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## Chapter I. **SHORT TITLE**

These regulations shall be known and may be cited as the Flathead County Air Pollution Control Program.

## Chapter II. **DECLARATION OF POLICY AND PURPOSE**

It is hereby declared to be the public policy of the Flathead County, and the purpose of this Program, to preserve, protect, improve, achieve and maintain such levels of air quality of the Flathead County and the State of Montana, as will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the inhabitants of Flathead County, facilitate the enjoyment of the natural attractions of Flathead County, and promote the economic and social development of Flathead County. To this end, it is the purpose of this program to require the use of all available practicable methods to reduce, prevent and control air pollution in Flathead County. To prevent, abate or control air pollution in the Flathead County, the regulations contained herein are hereby established for Flathead County by the Board of Commissioners for Flathead County.

## Chapter III. **AUTHORITIES FOR PROGRAM**

(1) The authority to enact this Program and these regulations contained herein is provided in the Montana Code Annotated, Section 75-2-301.

(2) Unless otherwise provided, the provisions of this program shall not apply to air contaminant sources or classes of air contaminant sources and operations over which exclusive jurisdiction and control is retained by the Montana Board of Health and Environmental Sciences for the Montana Department of Health and Environmental Sciences under provisions of the Montana Clean Air Act or the findings and determinations of the Montana Board of Health and Environmental Sciences at the time of approval of this program.

## Chapter IV. **ADMINISTRATION**

There is created a Flathead County Air Pollution Control Board, which shall be responsible for the administration of this Program. The Flathead City-County Board of Health shall be the Flathead County Air Pollution Control Board.

## Chapter V. **CONTROL BOARD, MEETINGS-DUTIES-POWERS**

(1) The chairperson of the Board of Health or their designee shall be the Chairperson of the Control Board.

(2) The Control Board shall hold meetings as necessary and keep minutes of its proceedings. Special meetings may be called by the Chairperson of the Control Board or upon request of two members of the Control Board.

(3) The Control Board may:

(a) Recommend to the Board of Commissioners of Flathead County the adoption, the

amendment, or the repeal of any regulations necessary to implement the provisions of this Program.

- (b) Hold hearings related to any aspect of the Program, and compel the attendance of witnesses and the production of evidence at such hearings.
- (c) Issue orders necessary to effectuate the purpose of this Program, and enforce them by appropriate judicial or administrative proceedings.
- (d) Instruct the Department to measure pollution levels and take samples of air pollution at designated sites.
- (e) Instruct the Department to conduct surveys, investigation and research related to air contamination in Flathead County.
- (f) Instruct the Department to collect and disseminate information and conduct educational and training programs related to prevention of air pollution.
- (g) Adopt a schedule of fees required for permits and administrative penalties under this Program.
- (h) Hear and decide appeals from decisions of the Department issuing, denying, suspending, revoking, amending, or modifying any permits required by this program.
- (I) Establish policy to be followed by the Department in implementing this Program.
- (j) Perform any and all acts which may be necessary for the successful implementation of this Program.

#### Chapter VI. AIR QUALITY STAFF

There shall be an air quality staff within the Flathead City-County Health Department. This staff shall consist of such employees as deemed necessary by the Control Board.

- (1) The Department shall employ personnel who shall possess such training and qualifications as are commensurate with the financial budget and the technical and administrative requirements of the Control Board.
- (2) The Department's Air Quality Staff, under the direction of the Control Officer or their designated representative, shall:
  - (a) issue, deny, modify, revoke, and suspend permits provided for or required under this program;
  - (b) issue written notices of violation, orders to take corrective action, and citations, and by appropriate administrative and judicial proceedings, enforce the provisions of this program;
  - (c) measure pollution levels and take samples of air pollution at designated sites in Flathead

County; conduct investigative surveys, and research related to air contaminant in Flathead County; and collect and disseminate information and conduct educational and training programs related to the prevention of air pollution;

(d) accept, receive and administer grants or other funds from public or private agencies for the purpose of carrying out any provisions of the Program;

(e) provide necessary scientific, technical, administrative, and operational services to the Control Board;

(f) establish an inventory of sources of air pollution under the programs jurisdiction within in the County;

(g) perform such other acts and functions designated by the Control Board for the successful implementation of this Program;

(h) investigate complaints; and

(I) administer this program.

#### Chapter VII. INSPECTIONS

(1) Any duly authorized officer, employee, or representative of the Control Board or the Department, upon the showing of identifying credentials, may enter and inspect any property except for a private residence, at any reasonable time, for investigating or testing any actual or suspected source of air pollution or ascertaining the state of compliance with this Program and regulations in force pursuant thereto.

(2) No person shall refuse entry or access to any authorized member or representative of the Control Board or Department, who requests entry for the purposes mentioned in section (1) or obstruct, hamper, or interfere in any manner with any such inspection.

#### Chapter VIII. FLATHEAD COUNTY AIR POLLUTION CONTROL PLAN

Sub-Chapter 1 For the purposes of this program, the following definitions apply:

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

(2) "Air Pollution" means the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof in sufficient quantities, and of such character and duration as is or is likely to be injurious to the health or welfare of human, plant, animal life, or property, or which will unreasonably interfere with the enjoyment of life or property or the conduct of business.

(3) "Air Pollution Control District" means the Flathead County Air Pollution Control District as defined by the area within the boundaries of Flathead County.

(4) "Ambient Air" means that portion of the atmosphere, external to buildings, to which the general

public has access.

(5) "Animal Matter" means any product or derivative of animal life.

(6) "Board of Health" means the Flathead City-County Board of Health.

(7) "Chairperson" means the chairperson of the Board of Health and the Flathead City-County Air Pollution Control Board.

(8) "Columbia Falls Air Pollution Control District" means a special district within Flathead County defined by the area within the city limits of Columbia Falls.

(9) "Contingency Plan" means specific measures which would be implemented if a nonattainment areas' State Implementation Plan fails to timely attain the National Ambient Air Quality Standards (NAAQS) or make reasonable further progress.

(10) "Control Board" means the Flathead City-County Board of Health.

(11) "Control Officer" means the Health Officer for the Flathead City-County Health Department, or any employee of the Department designated by the Health Officer.

(12) "Department" means the Flathead City-County Health Department.

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

(14) "EPA" means the United State Environmental Protection Agency.

(15) "Kalispell City/County Air Pollution Control District" means a special air quality district within Flathead County defined as the area within the city limits of Kalispell and the extraterritorial area as shown in Appendix A and described in Appendix B.

(16) "Odor" means that property of an emission which stimulates the sense of smell.

(17) "Opacity" means the degree, expressed in percent, to which emissions reduce the transmission of light and obscure the view of an object in the background. Where the presence of uncombined water is the only reason for failure of an emission to meet the an applicable opacity limitation contained in this chapter, that limitation shall not apply. For the purpose of this chapter, opacity determination shall follow all requirements, procedures, specifications, and guidelines contained in 40 CFR Part 60, appendix A, Method 9 (July 1, 1987 ed.) or by in-stack transmissometer which complies with all requirements, procedures, specifications, and guidelines contained in 40 CFR Part 60, Appendix B, performance specification 1 (July 1, 1987 ed.).

(18) "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 dispose of dangerous gases at refineries, gas sweetening plants, or oil and gas wells.

(19) "Particulate Matter" means any material, except water in uncombined form, that is or has been airborne and exists as a liquid or a solid at standard conditions.

(20) "Person" means any individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate, or any other legal entity.

(21) "PM-10" means particulate matter with an aerodynamic diameter of less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50, Appendix J, (52 FR 24664, July 1, 1987) and designated in accordance with 40 CFR Part 53 (52 FR 24727, July 1, 1987), or by an equivalent method designated in accordance with 40 CFR Part 53 (52 FR 24727, July 1, 1987).

(22) "Premises" means any property, piece of land, real estate, or building.

(23) "Public Nuisance" means any condition which endangers health or safety, is offensive to the senses or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood or by any considerable number of persons.

(24) "Salvage Operation" means any operation conducted in whole or in part for the salvaging or reclaiming of any product or material.

(25) "Source" means any property, real or personal, or person contributing to air pollution.

(26) "State Implementation Plan or SIP" means the emission control plan for the State of Montana that is required by the Federal Clean Air Act including state-wide and area specific provisions.

(27) "Stack or Chimney" means any flue, conduit, or duct arranged to conduct emissions.

(28) "Trade Waste" means solid, liquid, or gaseous material resulting from construction or the operation of any business, trade, industry, or demolition operation including but not limited to wood, wood products, plastic, cartons, grease, oil, chemicals, and cinders.

(29) "Whitefish City/County Air Pollution Control District" means a special air quality district within Flathead County defined as the area within the city limits of Kalispell and the extraterritorial area as shown in Appendix C and described in Appendix D.

(30) Wood-Waste Burners: Devices commonly called tepee burners, silos, truncated cones, wigwam burners, and other such burners commonly used by the wood products industry for the disposal or burning of wood wastes.

## Sub-Chapter 2 Open Burning

### Rule 201 Definitions

For the purpose of the open burning sub-chapter the following definitions apply:

(1) "Best Available Control Technology" (BACT) means those techniques and methods of controlling emissions of pollutants from an existing or proposed open burning source which limit

those emissions to the maximum degree to which the department determines, on a case-by-case basis, is achievable for that source, taking into consideration impacts on energy use, the environment, and the economy, and any other costs, including the 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 the department to minimize smoke impacts, limiting the amount of burning to be performed during any one period of 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. In the case of essential agricultural open burning during September or October, or prescribed wildland open burning during September, October, or November, BACT includes burning only during the time periods specified by the department. In the case of wildland open burning during December, January, and February, BACT includes burning during the times specified by the department.

(2) "Essential Agricultural Open Burning" means any open burning conducted on a farm or ranch for the purpose of:

- (a) Eliminating excess vegetative matter from an irrigation ditch where no reasonable alternative method of disposal is available.
- (b) Eliminating excess vegetative matter from cultivated fields where no reasonable alternative method of disposal is available.
- (c) Improving range conditions when no reasonable method of disposal is available.
- (d) Improving wildlife habitat when no reasonable alternative method is available.

(3) Major Open Burning Source: Any person, agency, institution, business, or industry conducting any open burning within Flathead County which on a countywide basis will burn more than 100 acres of forestry slash or emit more than 500 tons per calendar year of carbon monoxide or 50 tons per calendar year of any other pollutant regulated by Chapter 16 of the Administrative Rules of Montana.

(4) Minor Open Burning Source: Any person, agency, institution, business, or industry conducting open burning which is not a major open burning source.

#### Rule 202 Materials Prohibited

(1) The Control Board hereby adopts and incorporates 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 wastes which are moved from the premises where it was generated, including that moved to a solid waste disposal site, except as provided for in Sub-chapter 2, Rule 207, Rule

208, and Rule 209.

- (b) Food wastes.
- (c) Styrofoam and other plastics.
- (d) Wastes generating noxious odors.
- (e) Wood and wood by-products other than trade wastes unless a public or private garbage hauler, or rural container system is unavailable.
- (f) Poultry litter.
- (g) Animal droppings.
- (h) Dead animals or dead animal parts.
- (I) Tires.
- (j) Rubber materials.
- (k) Asphalt shingles, except as provided in Sub-chapter 2, Rule 206.
- (l) Tar paper, except as provided in Sub-chapter 2, Rule 206.
- (m) Automobile bodies and interiors.
- (n) Insulated wire, except as provided in Sub-chapter 2, Rule 206.
- (o) Oil and petroleum products, except as provided in Sub-chapter 2, Rule 206.
- (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 Sub-chapter 2; Rule 207, Rule 208, and Rule 209.
- (t) Any materials resulting from a salvage operation.
- (u) Chemicals

### Rule 203 Minor Open Burning Source Requirements

A minor open burning source need not obtain an air quality open burning permit, but must:

- (1) Comply with all rules within this sub-chapter and burn only clean, dry material.

(2) Comply with restrictions and times specified by the Montana State Airshed Group monitoring unit for major open burning sources or the department when the Montana State Airshed Group monitoring unit is not in operation.

(3) Comply with any requirements or regulations relating to open burning established by any public agency responsible for protecting public health and welfare, or which is responsible for fire prevention or control.

(4) If it desires to conduct essential agricultural open burning during September or October or prescribed wildland open burning during September, October, or November, adhere to the time periods set by the Department.

(5) If it desires to conduct prescribed wildland open burning during December, January, or February, adhere to the time period set by the Department.

#### Rule 204 Major Open Burning Source Requirements

Major open burning sources need not apply for and obtain an air quality open burning permit from the department if the source has obtained a permit from the Montana Department of Health and Environmental Sciences (DHES) pursuant to ARM 16.8.1304 (1989) and where no other provisions of these regulations is violated. A permit issued by DHES to burn will be valid in Flathead County only when the Montana State Airshed Group monitoring unit is in operation. Major open burning sources issued a permit pursuant to ARM 16.8.1304 (1989) shall be required to obtain a permit from the department when the Montana State Airshed Group monitoring unit is not in operation and adhere to the conditions of the permit.

#### Rule 205 Special Open Burning Periods

(1) Prescribed wildland open burning, open burning performed to train fire fighters under Chapter IX, Rule 206, open burning authorized under the emergency open burning permit provision set forth in Chapter IX, Rule 209, and for the purpose of thawing frozen ground to allow excavation of utilities may be conducted during the entire year.

(2) Open burning other than those categories listed in section 1 above may be conducted only during the months of March through October.

#### Rule 206 Fire Fighter Training

Asphalt shingles, tar paper, or insulated wire which is part of a building, and oil or petroleum products may be burned in the open for the purpose of training fire fighters, if the fire is restricted to a building or structure or a permanent training facility, in a site other than a solid waste disposal site, and if the material to be burned is not allowed to smolder after the training session has terminated, and no public nuisance is created. A permit must be obtained from the department prior to each burn unless the training occurs at a permanent training facility.

#### Rule 207 Open Burning Disposal of Christmas Tree Waste

(1) The department may issue an open burning permit to dispose of waste accumulated from the normal operation of Christmas tree farms if:

- (a) The wastes are generated on the owner or operators property and not generated from another source; and
- (b) Open burning constitutes the BACT; and
- (c) Emissions from such open burning would not endanger public health and welfare or cause or contribute to a violation of any Montana or Federal ambient air quality standard.

(2) The department may place any reasonable requirements in the open burning permit that it determines will reduce emissions of air pollutants or will minimize the impact of said emissions, and the recipient of such a permit must adhere to those conditions. In the case of a permit granted pursuant to Section (1) above:

- (a) BACT for the period covered by the permit shall be set out within the conditions of the permit; and
- (b) with the provision that the source may be required, prior to each burn, to receive approval from the Department of the date and time of the proposed burn to ensure that good ventilation exists and to assign priorities if necessary. Approval will be obtained by calling the Department.

(3) The applicant for this type of permit shall notify the public of its application by posting a public notice provided by the Department on the property where the open burn is to occur. Posting shall be made near the closest public right of way to the property and be clearly visible. The posted sign is to convey the information supplied on the application. The notice shall remain on the property in a visible condition for a period of 15 days. The notice shall include a statement that public comments may be submitted to the Department during the time period specified on the public notice.

(4) The Department's decision to approve or deny an application for this type of open burning permit shall be posted at the Department for three working days. The Department's decision may be reviewed by the Board in accordance with the following provisions:

- (a) A person who has submitted written comments and who is adversely affected by the department's final decision may request a hearing before the Control Board within 3 days after the Department's final decision. The request must be made in writing. The request for hearing must state specific grounds why the permit should not be issued or why it should be issued with particular conditions and why the complainant is adversely affected. The Control Officer shall determine, within 10 days, if a hearing need be held by the Control Board. If the Control Officer determines no hearing need be held, the decision of the department is affirmed, and said officer shall notify the complainant of the action. The Control Board may conduct a hearing within 30 days after receipt of such request upon due notice to the applicant, to the person requesting the hearing, and to the public. Within 10 days following the hearing the Control Board shall instruct the Department to issue, issue

with conditions, or deny the open burning permit.

(b) The filing of a request for a hearing postpones the effective date of the Department's decision until the conclusion of the hearing and the issuance of the final decision by the Board.

#### Rule 208 Conditional Air Quality Open Burning Permits

(1) The department may issue a conditional air quality open burning permit for the disposal of:

(a) Wood and wood by-product trade wastes by any business, trade, industry, or demolition project if it is determined that:

(I) Open burning constitutes the BACT; and

(ii) Emissions from such open burning would not endanger public health and welfare or cause a violation of any Montana or Federal ambient air quality standards.

(b) Untreated wood waste at a licensed landfill site if:

(I) alternative methods of disposal would result in extreme economic hardship to the solid waste management system owner or operator; and

(ii) emissions from such air quality open burning would not endanger public health or welfare or cause a violation of any Montana or Federal ambient air quality standard.

(iii) prior to issuance of a conditional air quality open burning permit, the wood waste pile is inspected by the Department and no prohibited materials listed in ARM 16.8.1302, other than wood wastes, are present.

(2) A conditional air quality open burning permit issued under this rule is valid for the following periods:

(a) Wood and wood by-product trade waste - one calendar year.

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

(3) 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 will minimize the impact of said emissions, and the recipient of such a permit must adhere to those conditions. In the case of a permit granted pursuant to section (1) (a) above, BACT for the year covered by the permit will be set out within the conditions of the permit, with the provision that the source may be required, prior to each burn, to receive approval from the Department of the date of the proposed burn to ensure that good ventilation exists and to assign priorities if necessary. Approval may be obtained by calling the Department.

(4) An application for a conditional air quality open burning permit must be made on a form provided by the Department. The applicant must provide adequate information to enable the department to determine that 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 (5) of this rule, shall be submitted as part of any application.

(5) The applicant for a conditional air quality open burning permit shall notify the public of its application for a permit by means of legal publication in a newspaper of general circulation in the area affected by the application. The notice shall be made not sooner than 10 days prior to submittal of an application and not later than 10 days after submittal of an application. Form of the notice shall be provided by the Department and shall include a statement that public comments may be submitted to the Department concerning the application within 20 days after publication of the notice or filing of the application, whichever is later.

(6) A conditional air quality open burning permit granted pursuant to section (1) (a) above is a temporary measure to allow time for an entity generating the trade wastes to develop alternative means of disposal.

(7) The Department's decision to approve or deny an application for a conditional air quality open burning permit shall be posted at the Department for three working days. The Department's decision may be reviewed by the Board in accordance with the following provisions:

(a) A person who has submitted written comments and who is adversely affected by the Department's final decision may request a hearing before the Control Board within 3 days after the Department's final decision. The request must be made in writing. The request for hearing must state specific grounds why the permit should not be issued or why it should be issued with particular conditions and why the complainant is adversely affected. The Control Officer shall determine, within 10 days, if a hearing need be held by the Control Board. If the Control Officer determines no hearing need be held, the decision of the Department is affirmed, and said officer shall notify the complainant of the action. The Control Board may conduct a hearing within 30 days after receipt of such request upon due notice to the applicant, the person requesting the hearing and to the public. Within 10 days following the hearing the Control Board shall instruct the Department to issue, issue with conditions, or deny the conditional air quality open burning permit.

(b) The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and the issuance of the final decision by the Board.

#### Rule 209 Emergency Open Burning Permits

(1) The Department may issue an emergency air quality open burning permit to allow the burning of a substance not otherwise approved for burning under this sub-chapter if the applicant demonstrates that the substance poses an immediate threat to public health and safety, plant or animal life, and that no alternative method of disposal is reasonably available.

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

- (a) Evidence why alternative methods of disposal 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 if not disposed of by burning.
- (c) The legal description or address of the site where the burn will occur.
- (d) The amount of material to be burned.
- (e) The date and time of the proposed burn.

#### Rule 210 Permit Fees

(1) The Control Board shall establish a fee schedule for the issuance of air quality open burning permits and the inspection of open burning sites. Such fees will be based on the cost associated with conducting the service.

(2) All fees collected shall be deposited in the Flathead City-County Health fund.

#### Sub-Chapter 3 Voluntary Solid Fuel Burning Device Curtailment Program

It is intent of this program to establish guidelines which may be utilized to control emissions of air contaminants from solid fuel burning devices in order to further the policy and purpose declared in Chapter II.

(1) For the purpose of this rule, the following definition applies:

- (a) "Air Pollution Alert" means a period when the PM-10 levels exceed or are expected to exceed 100 micrograms per cubic meter as measured with a tapered element oscillating microbalance (TEOM) or other Department approved monitoring device.

(2) Within the Control District, a voluntary curtailment program for solid fuel burning devices will be initiated by January 1, 1992.

(3) It is the Departments duty, when declaring an Air Pollution Alert to take reasonable steps to inform the public.

#### Sub-Chapter 4 Prohibited Materials for Wood or Coal Residential (Solid Fuel Burning Device) Stoves

#### Rule 401

(1) No person may cause or authorize the use of the following materials to be combusted in any residential solid-fuel combustion device such as a wood, coal, pellet stove, or fireplace:

- (a) Food wastes
- (b) Styrofoam and other plastics.
- (c) Wastes generating noxious odors.
- (d) Poultry litter.
- (e) Animal droppings.
- (f) Dead animals or dead animal parts.
- (g) Tires.
- (h) Asphalt shingles.
- (I) Tarpaper.
- (j) Insulated wire.
- (k) Treated lumber or timbers including railroad ties.
- (l) Pathogenic wastes.
- (m) Colored newspaper or magazine print.
- (n) Hazardous wastes as defined by 40 CFR Part 261
- (o) Chemicals.

#### Sub-Chapter 5 Kalispell Air Pollution Control District

It is the intent of this rule to establish a control plan which will provide protection to the residents of the City of Kalispell from air pollution levels in excess of the state and federal ambient air quality PM-10 standards. The provisions of this Sub-chapter apply only to the Kalispell Air Pollution Control District.

#### Rule 501 Material To Be Used on Roads and Parking Lots-Standards

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

- (a) "Parking Lot" means a parcel of land located off of the public right-of-way not less than 5000 square feet in size which is primarily used for the temporary storage of motor vehicles.
- (b) "Road" means any road, street, or alley which is greater than 50 feet in length, and has a projected traffic volume greater than 50 vehicles per day.

(2) Within the Kalispell Air Pollution Control District, no person shall place any sanding or chip

seal material upon any road or parking lot which has a durability, as defined by the Montana Modified L.A. Abrasion test of greater than or equal to 7 or other testing method which the Control Board deems suitable, and has a content of material smaller than 200 mesh, as determined by standard wet sieving methods, which exceeds 3.0% oven dry weight.

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

#### Rule 502 Construction and Demolition Activity

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

(a) "Construction/demolition activity" means any on-site mechanical activity preparatory to or related to building, alteration, maintenance, or demolition of an improvement on real property including, but not limited to: grading, excavation, filling, transport and mixing of material, loading, crushing, cutting, planing, shaping, breaking, sandblasting, or spraying.

(b) "Exempt activity" means any construction/demolition activity consisting of:

(I) A building or improvement with a combined floor space of less than 4000 square feet, or

(ii) A disturbed surface area of less than 4000 square feet.

(c) "Reasonably Available Control Technology" RACT means techniques used to prevent the emission and/or the airborne transport of dust and dirt from a construction/demolition site including: application of water or other liquid, limiting access to the site, securing loads, enclosing, shrouding, compacting, stabilizing, planting, cleaning vehicles as they leave the site, scheduling projects for optimum meteorological conditions, or other such measures the department may specify to accomplish satisfactory results.

(2) No person shall engage in any construction/demolition activity, except for exempt activities, without first applying for and obtaining a permit, which describes the project and contains a dust control plan which constitutes RACT, from the department.

(3) An application for a construction/demolition permit must be made on a form provided by the department. The applicant must provide adequate information to enable the department to determine that the application satisfies the requirements for a construction/demolition permit contained in this rule. Proof of publication of public notice, as required in Section (4) of this rule, shall be submitted as part of any application.

(4) The applicant for a construction/demolition permit shall notify the public of it's application for a permit by means of legal publication in a newspaper of general circulation in the area affected by the application. The notice shall be made not sooner than 10 days prior to submittal of an application and not later than 10 days after submittal of an application. Form of the notice shall be

provided by the Department and shall include a statement that public comments may be submitted to the Department concerning the application within 20 days after publication of the notice or filing of the application, whichever is later. It is the responsibility of the applicant to pay all costs associated with publication.

(5) The Department's decision to approve or deny an application for a construction/demolition permit shall be posted at the Department for three working days. The Department's decision may be reviewed by the board in accordance with the following provisions:

(a) A person who has submitted written comments and who is adversely affected by the Department's final decision may request a hearing before the Control Board within 3 days after the Department's final decision. The request must be made in writing. The request for hearing must state specific grounds why the permit should not be issued or why it should be issued with particular conditions and why the complainant is adversely affected. The Control Officer shall determine, within 10 days, if a hearing need be held by the Control Board. If the Control Officer determines no hearing need be held, the decision of the Department is affirmed, and said officer shall notify the complainant of the action. The Control Board may conduct a hearing within 30 days after receipt of such request upon due notice to the applicant and to the public. Within 10 days following the hearing the Control Board shall instruct the Department to issue, issue with conditions, or deny the construction/demolition permit.

(b) The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and the issuance of the final decision by the Board.

(6) The Department shall deny an application for a construction/demolition permit unless:

(a) in the opinion of the department, RACT is employed, and

(b) prior written approval had been obtained from the Kalispell Building Department.

#### Rule 503 Pavement of Roads Required

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

(a) "Compliance plan" means a plan and schedule of implementation to improve an unpaved road by routine application of dust suppressants, or other effective measure to control fugitive dust until the road is paved.

(b) "Existing street or road" means any street, road, or alley which is greater than 50 feet in length, has an average traffic volume greater than 200 vehicles per day, and was in existence on January 1, 1990.

(c) "New street or road" means any street, road, or alley which is greater than 50 feet in length, has a projected average traffic volume greater than 50 vehicles per day, and on which construction commenced or will commence after January 1, 1990.

(2) Within the Kalispell Control District, no person shall allow the construction of a new street or

road unless it is paved.

(3) Within the Kalispell Control District, no person shall allow the operation, use, or maintenance of any unpaved existing street or road unless a compliance plan has been filed with and approved by the Department. A compliance must be filed with the Department within 60 days of notification that paving is required. The Department may approve a compliance plan as submitted or amend the plan to include any additional reasonable dust control measures.

#### Rule 504 Pavement of Parking Lots Required

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

(a) "Parking lot" means a parcel of land located off the public right-of-way which is primarily used for the temporary storage of motor vehicles.

(b) "Existing parking lot" means any parking lot which was in existence and in use on January 1, 1990.

(c) "New parking lot" means any parking lot which construction commenced after January 1, 1990.

(d) "Compliance plan" means a plan and schedule of implementation to improve an unpaved parking lot by routine application of dust suppressants or other effective measures to control fugitive dust until the parking lot is paved.

(2) Within the Kalispell Air Pollution Control District, no person shall construct any new parking lot which has a parking area greater than 5000 square feet or private drive through business lane, or a parking capacity greater that 15 vehicles or a traffic volume of more than 50 vehicles per day, unless the parking lot is paved.

(3) Within the Kalispell Control District, no person shall allow the operation, use, or maintenance of any unpaved existing parking lot which has a parking area greater than 5000 square feet or private drive through business lane, or a parking capacity greater that 15 vehicles or a traffic volume of more than 50 vehicles per day unless a compliance plan has been filed with and approved by the Department. A compliance plan must be filed with the Department within 60 days of notification that paving is required. The Department may approve the compliance plan as submitted or amend the plan to include any additional reasonable control measures.

#### Rule 505 Street Sweeping and Flushing

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

(a) "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. In the event that streets become iced and sanding material is re-applied, the process will begin with the highest traffic volume streets.

(b) "Reasonably available control technology" means:

(I) During Winter months, 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 32° Fahrenheit, and

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

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

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

(2) Within the Kalispell Air Pollution Control District, no person shall allow the operation, use, or maintenance of any paved street unless RACT is utilized.

Rule 506 Clearing of land greater than 1/4 acre in size

(1) For the purpose of this rule, the following definition applies:

(a) "Reasonably available control technology" (RACT) means techniques used to prevent the emission and/or airborne transport of dust and dirt from any disturbed or exposed land including: planting vegetative cover, providing synthetic cover, water and/or chemical stabilization, covering with coarse aggregate, installing wind breaks, or other equivalent method or technique approved by the department.

(2) Within the Kalispell Air Pollution Control District, the owner or operator of any land greater than 1/4 acre in size that has been cleared or excavated, with the exception of fire breaks approved by the Kalispell Fire Department and the City Council or land cleared solely for agricultural purposes, shall employ RACT to control dust emissions within 30 days after notification by the Department that visible emissions were observed leaving the premises or that the premises have remained in an uncontrolled state for over 90 days.

(3) If it is determined that any land cleared poses an immediate threat to human health and welfare, the department may order the owner or operator to immediately employ RACT to control the dust emissions.

Rule 507 Contingency Plan

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

(a) "Extraordinary Circumstances" means a specific period of time when the thickness of ice on a road, the air temperature and/or the slope of a road would preclude the effective use of liquid de-icer.

(b) "Liquid De-icer" means a Departmentally approved agent which lowers the melting

point of ice.

(c) "Priority Route" means a roadway which must remain in a safe driving condition for emergency or safety purposes. Priority routes will be designated by the appropriate governing body and submitted to the Control Board.

(2) Within 60 days of notification by the EPA that the SIP for the Kalispell nonattainment area failed to timely attain the PM-10 National Ambient Air Quality Standards or make reasonable further progress the following will occur:

(3) Within the Kalispell Air Pollution Control District, only liquid de-icer shall be placed on any road or parking lot with the exception of priority routes with extraordinary circumstances existing. During extraordinary circumstances, priority routes must use sanding material which has a durability, as defined by the Montana Modified L.A. Abrasion test of less than or equal to 7 or other testing method which the Control Board deems suitable, and has a content of material less than 200 mesh, as determined by standard wet sieving methods, which is less than 3.0% oven dry weight.

(4) The person applying the liquid de-icer must obtain prior approval from the Department for the particular de-icer.

#### Sub-Chapter 6 Columbia Falls Air Pollution Control District

It is the intent of this rule to establish a control plan which will provide protection to the residents of Columbia Falls from air pollution levels in excess of the state and federal ambient air quality PM-10 standards. The provisions of this Sub-chapter apply only to the Columbia Falls Air Pollution Control District.

#### Rule 601 Material To Be Used on Roads and Parking Lots-Standards

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

(a) "Parking Lot" means a parcel of land located off of the public right-of-way which is primarily used for the temporary storage of motor vehicles.

(b) "Road" means any road or alley which is greater than 50 feet in length, and has a projected traffic volume greater than 50 vehicles per day.

(2) Within the Columbia Falls Air Pollution Control District, no person shall place any sanding or chip seal material upon any road or parking lot which has a durability, as defined by the Montana Modified L.A. Abrasion test of greater than or equal to 7 or other testing method which the Control Board deems suitable, and has a content of material smaller than 200 mesh, as determined by standard wet sieving methods, which exceeds 3.0% oven dry weight.

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

## Rule 602 Construction and Demolition Activity

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

(a) "Construction/demolition activity" means any on-site mechanical activity preparatory to or related to building, alteration, maintenance, or demolition of an improvement on real property including, but not limited to: grading, excavation, filling, transport and mixing of material, loading, crushing, cutting, planing, shaping, breaking, sandblasting, or spraying.

(b) "Exempt activity" means any construction/demolition activity consisting of:

(I) A building or improvement with a combined floor space of less than 4000 square feet, or

(ii) A disturbed surface area of less than 4000 square feet.

(c) "Reasonably Available Control Technology" RACT means techniques used to prevent the emission and/or the airborne transport of dust and dirt from a construction/demolition site including: application of water or other liquid, limiting access to the site, securing loads, enclosing, shrouding, compacting, stabilizing, planting, cleaning vehicles as they leave the site, scheduling projects for optimum meteorological conditions, or other such measures the department may specify to accomplish satisfactory results.

(2) No person shall engage in any construction/demolition activity, except for exempt activities, without first applying for and obtaining a permit, which describes the project and contains a dust control plan which constitutes RACT, from the department.

(3) An application for a construction/demolition permit must be made on a form provided by the department. The applicant must provide adequate information to enable the department to determine that the application satisfies the requirements for a construction/demolition permit contained in this rule. Proof of publication of public notice, as required in Section (4) of this rule, shall be submitted as part of any application.

(4) The applicant for a construction/demolition permit shall notify the public of it's application for a permit by means of legal publication in a newspaper of general circulation in the area affected by the application. The notice shall be made not sooner than 10 days prior to submittal of an application and not later than 10 days after submittal of an application. Form of the notice shall be provided by the Department and shall include a statement that public comments may be submitted to the Department concerning the application within 20 days after publication of the notice or filing of the application, whichever is later. It is the responsibility of the applicant to pay all costs associated with publication.

(5) The Department's decision to approve or deny an application for a construction/demolition permit shall be posted at the Department for three working days. The Department's decision may be reviewed by the board in accordance with the following provisions:

(a) A person who has submitted written comments and who is adversely affected by the

Department's final decision may request a hearing before the Control Board within 3 days after the Department's final decision. The request must be made in writing. The request for hearing must state specific grounds why the permit should not be issued or why it should be issued with particular conditions and why the complainant is adversely affected. The Control Officer shall determine, within 10 days, if a hearing need be held by the Control Board. If the Control Officer determines no hearing need be held, the decision of the Department is affirmed, and said officer shall notify the complainant of the action. The Control Board may conduct a hearing within 30 days after receipt of such request upon due notice to the applicant and to the public. Within 10 days following the hearing the Control Board shall instruct the Department to issue, issue with conditions, or deny the construction/demolition permit.

(b) The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and the issuance of the final decision by the Board.

(6) The Department shall deny an application for a construction/demolition permit unless:

(a) in the opinion of the department, RACT is employed, and

(b) prior written approval has been obtain from the Columbia Falls Building Department.

#### Rule 603 Pavement of Roads Required

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

(a) "Compliance plan" means a plan and schedule of implementation to improve an unpaved road by routine application of dust suppressants, or other effective measure to control fugitive dust until the road is paved.

(b) "Existing street or road" means any street, road, or alley which is greater than 50 feet in length, has an average traffic volume greater than 200 vehicles per day, and was in existence on January 1, 1991.

(c) "New street or road" means any street, road, or alley which is greater than 50 feet in length, has a projected average traffic volume greater than 50 vehicles per day, and on which construction commenced or will commence after January 1, 1991.

(2) Within the Columbia Falls Control District, no person shall allow the construction of a new street or road unless it is paved.

(3) Within the Columbia Falls Control District, no person shall allow the operation, use, or maintenance of any unpaved existing street or road unless a compliance plan has been filed with and approved by the Department. A compliance plan must be filed with the Department within 60 days of notification that paving is required. The Department may approve a compliance plan as submitted or amend the plan to include any additional reasonable dust control measures.

#### Rule 604 Pavement of Parking Lots Required

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

(a) "Parking lot" means a parcel of land located off the public right-of-way which is primarily used for the temporary storage of motor vehicles.

(b) "Existing parking lot" means any parking lot which was in existence and in use on January 1, 1991.

(c) "New parking lot" means any parking lot which construction commenced after January 1, 1991.

(d) "Compliance plan" means a plan and schedule of implementation to improve an unpaved parking lot by routine application of dust suppressants or other effective measures to control fugitive dust until the parking lot is paved.

(2) Within the Columbia Falls Air Pollution Control District, no person shall construct any new parking lot which has a parking area greater than 5000 square feet or private drive through business lane, or a parking capacity greater than 15 vehicles or a traffic volume of more than 50 vehicles per day, unless the parking lot is paved.

(3) Within the Columbia Falls Air Pollution Control District, no person shall allow the operation, use, or maintenance of any unpaved existing parking lot which has a parking area greater than 5000 square feet or private drive through business lane, or a parking capacity greater than 15 vehicles or a traffic volume of more than 50 vehicles per day unless a compliance plan has been filed with and approved by the Department. A compliance plan must be filed with the Department within 60 days of notification that paving is required. The Department may approve the compliance plan as submitted or amend the plan to include any additional reasonable control measures.

#### Rule 605 Street Sweeping and Flushing

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

(a) "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. In the event that streets become iced and sanding material is re-applied, the process will begin with the highest traffic volume streets.

(b) "Reasonably available control technology" means:

(I) During Winter months, 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 32° Fahrenheit, and

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

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

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

(2) Within the Columbia Falls Air Pollution Control District, no person shall allow the operation, use, or maintenance of any paved street unless RACT is utilized.

Rule 606 Clearing of land greater than 1/4 acre in size

(1) For the purpose of this rule, the following definition applies:

(a) "Reasonably available control technology" (RACT) means techniques used to prevent the emission and/or airborne transport of dust and dirt from any disturbed or exposed land including: planting vegetative cover, providing synthetic cover, water and/or chemical stabilization, covering with coarse aggregate, installing wind breaks or other equivalent method or technique approved by the department.

(2) Within the Columbia Falls Air Pollution Control District, the owner or operator of any land greater than 1/4 acre in size that has been cleared or excavated, with the exception of fire breaks approved by the Columbia Falls Fire Department and the City Council or land cleared solely for agricultural purposes, shall employ RACT to control dust emissions within 30 days after notification by the Department that visible emissions were observed leaving the premises or that the premises have remained in an uncontrolled state for over 90 days.

(3) If it is determined that any land cleared poses an immediate threat to human health and welfare, the department may order the owner or operator to immediately employ RACT to control the dust emissions.

Rule 607 Contingency Plan

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

(a) "Extraordinary Circumstances" means a specific period of time when the thickness of ice on a road, the air temperature, and/or the slope of a road would preclude the effective use of liquid de-icer.

(b) "Liquid De-icer" means a Departmentally approved agent which lowers the melting point of ice.

(c) "Priority Route" means a roadway which must remain in a safe driving condition for emergency or safety purposes. Priority routes will be designated by the appropriate governing body and submitted to the Control Board.

(2) Within 60 days of notification by the EPA that the SIP for the Columbia Falls nonattainment area failed to timely attain the PM-10 National Ambient Air Quality Standards or make reasonable

further progress the following will occur:

- (3) Within the Columbia Falls Air Pollution Control District, only liquid de-icer shall be placed on any road or parking lot with the exception of priority routes with extraordinary circumstances existing. During extraordinary events, priority routes must use sanding material which has a durability, as defined by the Montana Modified L.A. Abrasion test of less than or equal to 7 or other testing method which the Control Board deems suitable, and has a content of material less than 200 mesh, as determined by standard wet sieving methods, which is less than 3.0% oven dry weight.
- (4) The person applying the liquid de-icer must obtain prior approval from the Department for the particular de-icer.

#### Sub-Chapter 7 Whitefish Air Pollution Control District

It is the intent of this rule to establish a control plan which will provide protection to the residents of the City of Whitefish from air pollution levels in excess of the state and federal ambient air quality PM-10 standards. The provisions of this Sub-chapter apply only to the Whitefish Air Pollution Control District.

#### Rule 701 Material To Be Used on Roads and Parking Lots-Standards

- (1) For the purpose of this rule, the following definitions apply:
  - (a) "Parking Lot" means a parcel of land located off of the public right-of-way not less than 5000 square feet in size which is primarily used for the temporary storage of motor vehicles.
  - (b) "Road" means any road, street, or alley which is greater than 50 feet in length, and has a projected traffic volume greater than 50 vehicles per day.
- (2) Within the Whitefish Air Pollution Control District, no person shall place any sanding or chip seal material upon any road or parking lot which has a durability, as defined by the Montana Modified L.A. Abrasion test of greater than or equal to 9 or other testing method which the Control Board deems suitable, and has a content of material smaller than 200 mesh, as determined by standard wet sieving methods, which exceeds 4.0% oven dry weight.
- (3) It shall be the responsibility of the person applying the sanding or chip seal material to test the material and provide the department representative data demonstrating that the material meets the specifications listed in Section (2) prior to application. Such data shall be obtained by gathering a representative sample from the stockpile or the material as it is produced and analyzing the material in accordance with the methods identified in Section (2).

#### Rule 702 Construction and Demolition Activity

- (1) For the purpose of this rule, the following definitions apply:
  - (a) "Construction/demolition activity" means any on-site mechanical activity preparatory to

or related to building, alteration, maintenance, or demolition of an improvement on real property including, but not limited to: grading, excavation, filling, transport and mixing of material, loading, crushing, cutting, planing, shaping, breaking, sandblasting, or spraying.

(b) "Exempt activity" means any construction/demolition activity consisting of:

(I) A building or improvement with a combined floor space of less than 4000 square feet, or

(ii) A disturbed surface area of less than 4000 square feet.

(c) "Reasonably Available Control Technology" RACT means techniques used to prevent the emission and/or the airborne transport of dust and dirt from a construction/demolition site including: application of water or other liquid, limiting access to the site, securing loads, enclosing, shrouding, compacting, stabilizing, planting, cleaning vehicles as they leave the site, scheduling projects for optimum meteorological conditions, or other such measures the department may specify to accomplish satisfactory results.

(2) No person shall engage in any construction/demolition activity, except for exempt activities, without first applying for and obtaining a permit, which describes the project and contains a dust control plan which constitutes RACT, from the department.

(3) An application for a construction/demolition permit must be made on a form provided by the department. The applicant must provide adequate information to enable the department to determine that the application satisfies the requirements for a construction/demolition permit contained in this rule. Proof of publication of public notice, as required in Section (4) of this rule, shall be submitted as part of any application.

(4) The applicant for a construction/demolition permit shall notify the public of it's application for a permit by means of legal publication in a newspaper of general circulation in the area affected by the application. The notice shall be made not sooner than 10 days prior to submittal of an application and not later than 10 days after submittal of an application. Form of the notice shall be provided by the Department and shall include a statement that public comments may be submitted to the Department concerning the application within 20 days after publication of the notice or filing of the application, whichever is later. It is the responsibility of the applicant to pay all costs associated with publication.

(5) The Department's decision to approve or deny an application for a construction/demolition permit shall be posted at the Department for three working days. The Departments decision may be reviewed by the board in accordance with the following provisions:

(a) A person who has submitted written comments and who is adversely affected by the Department's final decision may request a hearing before the Control Board within 3 days after the Department's final decision. The request must be made in writing. The request for hearing must state specific grounds why the permit should not be issued or why it should be issued with particular conditions and why the complainant is adversely affected. The Control Officer shall determine , within 10 days, if a hearing need be held by the Control Board. If the Control Officer determines no hearing need be held, the decision of the

Department is affirmed, and said officer shall notify the complainant of the action. The Control Board may conduct a hearing within 30 days after receipt of such request upon due notice to the applicant and to the public. Within 10 days following the hearing the Control Board shall instruct the Department to issue, issue with conditions, or deny the construction/demolition permit.

(b) The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and the issuance of the final decision by the Board.

(6) The Department shall deny an application for a construction/demolition permit unless:

(a) in the opinion of the department, RACT is employed, and

(b) prior written approval had been obtained from the Whitefish Building Department.

#### Rule 703 Pavement of Roads Required

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

(a) "Compliance plan" means a plan and schedule of implementation to improve an unpaved road by routine application of dust suppressants, or other effective measure to control fugitive dust until the road is paved.

(b) "Existing street or road" means any street, road, or alley which is greater than 50 feet in length, has an average traffic volume greater than 200 vehicles per day, and was in existence on January 1, 1995.

(c) "New street or road" means any street, road, or alley which is greater than 50 feet in length, has a projected average traffic volume greater than 50 vehicles per day, and on which construction commenced or will commence after January 1, 1995.

(d) "Pavement", also referred to as paved or surfaced, means a dust prohibitive surface of asphalt concrete or portland cement concrete material constructed per standards established by the City Engineer. Variations from the City Engineer standards may be allowed if plans are prepared, sealed, and construction supervised by a Licensed Professional Engineer for the area to be paved.

(2) Within the Whitefish Control District, no person shall allow the construction of a new street or road unless it is paved.

(3) Within the Whitefish Control District, no person shall allow the operation, use, or maintenance of any unpaved existing street or road unless a compliance plan has been filed with and approved by the Department. A compliance must be filed with the Department within 60 days of notification that paving is required. The Department may approve a compliance plan as submitted or amend the plan to include any additional reasonable dust control measures.

#### Rule 704 Pavement of Parking Lots Required

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

(a) "Parking lot" means a parcel of land located off the public right-of-way which is primarily used for the temporary storage of motor vehicles.

(b) "Existing parking lot" means any parking lot which was in existence and in use on January 1, 1995.

(c) "New parking lot" means any parking lot which construction commenced after January 1, 1995.

(d) "Pavement", also referred to as paved or surfaced, means a dust prohibitive surface of asphalt concrete or portland cement concrete material constructed per standards established by the City Engineer. Variations from the City Engineer standards may be allowed if plans are prepared, sealed, and construction supervised by a Licensed Professional Engineer for the area to be paved.

(e) "Compliance plan" means a plan and schedule of implementation to improve an unpaved parking lot by routine application of dust suppressants or other effective measures to control fugitive dust until the parking lot is paved.

(2) Within the Whitefish Air Pollution Control District, no person shall construct any new parking lot which has a parking area greater than 5000 square feet or private drive through business lane, or a parking capacity greater than 15 vehicles or a traffic volume of more than 50 vehicles per day, unless the parking lot is paved.

(3) Within the Whitefish Control District, no person shall allow the operation, use, or maintenance of any unpaved existing parking lot which has a parking area greater than 5000 square feet or private drive through business lane, or a parking capacity greater than 15 vehicles or a traffic volume of more than 50 vehicles per day unless a compliance plan has been filed with and approved by the Department. A compliance plan must be filed with the Department within 60 days of notification that paving is required. The Department may approve the compliance plan as submitted or amend the plan to include any additional reasonable control measures.

#### Rule 705 Street Sweeping and Flushing

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

(a) "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. In the event that streets become iced and sanding material is re-applied, the process will begin with the highest traffic volume streets.

(b) "Reasonably available control technology" means:

(I) During Winter months, 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 expected to remain above 35 °F for a 24 hour period, and

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

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

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

(2) Within the Whitefish Air Pollution Control District, no person shall allow the operation, use, or maintenance of any paved street unless RACT is utilized.

#### Rule 706 Clearing of land greater than 1/4 acre in size

(1) For the purpose of this rule, the following definition applies:

(a) "Reasonably available control technology" (RACT) means techniques used to prevent the emission and/or airborne transport of dust and dirt from any disturbed or exposed land including: planting vegetative cover, providing synthetic cover, water and/or chemical stabilization, covering with coarse aggregate, installing wind breaks, or other equivalent method or technique approved by the department.

(2) Within the Whitefish Air Pollution Control District, the owner or operator of any land greater than 1/4 acre in size that has been cleared or excavated, with the exception of fire breaks approved by the Whitefish Fire Department and the City Council or land cleared solely for agricultural purposes, shall employ RACT to control dust emissions within 30 days after notification by the Department that visible emissions were observed leaving the premises or that the premises have remained in an uncontrolled state for over 90 days.

(3) If it is determined that any land cleared poses an immediate threat to human health and welfare, the department may order the owner or operator to immediately employ RACT to control the dust emissions.

#### Rule 707 Contingency Plan

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

(a) "Extraordinary Circumstances" means a specific period of time when the thickness of ice on a road, the air temperature and/or the slope of a road would preclude the effective use of liquid de-icer.

(b) "De-icing Agent" means a Departmentally approved agent which lowers the melting point of ice.

(c) "Priority Route" means a roadway which must remain in a safe driving condition for

emergency or safety purposes. Priority routes will be designated by the appropriate governing body and submitted to the Control Board.

(2) Within 60 days of notification by the EPA that the SIP for the Whitefish non-attainment area failed to timely attain the PM-10 National Ambient Air Quality Standards or make reasonable further progress the following will occur:

(3) Within the Whitefish Air Pollution Control District, only de-icing agents shall be placed on any road or parking lot with the exception of priority routes with extraordinary circumstances existing. During extraordinary circumstances, priority routes must use sanding material which has a durability, as defined by the Montana Modified L.A. Abrasion test of less than or equal to 9 or other testing method which the Control Board deems suitable, and has a content of material less than 200 mesh, as determined by standard wet sieving methods, which is less than 4 .0% oven dry weight.

(4) The person applying the de-icing agent must obtain prior approval from the Department for the particular de-icer.

#### **Chapter IX. ENFORCEMENT, JUDICIAL REVIEW, AND HEARINGS**

(1) Whenever the Department determines that there are reasonable grounds to believe that a violation of any provision of this program or condition or limitation imposed by a permit issued by the Department has occurred, the Department may issue a written notice to be served personally or by registered or certified mail on the alleged violator or their agent. This notice shall specify the provision of the program or permit condition alleged to have been violated and the facts alleged to constitute the violation. The notice may include an order to take necessary corrective action within a reasonable period of time specified in the order. The order becomes final unless, within 30 days after the notice and order is received, the person named requests in writing a hearing before the Control Board. Upon receipt of the request, the Board shall schedule a hearing to be held at the next regular meeting. Each hearing shall be recorded and the record maintained for a period of 5 years.

(2) If, after a hearing held under section (1) of this Chapter, the Control Board finds that the violations have occurred, it shall either affirm or modify the previously issued order or issue an appropriate order for the prevention, abatement, or control of the emissions involved, or for the taking of other corrective action it considers appropriate. An order issued as part of a notice or after a hearing may prescribe the date by which the violation shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the emissions. If, after hearing on a order contained in a notice, the Control Board finds that no violation has occurred, it shall rescind the order.

(3) In connection with a hearing held under this Chapter, the control board may, and on application by a party, shall compel the attendance of witnesses and the production of evidence on behalf of the parties.

(4) A person aggrieved by an order of the Control Board may apply for rehearing upon one or more of the following grounds and upon no other grounds:

- (a) The Control Board acted without or in excess of its powers.
  - (b) The order was procured by fraud.
  - (c) The applicant has discovered new evidence, material which could not with reasonable diligence have been discovered and produced at the hearing.
- (5) (a) Within 30 Days after the application for rehearing is denied, or if the application is granted, within 30 days after the decision on the rehearing, a party aggrieved thereby may appeal to the district court of the judicial district which is the situs of the property affected by the order.
- (b) The court shall hear and decide the cause upon the record of the Control Board. The court shall determine whether the findings of the Control Board were supported by substantial evidence, and whether the Control Board made errors in law prejudicial to the appellant.

#### **Chapter X. CIVIL PENALTIES**

- (1) Any person who violates any provision, rule, with the exception of the voluntary solid-fuel burning device rule, or order under this program, after notice thereof has been given by the Department shall be subject to a civil penalty not to exceed five hundred dollars (\$500) per violation. Each day of violation shall constitute a separate violation. The department may institute and maintain any enforcement proceedings hereunder. Upon request of the Department the county attorney shall petition the court to impose, assess, and recover the civil penalty.
- (2) Monies collected hereunder shall be deposited in a special fund for the purpose of administering these regulations.

#### **Chapter XI. SEVERABILITY CLAUSE**

If any section or part thereof of this program be declared invalid by a court of competent jurisdiction, such decision shall not affect the remainder of the act or any part thereunder.

#### **Chapter XII. AMENDMENTS AND REVISIONS**

The Flathead Board of County Commissioners may enact any amendments or revisions of this program which have been approved by the Control Board on public hearing upon due notice. Due notice shall be given by public advertisement once a week for at least two weeks before the public hearing in a weekly or daily newspaper published in Flathead County.