that public comments may be submitted to the Department concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applications.

(k) When the Department approves or denies the application for a permit under 75.1.408(4), a person who is jointly or severally adversely affected by the decision may request a hearing before the Lincoln County Board of Health. The request for hearing must be filed within 15 days after the Department renders its decision and must include an affidavit setting forth the grounds for the request. The Department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the Department's decision until the conclusion of the hearing and issuance of a final decision by the Lincoln County Board of Health.

75.1.409 PENALTY ASSESSMENTS:

(1) Any person who violates any provision of these regulations or any provision of any directive, action, permit, or approval adopted pursuant to the authority granted by these regulations, except for intentional violations of Section 75.1.405(2)(r), shall be, upon conviction, punished by a fine not less than \$25 and not more than \$200 for each offense. Violations of Section 75.1.405(2)(r), burning hazardous wastes as defined by 40 CFR Part 261, shall be, upon conviction, punished by a fine not to exceed \$10,000 per day per violation.

(2) Each day of violation shall be considered a separate offense.



RESOLUTION NO. 725

WHEREAS, the Board of Lincoln County Commissioners feels it necessary to adopt such revisions to the 6 January, 1993, Lincoln County Air Pollution Control Ordinance as are required by the Environmental Protection Agency to approve inclusion of this ordinance in the Libby SIP; and

WHEREAS, the absence of E.P.A. approved local air pollution control regulation would result in the implementation of Federally mandated regulations which could cause severe hardship, economic and otherwise, upon a substantial number of citizens of Lincoln County; and

WHEREAS, the proposed revisions to the Lincoln County Air Pollution Control Program contain certain provisions regarding outdoor burning which are more stringent than comparable state or federal standards, pursuant to 75-2-301 (4), the Lincoln County Commission finds that, based on information, peer-reviewed scientific studies, and other evidence submitted into the record in proceedings deliberating this matter, the proposed revisions:

- protect public health or the environment of affected areas Lincoln County;
- can mitigate harm to the environment to the public health or the environment; and
- are achievable with current technology.


• The Lincoln County Commission also acknowledges information submitted into the record regarding costs to the regulated community that are directly attributed to the proposed revisions.

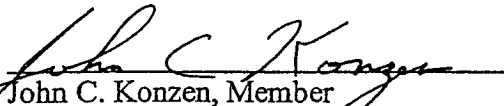
NOW THEREFORE BE IT RESOLVED that the Lincoln County Commission hereby approves and adopts the proposed revisions to the Lincoln County Air Pollution Control Program which are attached to and made a part of this Resolution and directs the same to be submitted, together with all pertinent evidence as required by 75-2-301, MCA, to the Montana Board of Environmental Review, to be effective upon approval by such Board; and

BE IT FURTHER RESOLVED that the Lincoln County Commission recommends the Governor of the state of Montana submit the revisions to the Lincoln County Air Pollution Program for inclusion into the Montana state implementation plan.

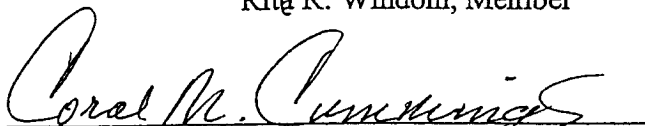
DONE IN SESSION this 27th day of February, 2006.

LINCOLN COUNTY BOARD OF COMMISSIONERS


Marianne B. Roose, Chairman


John C. Konzen, Member


Rita R. Windom, Member

ATTEST: 
Coral M. Cummings, Clerk of the Board

HEALTH AND ENVIRONMENT REGULATIONS
CHAPTER 1: Control of Air Pollution
Subchapter 1: General Provisions

(Revised 27 February 2006)

75.1.101 **INTENT:** The purpose of this chapter is to achieve and maintain such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property, and facilitate the enjoyment of the natural attractions of Lincoln County.

75.1.102: **SCOPE:** Unless otherwise indicated, the rules of Chapter 1 apply to activities and sources within the Air Pollution Control District.

75.1.103 **DEFINITIONS:** As used in this chapter, unless indicated otherwise, the following definitions apply:

- (1) "Air Contaminant" means dust, ash, fumes, gas, mist, smoke, vapor or any particulate matter or a combination thereof present in the outdoor atmosphere.
- (2) "Air Pollution Control District" means the geographical area designated on the attached map and as defined by the following Universal Transverse Mercator (UTM) coordinates:

Begin, 600000mE, 5370000mN; east to 620000mE, 5370000mN; south to 620000mE, 5340000mN; west to 600000mE, 5340000mN; north to 600000mE, 5370000mN.

- (3) "Department" means the Lincoln County Environmental Health Department.
- (4) "DEQ" means the Montana Department of Environmental Quality.
- (5) "Emission" means a release into the outdoor atmosphere of an air contaminant.
- (6) "EPA" means the US Environmental Protection Agency.
- (7) "MAAQS" means Montana Ambient Air Quality Standards.
- (8) "NAAQS" means National Ambient Air Quality Standards.
- (9) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or private corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the federal government or an agency of the federal government, or any other legal entity and includes persons resident in Canada.
- (10) "PM10" means particulate matter with an aerodynamic diameter of less than or equal to a nominal 10 micrometers.
- (11) "PM2.5" means particulate matter with an aerodynamic diameter of less than or equal to a nominal 2.5 micrometers.

75.1.104 **SELECTION & IMPLEMENTATION OF CONTINGENCY MEASURE PROGRAMS:**

- (1) Upon notification by DEQ or EPA that the Air Pollution Control District has failed to attain NAAQS/MAAQS or make reasonable further progress in reducing emissions, the Department shall determine the source(s) contributing to the violation and designate the associated contingency measure(s) to be implemented. The Department shall identify sources of contribution based upon documented observations of emission sources and corresponding EPA reference method monitoring data.
- (2) Unless otherwise prohibited by Section 75.1.104(2)(d), and within 60 days of notification from DEQ or EPA, the Department shall implement the following contingency measure(s) to reduce emissions from a source(s) identified as a contributor.
 - (a) If residential wood burning is determined to be a contributing source, the Department shall implement Section 75.1.208.

- (b) If re-entrained dust is determined to be a contributing source, the Department shall implement Section 75.1.307.
 - (c) If industrial facility emissions are determined to be a contributing source, DEQ shall initiate contingency measures to reduce emissions.
 - (d) The Department shall address failure to attain NAAQS or to make reasonable further progress in reducing emissions attributable to natural events or impacts generating activities occurring outside state or local jurisdictional control according to EPA policy while initiating interim contingency measures at the local level.
 - (e) If no emission source(s) can be identified as a contributor, the Department shall conduct a comprehensive review, including chemical and microscopic filter analysis. Until such time as the review and analyses have been completed, the Department shall implement at least one of the above contingency measures on an interim basis. Any selected interim contingency measure(s) shall remain in effect until the Department completes a comprehensive review and determines whether a permanent contingency measure is necessary.
- (3) Early voluntary implementation of a contingency measure shall not result in a requirement to develop additional moderate area contingency measures if the area later fails to attain the NAAQS/MAAQS or make reasonable further progress in reducing emissions. However, redesignation could necessitate additional control measures including Best Available Control Measures (BACM), Best Available Control Technology (BACT) and/or additional contingency measures.

75.1.105 ENFORCEABILITY:

The provisions of the regulations in this ordinance are enforceable by the Lincoln County Environmental Health Department authorities and/or appropriate law enforcement officials.

75.1.106 CONFLICT OF ORDINANCES:

- (1) In any case where a provision of these regulations is found to be in conflict with a provision of any zoning, building, fire, safety or health ordinance or code of any City of, Town of, or of the County of Lincoln, the provision which, in the judgment of the Health Officer, established the higher standard for the promotion and protection of the health and safety of the people shall prevail.
- (2) If any portion of these regulations should be declared invalid for any reason whatsoever, such decision shall not affect the validity of the remaining portion(s) of the ordinance and such portions shall remain in full force and effect.

SUBCHAPTER 2: SOLID FUEL BURNING DEVICE REGULATIONS

75.1.201 INTENT:

- (1) A regulation reducing the levels of particulate air pollutants to or below levels of the NAAQS/MAAQS.
- (2) This regulation is necessary to preserve, protect, improve, achieve and maintain such levels of air quality as will protect the health and welfare of the citizens of Lincoln County.

75.1.202 SCOPE AND EFFECTIVE DATE:

- (1) This regulation applies to all persons, agencies, institutions, businesses, industries or government entities living in or located within the Air Pollution Control District except for sources exempt from local regulation under 75-2-301(5), MCA.
- (2) The effective date of this sub-chapter is January 1, 2007.

75.1.203 DEFINITIONS: As used in this subchapter, unless indicated otherwise, the following definitions apply:

- (1) "Opacity" means a measurement of visible emissions defined as the degree expressed in percent to which emissions reduce the transmission of light and obscure the view of an object in the background.
- (2) "Operating Permit" means a permit issued by the Department that allows the use of a solid fuel burning device within the boundaries of the Air Pollution Control District.
- (3) "Pellet Fuel Burning Device" means a solid fuel burning device that burns only automatically fed biomass, pelletized fuels.
- (4) "Solid Fuel Burning Device" means any fireplace, fireplace insert, wood stove, pellet stove, pellet furnace, wood burning heater, wood-fired boiler, wood or coal-fired furnace, coal stove, or similar device burning any solid fuel used for aesthetic, cooking or heating purposes which has a rated capacity of less than 1,000,000 BTU's per hour.
- (5) "Standard Catalytic Device" means a solid fuel burning device with a catalytic emissions control system that has been certified by EPA test method as having emissions <4.1 grams/hour.
- (6) "Standard Non-Catalytic Device" means a solid fuel burning device with a non-catalytic emissions control system that has been certified by EPA test method as having emissions <7.5 grams/hour.

75.1.204 OPERATING & EMISSION LIMITS:

- (1) No person may install or operate any type of solid fuel burning device without a valid Operating Permit issued by the Department.
- (2) No person may 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 a solid fuel. Products manufactured or processed for use as solid fuels must conform to any other applicable provisions of this subchapter.
- (3) In the absence of an Air Pollution Alert, no person operating a solid fuel burning device may cause or allow the discharge of visible emissions greater than twenty percent opacity. The provisions of this section do not apply to visible emissions during the building of a new fire, for a period or periods aggregating no more than twenty minutes in any four-hour period.
- (4) During an Air Pollution Alert, no person operating a solid fuel burning device that is permitted for use during an Alert may cause or allow the discharge of visible emissions greater than ten percent opacity. The provisions of this subsection shall not apply during the building of a new fire, for a period or periods aggregating no more than twenty minutes in any four-hour period. No person may operate a standard catalytic or non-catalytic solid fuel burning device during an Air Pollution Alert.

75.1.205 SOLID FUEL BURNING DEVICE PERMITS:

- (1) Prior to installing or operating a solid fuel burning device in any residential or commercial property, a person shall apply to the Department for a permit and provide the following information:
 - (a) the owner/operator of the device;
 - (b) contact information for the device owner/operator;
 - (c) location of the device;
 - (d) device manufacturer & model;
 - (e) type of device (rating); and
 - (f) any other relevant information for the Department to determine whether it satisfies the requirements of this regulation.
- (2) The Department may issue Operating Permits for the following types of solid fuel burning devices:
 - (a) **Standard catalytic devices.** The Department may issue an Operating Permit for a catalytic solid fuel burning device. Standard catalytic devices may not be operated during an Air Pollution Alert. Implementation

of the contingency measure in 75.1.208 would automatically invalidate the operating permit for this type of device.

(b) **Standard non-catalytic devices.** The Department may issue an Operating Permit for a non-catalytic solid fuel burning device. Standard non-catalytic devices may not be operated during an Air Pollution Alert. Implementation of the contingency measure in 75.1.208 would automatically invalidate the operating permit for this type of device.

(c) **Pellet fuel burning devices.** The Department may issue an operating permit for a biomass pellet fuel burning device. Pellet fuel burning devices may be operated during an Air Pollution Alert. Implementation of the contingency measure in 75.1.208 would not invalidate the operating permit for this type of device.

(3) Unless otherwise invalidated by implementation of a contingency measure or future changes in solid fuel burning device regulations, Operating Permits are valid until the named owner/operator changes or the device is removed or modified in any way. Permits may not be transferred from person to person or from place to place.

(4) An Operating Permit for a solid fuel burning device may be revoked by the Department for non-compliance with these regulations or Operating Permit conditions.

75.1.206 AIR POLLUTION ALERTS:

(1) The Department may declare an Air Pollution Alert to be in effect whenever ambient PM concentrations, as averaged over a four hour period, exceed a level 20 percent below any state or federal ambient 24-hour standard established for particulate matter; and when scientific and meteorological data indicate the average concentrations will remain at or above these levels over the next 24 hours.

(2) The Department may also declare an Air Pollution Alert to be in effect whenever scientific and meteorological data indicate that the ambient PM concentrations over any four-hour period within the next twenty-four hours may reasonably be expected to exceed a level 20 percent below any state or federal ambient 24-hour standard established for particulate matter.

(3) No person shall be subject to any violation of 75.1.204(4) for three hours after the Department declares an Air Pollution Alert and makes that information reasonably available to the public.

75.1.207 PENALTY ASSESSMENTS:

(1) The Department shall issue a "Notice of Violation" for any documented violation. The first notice of violation issued is a warning to the violator and will include educational and compliance information on air pollution regulations.

(2) For a second and any subsequent violations, the Department shall process each notice of violation for a Civil Penalty Assessment of \$25.00 per violation.

(3) No person or entity may be cited for a violation more than once in any calendar day. However, the Department may issue a notice of violation for each calendar day of violation and each such notice is considered as a separate violation.

75.1.208 CONTINGENCY MEASURES:

(1) If compliance with NAAQS/MAAQs are not achieved or compliance levels are not maintained, and the Department determines that solid fuel burning device emissions are a contributor to non-compliance, the Department shall implement the following control measure:

(a). No person may operate a solid fuel burning device except a biomass pellet fuel burning device with a valid operating permit issued by the Department.

SUBCHAPTER 3: DUST CONTROL REGULATIONS:

Control Measures For Roads, Parking Lots And Commercial Lots

75.1.301 INTENT: Regulations enacting an emission control plan within the Air Pollution Control District to meet NAAQS for particulate matter by requiring dust abatement and control.

75.1.302 SCOPE & EFFECTIVE DATE:

(1) This regulation applies to all persons, agencies, institutions, businesses, industries or government entities living in or located within the "Regulated Road Sanding and Sweeping District."

(2) The effective date of this subchapter is January 1, 2007.

75.1.303 DEFINITIONS: As used in this subchapter, unless indicated otherwise, the following definitions apply:

(1) "Areas of Public Safety Concern" means specific areas that may include, but are not necessarily limited to: roadways with steep grade hills; roadways around public school facilities; and parking areas for medical, senior or public school facilities.

(2) "Commercial Yard/Lot" means a parcel of land located off the public right-of-way with uses that may include, but are not necessarily limited to, logging yards, bus lots, store and shopping parking areas, construction firms, trucking/transportation firms, and industrial facility sites.

(3) "Emergency Situation" means a situation when:

(a) Liquid de-icing agents and/or de-icing salts become unavailable due to circumstances beyond the control of the person, government or private entity maintaining a roadway, alley, parking lot or commercial yard/lot or;

(b) due to extreme weather conditions, or hazardous roadways, liquid de-icing agents and/or de-icing salts do not provide adequate traction for public safety.

(4) "Parking Lot" means a parcel of land located off of the public right-of-way which is not less than 5,000 square feet in size and which is primarily used for the temporary storage of motor vehicles. A parking lot as used in this regulation does not include lots for the storage of special mobile equipment as defined in 61-1-101(59), MCA.

(5) "Prioritized Street Sweeping and Flushing" means a schedule of street sweeping and/or flushing which cleans streets with the highest traffic volumes first and proceeds in descending order of traffic volume to streets with the lowest traffic volume. When all ice-free streets have been cleaned the cycle is immediately repeated.

(6) "Reasonably Available Control Technology" means

(a) During winter, prioritized street sweeping and flushing of streets with accumulated carry-on or applied materials shall commence on the first working day after the roadbed becomes ice-free and temperatures remain above freezing.

(b) During summer, street sweeping and/or flushing which is accomplished on an as-needed basis to remove any accumulated carry-on or applied materials, with priority given to streets with the highest traffic volumes.

(7) "Regulated Road Sanding and Sweeping District" means the geographical area designated by the attached map, wherein the regulations of this sub-chapter apply, and defined as follows:

Point of beginning: intersection of Pipe Creek Road and Highway 37 North, follow Highway 37 south to Thomas Road then west-northwest along the Kootenai River to the west end of Jay-Effar Road; then west-southwest across Highway 2 to Parnix

Way; then south-southeast along the base of the foothills, crossing Flower Creek Road and Main Avenue, to Reese court; then south along Cabinet Heights Road and Westgate to Snowshoe Road; then North-northeast on Shaughnessy Road to Highway 2; then east to Libby Creek; then north following the streambank of Libby Creek to the Kootenai River; then west-northwest along the Kootenai River to Highway 37; then north on Highway 37 to the point of beginning.

(8) "Road" means any road or alley which is greater than 50-feet in length and which has or is projected to have an average traffic volume greater than 50 vehicles per day.

(9) "Summer" means the months of May, June, July, August, September and October.

(10) "Winter" means the months of November, December, January, February, March and April.

75.1.304 LIMITATION ON USE AND ON APPLICATION OF MATERIALS:

(1) No person may allow vehicular operation on any road, parking lot or commercial yard/lot that is not paved or otherwise surfaced or treated to prevent vehicular carry-on and wind-borne entrainment of dust.

(a) If an emergency situation arises that requires vehicular operation in/on an untreated area, the Department may authorize utilization of the area during the course of the emergency provided alternative methods are implemented to minimize carry-on or entrainment.

(2) With the exception of "Emergency Situations" and "Areas of Public Safety Concern", sanding materials may not be applied. Only liquid de-icing agents and/or de-icing salts may be used on roads, parking lots and commercial yards/lots.

(3) No person may place any sanding or chip seal material on any road, parking lot or commercial yard/lot which has a durability, as defined by the Montana Modified LA Abrasion Test, of greater than 7, and a fines content of material smaller than 200 mesh, as determined by standard wet sieving methods, that exceeds 3 percent oven dry weight.

(4) A person, prior to application, shall test materials proposed for use as sanding or chip seal material and provide the Department laboratory test data demonstrating that the material meets the specified requirements for durability and fines content.

75.1.305 STREET SWEEPING & FLUSHING:

(1) Any person responsible for the maintenance of a road shall implement and maintain a schedule of prioritized street sweeping and flushing.

(2) Reasonably available control technology shall be utilized to assure timely removal of carry-on or applied accumulations from all roads.

75.1.306 SPECIFIC MEASURES FOR COMMERCIAL YARDS/LOTS:

(1) Operators of all commercial yards/lots shall implement measures to prevent the collection and deposition of dust from equipment wheels and chassis.

(2) Operators of all commercial yards/lots shall implement dust suppression measures (chemical dust suppressants, dust oiling, watering, etc.) in bare, undeveloped areas of the property(ies) to eliminate fugitive air-born dust.

(3) Operators of all commercial yards/lots shall clean carry-on material generated from their facility from adjoining roadways in a timely manner.

75.1.307 CONTINGENCY MEASURES:

(1) If compliance with NAAQS is not achieved or compliance levels are not maintained, and the Department determines that re-entrained dust emissions contribute to non-compliance, the Department shall implement the following control measure:

- (a) The Regulated Road Sanding and Sweeping District shall be extended to the boundaries of the Air Pollution Control District.
- (b) Control measures in place for the Regulated Road Sanding and Sweeping District shall apply throughout the entire Air Pollution Control District.

75.1.308 MATERIALS APPLICATION OUTSIDE THE DISTRICT:

- (1) For all areas of the Air Pollution Control District that lie outside of the Regulated Sanding and Sweeping District, each person or government or private entity is strongly encouraged to reduce the amount of sanding materials applied, taking into consideration public safety and air quality.
- (2) Outlying areas and low traffic volume roads should have a low priority.
- (3) Residential areas may receive less sanding material because of lower speeds.
- (4) Adding salt compounds to conventional sanding materials reduces the total amount of sand applied.
- (5) Vehicles used for winter driving should be equipped with winter tires or traction devices.

SUBCHAPTER 4: OUTDOOR BURNING REGULATIONS

75.1.401 INTENT:

- (1) Local geographic features and concentrations of populations in Libby and the immediate surrounding area necessitate rules and regulations concerning the outdoor burning of waste materials.
- (2) Experience has demonstrated that air quality degradation and public health problems are often associated with the improper burning of waste materials in both urban and suburban areas.
- (3) The purpose of this regulation is to improve air quality and meet NAAQS/MAAQS for particulate matter by restricting non-essential outdoor burning, promoting alternative disposal methods and recycling, and setting standards to minimize emissions when outdoor burning is required.

75.1.402: SCOPE AND EFFECTIVE DATE:

- (1) This regulation applies to all persons, agencies, institutions, businesses, industries or government entities living in or located within the boundaries of the Air Pollution Control District and Impact Zone L and to all licensed landfills within the boundaries of Lincoln County.
- (2) The effective date of this sub-chapter is April 15, 2006.

75.1.403 DEFINITIONS:

- (1) "Best Available Control Technology" (BACT) means those techniques and methods of controlling emissions of pollutants from an existing or proposed outdoor burning source which limit those emissions to the maximum degree which the Department determines, on a case-by-case basis, is achievable for that source, taking into account impacts on energy use, the environment, and the economy, and any other costs, including cost to the source.
Such techniques and methods may include the following: scheduling of burning during periods and seasons of good ventilation; applying dispersion forecasts; utilizing predictive modeling results performed by and available from DEQ to minimize smoke impacts; limiting the amount of burning to be performed during any one time; using ignition and burning techniques which minimize smoke production; selecting fuel preparation methods that will minimize dirt and moisture content; promoting fuel configurations which create an adequate air to fuel ratio; prioritizing burns as to air quality impact and assigning control techniques accordingly;

promoting alternative treatments and uses of materials to be burned; and selecting sites that will minimize smoke impacts. BACT for all residential and management outdoor burning includes burning only as authorized by and during the time periods specified by the Department.

(2) "Bonfire" means a ceremonial fire or small recreational fire, in which the materials burned are cordwood or clean untreated dimensional wood and which is conducted by an educational, fraternal or religious organization for the purpose of celebrating a particular organization-related event or for a social gathering, picnic, campout, fireside singalong, etc.

(3) "Christmas Tree Waste" means wood waste from commercially grown Christmas trees left in the field where the trees were grown, after harvesting and on-site processing.

(4) "Conditional Open Burning Permit" means a permit issued to conduct outdoor burning at a licensed landfill.

(5) "Emergency outdoor burning" means an event beyond individual control that necessitates the use of outdoor burning in order to dispose of a substance that poses an immediate threat to public health and safety, or plant or animal life, and for which no alternative method of disposal is reasonably available.

(6) "Impact Zone L" means all of the land within the following boundaries: Beginning at Kootenai Falls, going southeast to Scenery Mountain, then south to Indian Head, then south to Treasure Mountain, then south to Mount Snowy, then east to Double N Lake, then across Highway 2 going northeast to McMillan Mountain, then north to Swede Mountain, then northeast across Highway 37 to the Vermiculite Mine, then west to Sheldon Mountain, then west-northwest to Flagstaff Mountain, then southwest to Kootenai Falls, the point of beginning.

(7) "Libby Outdoor Burning Control Area" means all of the land included with the boundaries of the Air Pollution Control District and Impact Zone L, including the City of Libby.

(8) "Licensed Landfill" means a solid waste disposal site that is licensed for operation by DEQ.

(9) "Licensed Landfill Outdoor Burning" means burning at a licensed landfill pursuant to a conditional outdoor burning permit.

(10) "Major Open Burning Source" means any person, agency, institution, business or industry conducting any outdoor burning that, on a statewide basis, will emit more than 500 tons per calendar year of carbon monoxide or 50 tons per calendar year of any other pollutant regulated under ARM 17.8.101 et seq., except hydrocarbons.

(11) "Management Burning" means any person, agency, institution, business or industry conducting any outdoor burning for any purpose except residential burning, including forestry/wildlife management, licensed landfill management, firefighter training exercises, commercial film productions, or fuel hazard reduction which is designated as necessary by a fire protection agency.

(12) "Outdoor Burning" means the combustion of any material directly in the open air without a receptacle, or in a receptacle other than a furnace, multiple chambered incinerator, or wood waste burner, with the exception of unexploded ordnance, small recreational fires (including bonfires), construction site heating devices used to warm workers, or safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants or elemental phosphorus plants.

(13) "Residential Burning" means any outdoor burning conducted on a residential, farm or ranch property to dispose of vegetative wastes.

(14) "Salvage operation" means any operation conducted in whole or in part to salvage or reclaim any product or material, except the silvicultural practice commonly referred to as a salvage cut.

(15) "Trade wastes" means solid, liquid or gaseous material resulting from construction or operation of any business, trade, industry or demolition project.

Wood product industry wastes such as sawdust, bark, peelings, chips, shavings, branches, limbs and cull wood are considered trade wastes. Trade wastes do not include Christmas tree waste or wastes generally disposed of by residential outdoor burning or management outdoor burning, as defined in these regulations.

75.1.404 OUTDOOR BURNING CONTROL AREAS:

(1) Outdoor burning regulations shall apply to all outdoor burning activities within the boundaries of the Air Pollution Control District and/or Impact Zone L. The Department may issue restrictions and prohibit outdoor burning activities within these boundaries.

(2) Restrictions and permitting regulations for Licensed landfills shall apply throughout the boundaries of Lincoln County.

75.1.405 PROHIBITED MATERIALS & ACTIVITIES:

(1) 40 Code of Federal Regulations (CFR) Part 261, which identifies and defines hazardous wastes, is hereby incorporated by reference.

(2) Except as specifically provided under ARM 17.8.604 for firefighter training, commercial film production and licensed landfills; the following materials may not be disposed of by outdoor burning:

- (a) any waste moved from the premises where it was generated;
- (b) food wastes;
- (c) styrofoam and other plastics;
- (d) wastes generating noxious odors;
- (e) wood and wood by-products that have been treated, coated, painted, stained, or contaminated by a foreign material, such as papers, cardboard, or painted or stained wood;
- (f) poultry litter;
- (g) animal droppings;
- (h) dead animals or dead animal parts;
- (i) tires;
- (j) rubber materials;
- (k) asphalt shingles;
- (l) tar paper;
- (m) automobile or aircraft bodies and interiors;
- (n) insulated wire;
- (o) oil or petroleum products;
- (p) treated lumber and timbers;
- (q) pathogenic wastes;
- (r) hazardous wastes as defined by 40 CFR Part 261;
- (s) trade wastes;
- (t) any materials resulting from a salvage operation;
- (u) chemicals;
- (v) Christmas tree waste;
- (w) asbestos or asbestos-containing materials;
- (x) standing or demolished structures; and
- (y) paint.

(3) The burning of stumps, the burning of grass clippings and leaves, and overnight smoldering of burns is prohibited.

(4) Burning on any city or county street, road or alley is prohibited.

(5) The use of burn barrels, or other unapproved devices, is prohibited.

75.1.406 OUTDOOR BURNING PERIODS: Various types of outdoor burning activities are limited to the following time periods:

(1) **Residential burning – April 1 through April 30:**

- (a) Residential Outdoor Burning may be conducted during the month of April.

- (b) In the event of unduly wet or wintry weather conditions during the month of April, the Department may extend the residential burning season into the month of May.
- (c) No person may conduct residential outdoor burning at any other time during the year.
- (2) **Management Burning – April 1 through October 31:**
 - (a) Management burns may be conducted throughout the management burning season of April 1 through October 31.
- (3) **Closed Burning Periods – November 1 through March 31:**
 - (a) No person may conduct outdoor burning during the months of November, December, January, February and March.
 - (b) The Department may authorize exceptions for emergency outdoor burning after receiving the following information:
 - (i) facts establishing that alternative methods of disposing of the substance are not reasonably available;
 - (ii) facts establishing that the substance to be burned poses an immediate threat to human health and safety or plant or animal life;
 - (iii) the legal description or address of the site where the burn will occur;
 - (iv) the amount of material to be burned;
 - (v) the date and time of the proposed burn; and
 - (vi) the date and time that the spill or incident giving rise to the emergency was first noticed.
 - (c) Management burning in closed burning periods may be conducted based on a written demonstration of need from a fire protection agency and approval from the Department prior to each ignition.

75.1.407 GENERAL COMPLIANCE & PERMITTING REQUIREMENTS:

- (1) Outdoor burning is allowed only on days with good ventilation/dispersion forecasts. The Department will make this determination based on available interagency meteorological information and local ambient particulate concentrations.
- (2) All residential burners shall apply for and receive an Air Quality Permit from the Department prior to initiating any outdoor burn.
- (3) All burners shall apply for and receive any necessary fire permit(s) from the jurisdictional fire protection agency prior to initiating any burn.
- (4) All burners shall use alternative disposal methods when reasonably available.
- (5) All burners shall utilize BACT.
- (6) All residential burners shall call the Air Quality Hotline at 293-5644 prior to ignition and comply with established burning hours and any burning bans or other announced restrictions.
- (7) All management burners shall contact the Department and receive approval prior to ignition of a planned burn. The Department may authorize, restrict, or prohibit proposed burns after reviewing meteorological dispersion forecasts and local conditions.
- (8) Prior to conducting any outdoor burning, all major open burning sources shall apply for and receive an air quality major open burning permit pursuant to ARM 17.8.610.

75.1.408 SPECIAL COMPLIANCE & PERMITTING REQUIREMENTS:

- (1) **Firefighter Training:**
 - (a) Prior to conducting outdoor burning sessions as part of their training program, Fire Departments shall apply for and receive a Firefighter Training Permit issued by DEQ.
 - (b) Any person planning Firefighter Training outdoor burning shall contact the Department and receive approval prior to conducting the training

burn. The Department may authorize, restrict, or prohibit proposed burns after reviewing meteorological dispersion forecasts and local conditions.

(c) Any person planning Firefighter training outdoor burning shall provide at least three weeks advance notice to all residents within a 1/4-mile or four-block radius of the proposed training site. The Department and County Health Officer shall evaluate any concerns about environmental or health impacts presented by surrounding residents prior to authorization or denial of the outdoor burning.

(2) **Commercial Film Production Burns:**

(a) Anyone planning to conduct Commercial Film Production outdoor burning shall apply for and receive a Commercial Film Production Permit issued by DEQ.

(b) Anyone planning Commercial Film Production outdoor burning shall contact the Department and receive approval prior to conducting outdoor burning. The Department may authorize, restrict, or prohibit proposed burns after reviewing meteorological dispersion forecasts and local conditions.

(3) **Fuel Hazard Reduction:**

(a) Any proposed burn for fuel hazard reduction must be designated as necessary by a fire protection agency.

(b) Anyone planning Fuel Hazard Reduction outdoor burning shall contact the Department and receive approval prior to conducting outdoor burning. The Department may authorize, restrict, or prohibit proposed burns after reviewing meteorological dispersion forecasts and local conditions.

(4) **Licensed Landfill Burns**

(a) All licensed landfills within the boundaries of Lincoln County must:

(i) Have an approved burn site, as designated in the solid Waste Management System License issued by the DEQ, pursuant to ARM Title 17, chapter 50, subchapter 5, before a Conditional Air Quality Open Burning permit may be issued.

(ii) Obtain a Conditional Air Quality Outdoor Burning Permit from the Department before burning. A new permit must be obtained for each burn.

(iii) Comply with all conditions of the permit.

(b) No licensed landfill within the boundaries of Lincoln County shall cause or allow the burning of untreated wood waste unless they have first applied for and received a permit for such outdoor burning from the Department.

(c) The Department may issue a conditional air quality open burning permit if the Department determines that:

(i) alternative methods of disposal would result in extreme economic hardship to the applicant; and

(ii) emissions from open burning will not endanger public health or welfare or cause or contribute to a violation of any NAAQS/MAAQS.

(d) The Department must be reasonable when determining whether alternative methods of disposal would result in extreme economic hardship to the applicant.

(e) Conditional outdoor burning must conform with BACT.

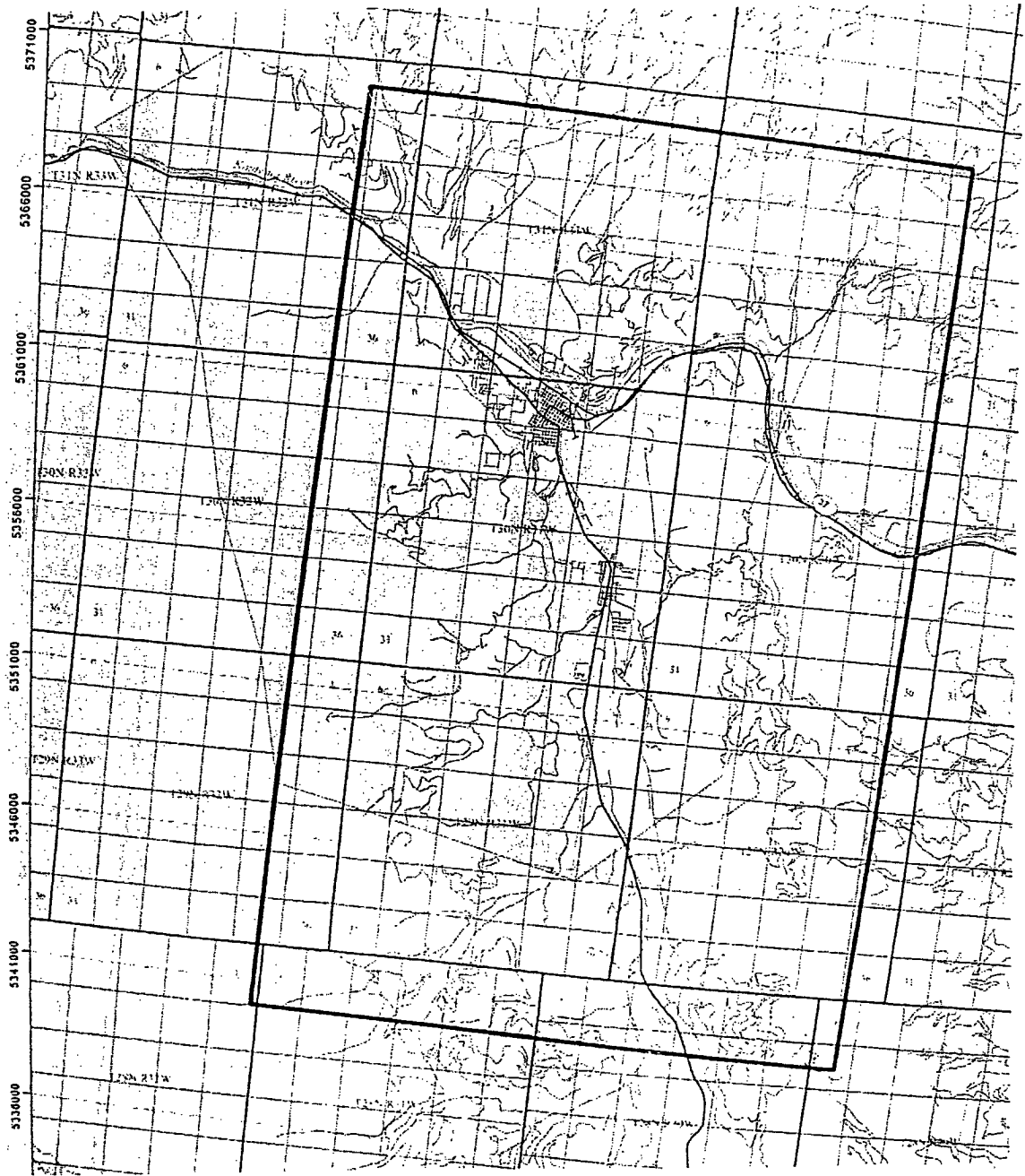
(f) The Department may issue a conditional air quality outdoor permit to dispose of untreated wood waste at a licensed landfill site, if the Department determines that:

(i) the proposed open burning will occur at an approved burn site as designated in the solid waste management system license issued by DEQ pursuant to ARM title 17, chapter 50, subchapter 5; and

- (ii) prior to the issuance of the air quality open burning permit, the wood waste pile is inspected by the Department or its designated representative and no prohibited materials listed in 75.1.405(2), other than wood waste, are present.
- (g) A permit issued under this rule is valid for a single burn of untreated wood waste at licensed landfill sites. A new permit must be obtained for each burn.
- (h) The Department may place any reasonable requirements in a conditional air quality open burning permit that it determines will reduce emissions of air pollutants or minimize the impact of emissions and the recipient of a permit must adhere to those conditions.
- (i) An application for a conditional air quality open burning permit must be made on a form provided by the Department. The applicant shall provide adequate information to enable the Department to determine whether the application satisfies the requirements for a conditional air quality open burning permit contained in this rule. Proof of publication of public notice, as required in section (j) of this rule, must be submitted to the Department before an application will be considered complete.
- (j) An applicant for a conditional air quality open burning permit shall notify the public of the application by legal publication, at least once, in a newspaper of general circulation in the area affected by the application. The notice must be published no sooner than 10 days prior to submittal of an application and no later than ten days after submittal of an application. Form of the notice must be provided by the Department and must include a statement that public comments may be submitted to the Department concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applications.
- (k) When the Department approves or denies the application for a permit under 75.1.408(4), a person who is jointly or severally adversely affected by the decision may request a hearing before the Lincoln County Board of Health. The request for hearing must be filed within 15 days after the Department renders its decision and must include an affidavit setting forth the grounds for the request. The Department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the Department's decision until the conclusion of the hearing and issuance of a final decision by the Lincoln County Board of Health.

75.1.409 PENALTY ASSESSMENTS:

- (1) Any person who violates any provision of these regulations or any provision of any directive, action, permit, or approval adopted pursuant to the authority granted by these regulations, except for intentional violations of Section 75.1.405(2)(r), shall be, upon conviction, punished by a fine not less than \$25 and not more than \$200 for each offense. Violations of Section 75.1.405(2)(r), burning hazardous wastes as defined by 40 CFR Part 261, shall be, upon conviction, punished by a fine not to exceed \$10,000 per day per violation.
- (2) Each day of violation shall be considered a separate offense.



75.1.101 INTENT: The purpose of this chapter is to achieve and maintain such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property, and facilitate the enjoyment of the natural attractions of Lincoln County.

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75.1.102 DEFINITIONS: As used in this chapter, unless indicated otherwise, the following definitions apply:

(1) "Air Contaminant" means dust, ash, fumes, gas, mist, smoke, vapor, odor or any particulate matter or a combination thereof present in the outdoor atmosphere.

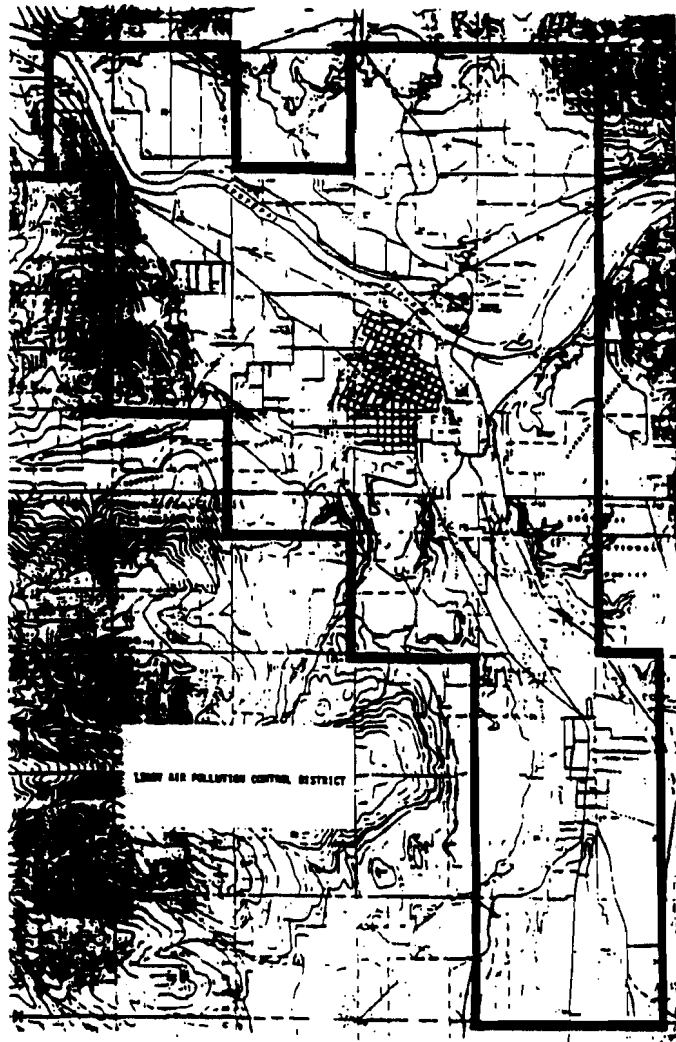
(2) "Air Pollution Control District" means the geographical area designated as such by the map attached hereto.

(3) "Emission" means a release into the outdoor atmosphere of an air contaminant.

(4) "Department" means the Lincoln County Health Department.

STATE OF MONTANA AIR QUALITY CONTROL IMPLEMENTATION PLAN	Subject: Lincoln County Air Quality Control Program
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LIBBY AIR POLLUTION CONTROL DISTRICT



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75.1.103 SELECTION & IMPLEMENTATION OF CONTINGENCY MEASURE PROGRAMS:

(1) Upon notification by the Montana Department of Environmental Quality (DEQ) or the U.S. Environmental Protection Agency (EPA) that the Libby Air Pollution Control District has failed to attain NAAQS for PM-10 or to make reasonable further progress in reducing emissions, the Department shall determine the significant contributor(s) to the PM-10 violation and designate the associated contingency measure(s) to be implemented. Identification of sources of significant contribution shall be made by the Department based on their documented observations of emission sources, correlated with corresponding TEOM PM-10 data. (Ruprecht & Patashnick TEOM® Series 1400a Ambient Particulate Monitor operated with an RP PM-10 inlet, flow rate of 16.7 liters/minute, teflon-coated glass fiber filter cartridges, total mass averaging time set at 300 seconds and mass rate/mass concentration averaging time set at 300 seconds. E.P.A. designated as an equivalent method for the determination of 24-hour average PM-10 concentrations in ambient air. E.P.A. Designation No. EQPM-1090-079.)

(2) Unless contraindicated by Section 75.1.103(2)(d), the following contingency measure(s) to reduce PM-10 emissions from the source(s) identified as the significant contributor shall be implemented within sixty (60) days of notification from DEQ or EPA:

(a) If residential wood burning is determined to be the significant source, 75.1.206(3) shall be implemented by the Department.

(b) If re-entrained road dust is determined to be the significant source, 75.1.303(3) shall be implemented by the Department.

(c) If industrial facility emissions are determined to be the significant source, contingency measures reducing the identified industrial sources' emissions shall be initiated by DEQ.

(d) Failure to attain NAAQS for PM-10 or to make reasonable further progress in reducing emissions that is attributable to natural disasters or impacts generated by activities occurring outside State or Local jurisdictional control shall be addressed according to E.P.A. policy while interim contingency measures are initiated at the local level.

(e) If no emission source(s) can be identified as significant contributors, a comprehensive review, including chemical and microscopic analysis of exposed PM-10 filters, shall be conducted by the Department and DEQ. Until such time as the review and analyses have been completed, at least one of the above contingency measures shall be implemented on an interim basis by the Department and/or DEQ. This contingency measure(s) shall remain in effect until the significant source is identified and a permanent contingency measure has been implemented.

(3) Early voluntary implementation of a contingency measure shall not result in a requirement to develop additional moderate area contingency measures if the area later fails to attain the NAAQS for PM-10 or make reasonable further progress in reducing PM-10 emissions. However, redesignation as a serious non-attainment area could necessitate additional control measures including Best Available Control Measures (BACM), Best Available Control Technology (BACT) and serious area contingency measures.

75.1.201 INTENT:

(1) A regulation reducing the level of air pollutants at or below those standards found in Administrative Rules of Montana, Title 16, Chapter 8 Sub-Chapter 8 and 9, and in effect as of October 1, 1990.

(2) This regulation is necessary to preserve, protect, improve, achieve and maintain such levels of air quality as will protect the health and welfare of the citizens of Lincoln County.

(3) This regulation applies to all persons, agencies, institutions, businesses, industries or government entities living in or located within the area defined in the attached District Map. Stationary sources with the potential to emit more than 25 tons per year of any pollutant, with the exception of 5 tons per year of lead, must comply with this rule unless the affected emission point is specifically regulated by DEQ under the Montana Clean Air Act or administrative rules adopted pursuant to the Montana Clean Air Act.

75.1.202 DEFINITIONS: As used in this regulation, unless indicated otherwise, the following definitions apply:

(1) "Class I Permit" means an emission permit issued by the Department to operate a solid fuel burning device during an Air Pollution Alert.

(2) "Class II Permit" means an emission permit issued for new solid fuel burning devices or existing solid fuel burning devices upon resale or re-rental of a home.

(3) "Department" means the Lincoln County Department of Environmental Health Air Quality Control.

(4) "Emergency Heating Situation" means events beyond individual control that necessitate the use of an otherwise unauthorized solid fuel burning device in order to heat a structure to temperatures required for habitation and/or property protection.

(5) "EPA Method" means 40 CFR Part 60, Subpart AAA, Sections 60.531, 60.534, and 60.535.

(6) "Exempted Solid Fuel Burning Device" means EPA NSPS exempt solid fuel burning boilers, furnaces, and cookstoves per 40 CFR Ch. 1, Subpart AAA, 60.530 as defined in Subpart AAA, 60.531.

(7) "Low Income Exemption Permit" means an emission permit issued by the Department for a solid fuel burning device in use by a Low Income Energy Assistance Program (LIEAP) recipient whose primary source of heat is wood.

(8) "Opacity" means a measurement of visible emissions defined as the degree expressed in percent to which emissions reduce the transmission of light and obscure the view of an object in the background. Opacity shall be determined only by Department personnel who have successfully completed the DEQ Visible Emissions Evaluation Course or equivalent course, and who hold a current qualification.

(9) "Particulate Matter Ten (PM-10)" means particulate matter with an aerodynamic diameter of less than or equal to a nominal 10 micrometers.

(10) "Restricted Usage Permit" means an emissions permit issued by the Department for solid fuel burning devices in use prior to November 1, 1990, that do not qualify for Class I, Class II, or

Sole Source of Heat Permits. Restricted Usage Permits shall not be valid for operation of the device during an Air Pollution Alert.

(11) "Sole Source of Heat" means one or more solid fuel burning devices which constitute the only source of heat in a structure, for the purpose of space heating. No solid fuel burning device shall be considered to be the sole source of heat if the structure is equipped with a permanently installed furnace or heating system, designed to heat the structure utilizing oil, natural gas, electricity or propane; whether the system is connected or disconnected from its energy source. A sole source permit may be issued by the Department when the heating system is only minimally sufficient to keep the plumbing from freezing.

(12) "Sole Source of Heat Permit" means an emission permit issued by the Department to operate a solid fuel burning device as a sole source of heat during an Air Pollution Alert. Only structures equipped with a solid fuel burning device which qualifies for a Class I Permit or which qualifies as an Exempted Solid Fuel Burning Device may obtain a new Sole Source of Heat Permit after October 1, 1992.

(13) "Solid Fuel Burning Device" means any fireplace, fireplace insert, wood stove, wood burning heater, wood-fired boiler, wood or coal-fired furnace, coal stove, or similar device burning any solid fuel used for aesthetic, cooking or heating purposes which has a rated capacity of less than 1,000,000 B.T.U.s per hour.

(14) "Temporary Emergency Heating Authorization Permit" means an emission permit issued by the Department to operate a solid fuel burning device, not otherwise permitted to operate, as a temporary source of heat during an emergency heating situation.

75.1.204 EMISSION LIMITS:

(1) Within the air pollution control district, no person owning or operating a solid fuel burning device shall cause, allow, or discharge emissions from such device which are of an opacity greater than twenty-five percent. The provisions of this subsection shall not apply to emissions during the building of a new fire, for a period or periods aggregating no more than thirty minutes in any four hour period.

(2) Within the air pollution control district, no person in control of a solid fuel burning device shall emit any visible emission from such device during an Air Pollution Alert declared by the Department unless a Sole Source of Heat Permit, a Low Income Exemption Permit, or a Class I Permit has been issued for such device; or the device is operating on a validated Temporary Emergency Heating Authorization Permit.

(3) Within the Air Pollution Control District, no person in control of a solid fuel burning device for which a Sole Source of Heat Permit, a Low Income Exemption Permit, or a Class I Permit, or for which a Temporary Emergency Heating Authorization Permit has been validated, shall cause, allow or discharge any emissions from such device which are of an opacity greater than ten percent during an Air Pollution Alert declared by the Department. 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 thirty minutes in any four hour period.

(4) 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 hours before initiating any enforcement action for a violation of subsections 2 and 3.

(5) Every person operating or in control of a solid fuel burning device within the Air Pollution Control District has a duty to know when an air pollution alert has been declared by the Department.

(6) Effective March 1, 1993, warning letters will be replaced with Notices of Violation. Notices will be issued to people in violation of this regulation. Notices of Violation will include educational material on Air Pollution Control District Regulations and clean burning techniques. All Notices of

Violation will be documented and processed into a Department Database Program for use in implementation of Civil Penalties.

(7) Effective March 1, 1993, a system of Civil Penalty Assessment for violation of Solid Fuel Burning Device regulations will be implemented. The formula for penalties shall be that the first two (2) violations will receive only Notices of Violation and be considered warnings. Any subsequent violation will automatically be processed for Civil Penalty Assessment. All Notices of Violation issued on or after February 1, 1993, will accrue toward the penalty assessment formula. The Civil Penalty Assessment schedule for noncompliance shall be:

For third and subsequent violations, each violation will be subject to a Civil Penalty Assessment of Twenty-five dollars (\$25.00)

(8) No person or entity shall be cited for a violation of this regulation more than once in any calendar day. However, each calendar day of violation may be considered a separate offense.

(9) Only those violations of the regulation by a person or entity which have occurred within one year of a present offense shall be considered as prior violations.

(10) Civil Penalty Assessments will be credited to an Air Quality Control Account and used for costs associated with the administration of the Air Quality Control Program.

75.1.205 ISSUANCE OF AIR POLLUTION ALERT: For the purpose of this section, the Department may declare an Air Pollution Alert to be in effect whenever the ambient concentration of PM-10 within the Air Pollution Control District equals or exceeds 100 micrograms per cubic meter (ug/m^3) averaged over any four hour period and when scientific and meteorological data indicate the average PM-10 concentrations will remain at $100 \text{ ug}/\text{m}^3$ if an Air Pollution Alert is not called. The Department may call an Air Pollution Alert whenever available scientific and meteorological data indicate that the ambient concentration of PM-10 within the Air Pollution Control District can reasonably be expected to equal or exceed $100 \text{ ug}/\text{m}^3$ averaged over a four hour period within the next twenty-four hours. As a surrogate method for PM-10 measurement, the Department may use nephelometer readings correlated to ambient PM-10 concentrations or a reference-equivalent continuous PM-10 monitor.75.1.205

75.1.206 PERMITS:

(1) Effective October 1, 1993, all solid fuel burning devices within the Libby Air Pollution Control District shall be permitted by the Department and no person or entity will operate such a device without a permit. Permits will indicate the type of permit issued and any restrictions on the use of the permitted device. Permits will be valid for a period of two (2) years from date of issue. Permits are not transferable from person to person or from place to place.

(2) Any permit for solid fuel burning devices can be denied, suspended, or revoked by the Department for non-compliance with conditions of permit issuance.

(3) If compliance with NAAQ standards for PM-10 are not demonstrated by December 31, 1993, or PM-10 compliance levels are not maintained after that date; and solid fuel burning device emissions are determined to be a significant contributor to the non-compliance problem by:

(a) visual, microscopic, or chemical analyses of exposed PM-10 filters, or

(b) seasonal patterns of PM-10 concentrations, or

(c) visual observations of emission sources by the Lincoln County Environmental Health Department or DEQ

the following changes in this regulation will become effective:
"No solid fuel burning device shall be operated within the Libby Air Pollution Control District between October 1 and March 31 unless it has been permitted by the Department as a Class I, Class II, Low Income Exemption or Sole Source device or is operating on a validated Temporary Emergency Heating Authorization Permit."

(4) Types of Permits:

(a) Class I Permit

The Department shall issue a Class I Permit for solid fuel burning devices if the emissions do not exceed 4.1 grams per hour weighted average when tested using the EPA Method. Pellet stoves, which are exempted from EPA emission testing due to their air-to-fuel ratio, shall be considered Class I solid fuel burning devices.

(b) Sole Source of Heat Permit

The Department may issue a sole source of heat permit for a solid fuel burning device that is a sole source of heat. After October 1, 1992, new Sole Source of Heat Permits shall be issued only for solid fuel burning devices which qualify for a Class I Permit or qualify as an Exempted Solid Fuel Burning Device. The expiration date of Sole Source of Heat Permits written prior to October 1, 1992, will be extended to September 30, 1993. After that date, the new Sole Source of Heat Permit requirements must be met for reissuance of the permit.

(c) Temporary Emergency Heating Authorization Permit

Temporary Emergency Heating Authorization Permits may be issued to any solid fuel burning devices that do not qualify for Class I or Sole Source of Heat Permits. Temporary Emergency Heating Authorization Permits allow the use of an otherwise unauthorized solid fuel burning device during an emergency situation only when the permit has been validated by authorization of the Department. 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 a situation where the furnace or central heating system is involuntarily disconnected from its energy source by a public utility or other fuel supplier; or a situation where a neighborhood or community power or fuel supply is interrupted. The validation of a Temporary Emergency Heating Authorization Permit is at the discretion of the Department based on need.

(d) Class II Permit

(1) The Department shall issue a Class II permit for the installation of a new solid fuel burning device or use of an existing solid fuel burning device inside the Air Quality Control District if the emissions do not exceed 7.5 grams per hour weighted average for non-catalytic solid fuel burning devices and 4.1 grams per hour weighted average for catalytic solid fuel burning devices when tested using the EPA Method. A Class II Permit shall expire 100 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.

(2) After November 1, 1990 no person or persons shall install or use any new solid fuel burning device in any existing or new structure within the Air Pollution Control District, without having a Class II permit. On the resale or re-rental of an existing structure within the Air Pollution Control District no person shall operate an existing solid fuel burning device without a Class II permit. If a Class II permit cannot be obtained, the existing stove shall be replaced or eliminated.

(3) Fireplaces which have not been tested in conformance with 75.1.202(5) may be issued a Class II permit when installed with a propane fuel source or electric fire log and upon the stipulation that only propane or electricity may be used in the fireplace. No person shall cause or allow any visible emissions whatsoever from a fireplace which has been issued a Class II permit pursuant to this subsection.

(4) Catalyst equipped solid fuel burning devices 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 of a combustor surface.

(5) New solid fuel burning devices may not be installed or used with a flu damper unless the device was so equipped when tested in accordance with 75.1.202(5).

(6) New solid fuel burning devices installed within the air pollution control district must meet the requirements of section 75.1.206(4)(d)(1). The installation must be inspected and approved by the department.

(e) Low Income Exemption Permit

(1) Unless permitting is otherwise prohibited by 75.1.206(d), Low Income Exemption Permits may be issued to LIEAP recipients under the following conditions:

(i) the device was installed and in use prior to November 1, 1990;

(ii) the device is not permittable under Class I or Sole Source of Heat definitions;

(iii) wood is the recipients primary source of heat; and

(iv) verification of receipt of LIEAP benefits is provided by the issuing agency.

(2) Solid fuel burning devices with Low Income Exemption Permits may be used during Air Pollution Alerts.

(3) Low Income Exemption permits shall be valid only for the heating season in which they are issued.

(f) Restricted Usage Permit

Unless permitting is otherwise prohibited by 75.1.206(d), Restricted Usage Permits shall be issued to solid fuel burning devices in use prior to November 1, 1990, that do not qualify for Class I, Class II, or Sole Source of Heat Permits. Solid fuel burning devices with Restricted Usage Permits may not be used during Air Pollution Alerts.

75.1.207 PROHIBITED MATERIALS: Within the Air Pollution Control District no person shall burn any material in a solid fuel burning device except black and white newspaper, untreated wood and lumber, and products manufactured for the sole purpose of use as fuel. Products manufactured or processed for use as fuel must conform to other applicable sections of this program.75.1.207

5.1.209 ENFORCEABILITY: The provisions of this regulation shall be enforced by the Lincoln County Health Department authorities or the appropriate law enforcement officials.

75.1.301 INTENT: Regulations enacting an emission control plan for the Air Quality Control District to meet National Ambient Air Quality (NAAQ) standards for PM-10 by requiring dust abatement and control in the Air Quality Control

District.75.1.301 INTENT: Regulations enacting an emission control plan for the Air Quality Control District to meet National Ambient Air Quality (NAAQ) standards for PM-10 by requiring dust abatement and control in the Air Quality Control District.

75.1.302 DEFINITIONS: As used in this regulation, unless indicated otherwise, the following definitions apply:

(1) "Area of Regulated Road Sanding and Sweeping" means the geographical area designated by the map attached hereto in which the regulations pertaining to materials to be used on roads and parking lots and street sweeping and flushing apply.

(2) "Parking Lot" means a parcel of land located off of the public right-of-way not less than 5,000 square feet in size which is primarily used for the temporary storage of motor vehicles; a parking lot as used in this regulation does not include lots for the storage of special mobile equipment as defined in the Montana Codes Annotated.

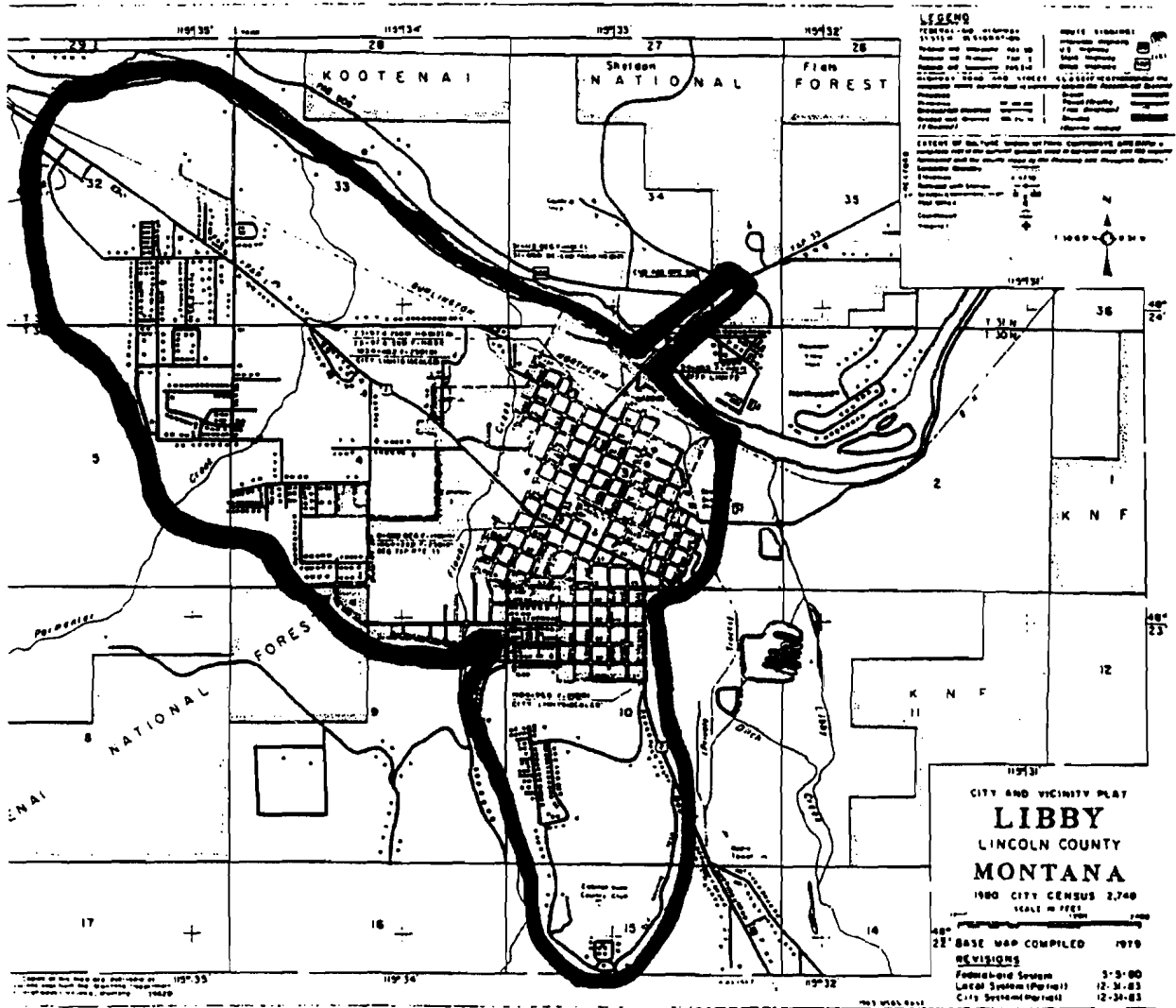
(3) "Road" means any road or alley which is greater than 50 feet in length, and has or is projected to have an average traffic volume greater than 50 vehicles per day.

(4) "Emergency Situation" means a situation when:

(a) Liquid de-icing agents become unavailable due to circumstances beyond the control of the person, government or private entity maintaining a road or parking lot; or

(b) due to extreme weather conditions, or hazardous roadways, liquid de-icing agents do not adequately provide for public safety.

AREA OF REGULATED SANDING AND SWEEPING



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75.1.303 EMISSION LIMITS:

(1) Within the Area of Regulated Road Sanding and Sweeping, no person or government or private entity shall place any sanding or chip seal material upon any road or parking lot which has a durability, as defined by the Montana Modified LA Abrasion Test, of more than or equal to 7 and has a content of material smaller than 200 mesh, as determined by standard wet sieving methods, which exceeds 3.0% oven dry weight.

(2) It shall be the responsibility of the person or government or private entity applying the sanding or chip seal material to test the material and provide to the Department data demonstrating that the material meets the specifications listed above prior to application. Such data shall be obtained by gathering a representative sample from the supply stockpile or the material as it is produced and analyzing the material in accordance with the methods identified in 75.1.303(1).

(3) If compliance with the NAAQ standards for PM-10 are not demonstrated by December 31, 1993, or PM-10 compliance levels are not maintained after that date; and if re-entrained road dust is determined a significant contributor to the non-compliance problem by:

(i) visual, microscopic or chemical analyses of exposed PM-10 filters, or

(ii) seasonal patterns of PM-10 concentrations, or

(iii) visual observations of emission sources by the Lincoln County Health Department or DEQ

the following changes in this regulation will become effective:

(a) The Area of Road Sanding and Sweeping will be extended to the boundaries of the Air Pollution Control District.

(b) The use of liquid de-icing agents will be mandatory on all roads and parking lots within the Road Sweeping and Sanding District. Use of sanding materials will be prohibited except in emergency situations.

(c) Any sanding materials used in an emergency situation must meet the specifications identified in subsection 1 of this regulation.

5.1.401 DEFINITIONS: As used in this regulation, unless indicated otherwise, the following definitions apply:

(1) "Area of Regulated Road Sanding and Sweeping" means the geographical area designated by the map attached hereto wherein the regulations pertaining to materials to be used on roads and parking lots and street sweeping and flushing apply.

(2) "Winter" means the months of November, December, January, February, March and April.

(3) "Summer" means the months of May, June, July, August, September and October.

(4) "Prioritized Street Sweeping and Flushing" means a schedule of street sweeping and/or flushing which cleans streets with the highest traffic volumes first and proceeds in descending order of traffic volume to streets with the lowest traffic volume. When all ice-free streets have been cleaned, the cycle is immediately repeated.

(5) "Reasonably Available Control Technology" means:

(a) During winter, prioritized street sweeping and flushing shall commence on the first working day after any streets become either temporarily or permanently ice-free and temperatures are above freezing;

(b) During summer, street sweeping and/or flushing shall be accomplished on an as-needed basis with priority given to streets with the highest traffic volumes.

75.1.402 EMISSION LIMITS:

(1) Within the Area of Regulated Road Sanding and Sweeping no person or government or private entity shall allow the operation, use or maintenance of any paved road or street unless reasonably available control technology is utilized, or unless an agreement is secured from the department for the alternative operation, use or maintenance of any paved road or street, or unless an emergency exists that requires alternative methods to be used.

(2) If compliance with the NAAQ standards for PM-10 are not demonstrated by December 31, 1993, and PM-10 compliance levels are not maintained after that date; and if re-entrained road dust is determined a significant contributor to the non-compliance problem by:

(i) visual, microscopic or chemical analyses of exposed PM-10 filters, or

(ii) seasonal patterns of PM-10 concentrations, or

(iii) visual observations of emission sources by the Lincoln County Health Department or DEQ.

The following changes in this regulation will become effective:

(a) The Area of Road Sanding and Sweeping will be extended to the boundaries of the Air Pollution Control District.

(b) The prioritized street sweeping and flushing schedule will apply to all public roadways within the boundaries of the Air Pollution Control District.

75.1.501 EMISSION LIMITS:

(1) All log yards in the air pollution control district will install, maintain and operate automatic wheel and chassis washers or comply with another approved plan to minimize carry-on road dust.

(2) Within the air pollution control district, all log yards will use chemical dust suppressants, road oiling or watering as required to reduce fugitive dust from this source.

75.1.601 INTENT: Unless otherwise prohibited or nullified by implementation of Subchapter 3, subsection 75.1.303(3), all sections of this regulation will be in effect within the boundaries of the Air Pollution Control District.75.1.601

75.1.602 APPLICATION LIMITS: Within the Air Pollution Control District each person or government or private entity is strongly encouraged to reduce the amount of sanding material applied taking into consideration public safety and air quality. Outlying areas and low traffic volume roads have a low priority. Residential areas may receive less sanding material because of lower speeds. It is strongly encouraged that vehicles used in winter driving should be equipped with winter tires or traction devices.

(1) During storms snow may be allowed to accumulate up to 6 inches, or wait until the next scheduled shift, before plowing and sanding begins. Major hills have first priority; then main roads and intersections. Only major hills and intersections should be sanded. Salt can be applied to the major hills and intersections to form a sand/salt mix to aid traction.

(2) After storms sand may be applied to hills and curves of all roads and intersections on an as needed basis during normal work shifts. Weather forecasts should be monitored and if unsettled weather is forecast the sanding should be kept to a minimum.

(3) During freezing rain, extra sanding may be applied on all roads.

75.1.603 RESOLUTION:

(1) The department will discourage unnecessary log truck traffic through the Air Pollution Control District.

(2) The department will promote the design and construction of bicycle pathways through the Air Pollution Control District.

75.1.701 INTENT: On November 15, 1990, Libby was designated under federal regulations as a moderate PM-10 non-attainment area. As a result of this designation the Libby area is required to develop a regulatory program to reduce air pollution and attain the Montana and federal ambient air quality standards for PM-10. Air quality studies conducted in the Libby area identified emissions from open burning as a contributor to the air pollution problem.

(1) Pursuant to federal regulations, and because of local geographic features and concentrations of populations in Libby and the immediate surrounding area; the Lincoln County Commissioners and Libby City Council find it necessary to enact rules and regulations concerning open burning of waste materials, pursuant to 75-2-301, M.C.A. Experience has demonstrated that air quality degradation and public health problems are often associated with the improper burning of waste materials in urban and suburban areas.

(2) The following regulation is adopted to improve air quality and meet National Ambient Air Quality standards for PM-10 by restricting unnecessary open burning, promoting alternative disposal methods and recycling, and setting standards to minimize emissions when open burning is required.

75.1.702 DEFINITIONS: As used in this regulation and unless indicated otherwise, the following definitions apply:

(1) "Air Quality Control" means the Air Quality Control division of the Lincoln County Department of Environmental Health.

(2) For the purpose of open burning "Best Available Control Technology" (BACT) means those techniques and methods of controlling emission of pollutants from an existing or proposed open burning source which limit those emissions to the maximum degree which Air Quality Control determines, on a case-by-case basis, is achievable for that source, taking into account impacts on energy use, the environment, and the economy, and any other costs, including cost to the source. Such techniques and methods may include the following: scheduling of burning during periods and seasons of good ventilation, applying dispersion forecasts, utilizing predictive modeling results performed by and available from DEQ to minimize smoke impacts, limiting the amount of burning to be performed during any one time, using ignition and burning techniques which minimize smoke production, selecting fuel preparation methods that will minimize dirt and moisture content, promoting fuel configurations which create an adequate air to fuel ratio, prioritizing burns as to air quality impact and assigning control techniques accordingly and promoting alternative treatments and uses of materials to be burned. During the period of March 1 through October 31, BACT includes burning only during the periods specified by Air Quality Control, which may be determined by calling the Open Burning Hotline 293-5644. BACT for any permitted open burn outside these periods includes burning only during time periods specified by Air Quality Control, which may be determined by calling 293-7781.

(3) "Bonfire" means a ceremonial fire, in which the materials burned are cordwood or clean untreated dimensional wood and which is conducted by an educational, fraternal or religious organization for the purpose of celebrating a particular organization related event.

(4) "Christmas tree waste" means wood waste from commercially grown Christmas trees left in the field where the trees were grown, after harvesting and on-site processing.

(5) "DEQ" means the Montana Department of Environmental Quality.

(6) "Essential agricultural open burning" means any open burning conducted on a farm or ranch to:

(a) eliminate excess vegetative matter from an irrigation ditch when no reasonable alternative method of disposal is available; or

(b) eliminate excess vegetative matter from cultivated fields after harvest has been completed when no reasonable alternative method is available; or

(c) improve range conditions when no reasonable alternative method is available; or

(d) improve wildlife habitat when no reasonable alternative method is available.

(7) "Impact Zone L" means all of the land within the following boundaries:

Beginning at Kootenai Falls, going southeast to Scenery Mountain, then south to Indian Head, then south to Treasure Mountain, then south to Mount Snowy, then east to Double N Lake, then Across Highway 2 going northeast to McMillan Mountain, then north to Swede Mountain, then northeast across Highway 37 to the Vermiculite Mine, then west to Sheldon Mountain, then west northwest to Flagstaff Mountain, then southwest to Kootenai Falls, the point of beginning.

(8) "Libby Open Burning Control Area" means all of the land included within the boundaries of the Libby Rural Fire District including the City of Libby.

(9) "Licensed Landfill" means a solid waste disposal site that is licensed for operation by DEQ.

(10) "Major open burning source" means any person, agency, institution, business or industry conducting any open burning which on a statewide basis will emit more than 500 tons per calendar year of carbon monoxide or 50 tons per calendar year of any other regulated pollutant, except hydrocarbons.

(11) "Minor open burning source" means any person, agency, institution, business or industry conducting any open burning which is not a major open burning source.

(12) "Open burning" means combustion of any material directly in the open air without a receptacle, or in a receptacle other than a furnace, multiple chambered incinerator, or wood waste burner, with the exception of small recreational fires, construction site heating devices used to warm workers, or safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants or elemental phosphorus plants.

(13) "Prescribed wildland open burning" means any planned open burning, either deliberately or naturally ignited, that is conducted on forest land or relatively undeveloped rangeland to:

(a) improve wildlife habitat;

(b) improve range conditions;

(c) promote forest regeneration;

(d) reduce fire hazards resulting from forestry practices, including reduction of log deck debris when the log deck is close to a timber harvest site;

(e) control forest pests and diseases; or

(f) promote any other accepted silvicultural practices.

(14) "Salvage operation" means any operation conducted in whole or in part to salvage or reclaim any product or material, except the silvicultural practice commonly referred to as a salvage cut.

(15) "Trade wastes" means solid, liquid or gaseous material resulting from construction or operation of any business, trade, industry or demolition project. Wood product industry wastes such as sawdust, bark, peelings, chips, shavings and cull wood are considered trade wastes. Trade wastes do not include wastes generally disposed of by essential agricultural open burning and prescribed wildland open burning or Christmas tree waste, as defined in this rule.

75.1.703 OPEN BURNING CONTROL AREAS:

(1) General open burning requirements shall be in effect for all areas within the boundaries of Impact Zone L. Air Quality Control restrictions and bans on open burning shall be observed by all open burners.

(2) Minor Open Burning Source restrictions and permitting regulations shall be in effect for all areas with the boundaries of the Libby Open Burning Control Area.

(3) Restrictions and permitting regulations for Major Open Burning Sources, and Tradewaste Burners, shall be in effect for all areas within the boundaries of Impact Zone L.

(4) Restrictions and permitting regulations for Licensed Landfills shall be in effect for all areas within the boundaries of Lincoln County.

(5) The remainder of Lincoln County and its municipalities shall continue to be regulated by the State of Montana Open Burning Regulation and any other local ordinances in effect at the time of burning activity.

75.1.704 MATERIALS PROHIBITED:

(1) The Lincoln County Commissioners and Libby City Council hereby adopt and incorporate by reference 40 Code of Federal Regulations (CFR) Part 261, which identifies and defines hazardous wastes.

(2) The following material may not be disposed of by open burning:

(a) any waste moved from the premises where it was generated, including that moved to a solid waste disposal site, except as provided for in 75.1.709 and 75.1.713 or 75.1.714;

(b) food wastes;

(c) styrofoam and other plastics;

(d) wastes generating noxious odors;

(e) wood and wood by-products other than trade wastes that have been treated, coated, painted, stained, or contaminated by a foreign material, such as papers, cardboard, or painted or stained wood, unless a public or private garbage hauler or rural container system is unavailable, or unless open burning is allowed under ARM 16.8.1310 and 75.1.716;

(f) poultry litter;

(g) animal droppings;

(h) dead animals or dead animal parts;

(I) tires, except as provided in ARM 16.8.1306 and 75.1.710;

(j) rubber materials;

(k) asphalt shingles, except as provided in ARM 16.8.1306 or ARM 16.8.1310 and 75.1.710 or 75.1.716;

(l) tar paper, except as provided in ARM 16.8.1306 or ARM 16.8.1310 and 75.1.710 or 75.1.716;

(m) automobile or aircraft bodies and interiors, except as provided in ARM 16.8.1306 or ARM 16.8.1310 and 75.1.710 or 75.1.716;

- (n) insulated wire, except as provided in ARM 16.8.1306 or ARM 16.8.1310 and 75.1.710 or 75.1.716;
 - (o) oil or petroleum products, except as provided in ARM 16.8.1306 or ARM 16.8.1310 and 75.1.710 or 75.1.716;
 - (p) treated lumber and timbers;
 - (q) pathogenic wastes;
 - (r) hazardous wastes as defined by 40 CFR Part 261.
 - (s) trade wastes, except as provided in 75.1.708 and 75.1.713 or 75.1.714;
 - (t) any materials resulting from a salvage operation;
 - (u) chemicals, except as provided in ARM 16.8.1306 or 16.8.1310 and 75.1.710 or 75.1.716;
 - (v) Christmas tree waste as defined in 75.1.702, except as provided in ARM 16.8.1309 and 75.1.715;
 - (w) asbestos or asbestos-containing materials; and
 - (x) standing or demolished structures except as provided in ARM 16.9.1306 or 16.8.1310 and 75.1.710 or 75.1.716;
- (3) Except as provided in 75.1.703, no person may open burn any non-prohibited material without first obtaining an open burning permit from Air Quality Control.

75.1.705 GENERAL OPEN BURNING REGULATIONS:

(1) Within the boundaries of Impact Zone L all open burners must:

(a) Use alternative disposal methods when reasonably available.

(b) Utilize best available control technology.

(c) Burn only during periods designated by applicable special burning periods or permit parameters.

(d) Call the Open Burning Hotline before initiating a burn.

(e) Comply with any burning restrictions or bans in effect.

75.1.706 MINOR OPEN BURNING SOURCE REQUIREMENTS:

(1) All minor open burning sources with the Libby Open Burning Control Area must:

(a) Obtain an open burning permit from Air Quality Control prior to burning.

(b) Comply with all conditions of their open burning permit.

75.1.707 MAJOR OPEN BURNING SOURCE REQUIREMENTS:

(1) All major open burning sources within the boundaries of Impact Zone L must:

(a) Hold an Air Quality Major Open Burning Permit from the DEQ pursuant to A.R.M. 16.8.1304.

(b) Obtain an Impact Zone L Smoke Management Permit from Air Quality Control for each open burn conducted within the boundaries of Impact Zone L.

(c) Comply with all conditions of their DEQ and Impact Zone L permits.

75.1.708 TRADE WASTE BURNING REQUIREMENTS:

(1) All Trade Waste Burning Sources within the boundaries of Impact Zone L must:

(a) Obtain a Conditional Air Quality Open Burning Permit from Air Quality Control.

(b) Comply with all conditions of the permit.

75.1.709 LICENSED LANDFILL REQUIREMENTS:

(1) All licensed landfills within the boundaries of Lincoln County must:

(a) Have an approved burn site, as designated in the Solid Waste Management System License issued by the DEQ, pursuant to A.R.M. Title 16, Chapter 14, Subchapter 5, before a Conditional Air Quality Open Burning Permit may be issued.

(b) Obtain a Conditional Air Quality Open Burning Permit from Air Quality Control before burning. A new permit must be obtained for each burn.

(c) Comply with all conditions of the permit.

75.1.710 FIRE FIGHTER TRAINING:

(1) All Firefighter Training open burns within the boundaries of Impact Zone L must:

(a) Hold an air quality open burning permit from DEQ for Firefighter Training pursuant to A.R.M. 16.8.1306.

(b) Obtain an Impact Zone L Firefighter Training Permit from Air Quality Control for each training burn conducted with the boundaries of Impact Zone L.

(c) Comply with all conditions of their DEQ and Impact Zone L permits.

75.1.711 SPECIAL BURNING PERIODS:

(1) Essential agricultural open burning and prescribed wildland open burning may be conducted only during the months of March through October.

(2) Open burning performed to train fire fighters pursuant to ARM 16.8.1306 and 75.1.710, and open burning authorized under the emergency open burning permit provisions set forth in 75.1.714 may be conducted during the entire year.

(3) Unless exempted elsewhere in this regulation, or by approval and permitting of a request for exception, no open burning shall be conducted with the Libby Open Burning Control Area during the months of November through February.

(4) Open burning by Major Open Burning Sources, Trade Waste Burners, Licensed Landfills, Christmas tree waste burners, and commercial film productions may be conducted only during the periods designated by their permit from Air Quality Control.

(5) Open burning other than those categories listed in the preceding subsections may be conducted only during the months of March through October, except for bonfires, which can be conducted during the entire year.

75.1.712 OPEN BURNING PERMIT REQUIREMENTS & LOCAL RESTRICTIONS:

(1) No person, agency, institution, business or industry shall cause or allow minor open burning within the Libby Open Burning Control Area unless he has first applied for and received a permit from Air Quality Control. Prescribed wildlife open burns and salvage operations within the Libby Open Burning Control Area shall be considered minor open burning sources and shall comply with minor open burning source regulations.

(2) No person, agency, institution, business or industry shall cause or allow major open burning, trade waste burning, firefighter training burns, Christmas tree waste burns, or commercial film production burns within the boundaries of Impact Zone L unless he has first applied for and received a permit for such open burning from Air Quality Control.

(3) No Licensed Landfill within the boundaries of Lincoln County shall cause or allow the burning of untreated wood waste unless they have first applied for and received a permit for such open burning from Air Quality Control.

(4) Air Quality Control may place any reasonable requirements in an open burning permit that it determines will reduce emissions of air pollutants, or will minimize the impact of said emissions, or will protect the public health or safety. The person or agency conducting the burn must adhere to those conditions.

(5) Air Quality Control may impose restrictions or bans on all open burning sources within the boundaries of Impact Zone L:

(a) During periods of poor air quality.

(b) When conditions indicate that open burning activities will adversely impact air quality.

(c) During periods when fire danger indicates the need for restrictions on burning activities. Fire danger burning restrictions are determined by the U.S.F.S. employees of the Libby District and Kootenai National Forest sections, who will coordinate with Air Quality Control.

75.1.713 CONDITIONAL AIR QUALITY OPEN BURNING PERMITS:

(1) Air Quality Control may issue a conditional air quality open burning permit if Air Quality Control determines that:

(a) alternative methods of disposal would result in extreme economic hardship to the applicant; and

(b) emissions from open burning will not endanger public health or welfare or cause or contribute to a violation of any Montana or federal ambient air quality standard.

(2) Air Quality Control must be reasonable when determining whether alternative methods of disposal would result in extreme economic hardship to the applicant.

(3) Conditional open burning must conform with BACT

(4) Air Quality Control may issue a conditional air quality open burning permit to dispose of:

(a) Wood and wood by-product trade wastes by any business, trade, industry, or demolition project; or

(b) untreated wood waste at a licensed landfill site, if Air Quality Control determines that:

(i) the proposed open burning will occur at an approved burn site, as designated in the solid waste management system license issued by DEQ pursuant to A.R.M. Title 16, Chapter 14, Subchapter 5; and

(ii) prior to the issuance of the air quality open burning permit, the wood waste pile is inspected by Air Quality Control or its designated representative and no prohibited materials listed in 75.1.704, other than wood waste, are present.

(5) A permit issued under this rule is valid for the following period:

(a) wood and wood by-products trade waste -- one year, applicants may reapply for a permit annually and

(b) untreated wood waste at licensed landfill sites -- single burn. A new permit must be obtained for each burn.

(6) Air Quality Control may place any reasonable requirements in a conditional air quality open burning permit that it determines will reduce emissions of air pollutants or minimize the impact of emissions, and the recipient of a permit must adhere to those conditions. For a permit granted under 75.1.713(4)(a) above, BACT for the year covered by the permit will be specified the permit; however, the source may be required, prior to each burn, to receive approval from Air Quality Control of the date of the proposed burn to ensure that good ventilation exists and to assign burn priorities if other sources in the area request to burn on the same day. Approval may be requested by calling Air Quality Control at 293-7781.

(7) An application for a conditional air quality open burning permit must be made on a form provided by Air Quality Control. The applicant shall provide adequate information to enable Air Quality Control to determine whether the application satisfies the requirements for a conditional air quality open burning permit contained in this rule. Proof of publication of public notice, as required in 75.1.713(8) of this rule, must be submitted to Air Quality Control before an application will be considered complete.

(8) An application for a conditional air quality open burning permit applications shall notify the public of the application by legal publication, at least once, in a newspaper of general circulation in the area affected by the application. The notice must be published no sooner than 10 days prior to submittal of an application and no later ten 10 days after submittal of an application. Form of the notice must be provided by Air Quality Control and must include a statement that public comments may be submitted to Air Quality Control concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

(9) A conditional air quality open burning permit granted pursuant to 75.1.713(4)(a) is a temporary measure to allow time for the entity generating the trade wastes to develop alternative means of disposal.

(10) When Air Quality Control approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the decision may request a hearing before the Lincoln County Board of Health. The request for hearing must be filed within 15 days after Air Quality Control renders its decision and must include an

affidavit setting forth the grounds for the request. Air Quality Control's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of Air Quality Control's decision until the conclusion of the hearing and issuance of a final decision by the Lincoln County Board of Health.

75.1.714 EMERGENCY OPEN BURNING PERMITS:

(1) Air Quality Control may issue an emergency air quality open burning permit to allow burning of a substance not otherwise approved for burning under this regulation of the applicant demonstrates that the substance sought to be burned poses an immediate threat to public health and safety, or plant or animal life, and that no alternative method of disposal is reasonably available.

(2) Application for such a permit may be made to Air Quality Control by telephone or in writing and must include:

(a) facts establishing that alternative methods of disposing of the substance are not reasonably available;

(b) facts establishing that the substance to be burned poses an immediate threat to human health and safety or plant or animal life;

(c) the legal description or address of the site where the burn will occur;

(d) the amount of material to be burned; and

(e) the date and time of the proposed burn;

(3) Within 10 days of receiving an oral authorization to conduct emergency open burning under (2) above, the applicant must submit to Air Quality Control a written application for an emergency open burning permit containing the information required under (2)(a) through (f).

(4) The holder of an Emergency Open Burning Permit must:

(a) Notify Air Quality Control before initiating the proposed burn, and

(b) coordinate with Air Quality Control to minimize impact on air quality by conducting the burn, if feasible, during a period of good dispersion.

75.1.715 CHRISTMAS TREE WASTE OPEN BURNING PERMITS

(1) All Christmas tree waste open burns within the boundaries of Impact Zone L must:

(a) Hold an air quality open burning permit from DEQ for Christmas tree waste open burning pursuant to A.R.M. 16.8.1309.

(b) Obtain a Impact Zone L Christmas Tree Waste Permit from Air Quality Control for each waste burn conducted within the boundaries of Impact Zone L.

(c) Comply with all conditions of their DEQ and Impact Zone L permits.

75.1.716 COMMERCIAL FILM PRODUCTION OPEN BURNING PERMITS

(1) All Commercial film production open burns within the boundaries of Impact Zone L must:

(a) Hold an air quality open burning permit from DEQ for commercial film production open burning pursuant to A.R.M. 16.8.1310.

(b) Obtain a Impact Zone L Commercial Film Production Open Burning Permit from Air Quality Control for each production conducted with the boundaries of Impact Zone L.

(c) Comply with all conditions of their DEQ and Impact Zone L permits.

75.1.717 PROHIBITED ACTS:

(1) No burning activity shall occur on any surfaced city or county road or alley.

(2) No burning shall occur in any barrel or other unapproved device.

75.1.718 PENALTIES:

(1) Any person who violates any provision of this regulation or any provision of any regulation adopted pursuant to authority granted by this regulation, excepting intentional violations of 75.1.704(2)(r); shall, upon conviction, be punished by a fine not less than \$10.00 and not more than \$200.00 for each offense. Violations of 75.1.704(2)(r), burning hazardous wastes as defined by 40 CFR Part 261, shall, upon conviction, be punished by a fine not to exceed \$10,000 for each offense. Each day of violation shall be considered a separate offense.

(2) Fines levied for open burning violations will be credited to an Air Quality Control Account and used for costs associated with the administration of the Air Quality Control Program.

75.1.719 CONFLICT OF ORDINANCES, EFFECT OF PARTIAL INVALIDITY:

(1) In any case where a provision of this rule is found to be in conflict with a provision of any zoning, building, fire, safety or health ordinance or code of any City of, Town of, or of the County of Lincoln, the provision which in the judgement of the Health Officer, established the higher standard for the promotion and protection of the health and safety of the people shall prevail.

(2) If any section, subsection, paragraphs, sentence, clause or phrase of this regulation should be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this regulation which shall remain in full force and effect; and, to this end, the provisions of this regulation are hereby declared to be serviceable.