

**LEWIS AND CLARK COUNTY
OUTDOOR AIR QUALITY REGULATIONS**

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LEWIS AND CLARK COUNTY OUTDOOR AIR QUALITY REGULATIONS

CHAPTER 1 PROGRAM AUTHORITY AND ADMINISTRATION

Rule 1.101 - Title

These regulations shall be known and cited as the Lewis and Clark County Outdoor Air Quality Regulations.

Rule 1.102 - Authorities for Program

The authorities to promulgate these regulations are provided in Article XI, Section 4(b) of the Constitution of the State of Montana and in §75-2-301, Montana Code Annotated (MCA).

Rule 1.103 - Intent and Purpose

- (1) It is the purpose of these regulations to achieve and maintain such levels of outdoor air quality as will protect human health and safety in Lewis and Clark County.
- (2) The intent of these regulations is to maintain the level of air pollutants at or below those standards set forth in §17.8.2 and 17.8.3, Administrative Rules of Montana (ARM).

Rule 1.104 - Scope

- (1) The provisions of these regulations apply to all sources of air pollution within the area defined in the attached Air Pollution Control District Map and legal description with the exception of air pollution sources over which jurisdiction is retained by the Montana Board of Environmental Review pursuant to §75-2-301 (5), MCA.
- (2) The provisions of these regulations do not supersede the provisions set forth in Chapter 9 of the State of Montana Air Quality Control Implementation Plan: Emergency Episode Avoidance Plan.

Rule 1.105 - Severability

In the event any section, subsection or other portion of these regulations is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such section, subsection or portion will be considered a separate provision of these regulations and

such holding will not affect the validity of the remaining portions of these regulations which will remain in full force and effect.

CHAPTER 2
DEFINITIONS

- (1) “Air Pollution Control District” means the area within which the Lewis and Clark County Outdoor Air Quality Regulations are enforced.
- (2) “Air Quality Ratings” are “Good”, “Watch” and “Poor”.
 - (a) “Good” means
 - (i) ambient air particulate matter (PM) concentrations averaged over an eight hour period are less than 60% of any state or federal ambient 24-hour standard established for PM 2.5, and
 - (ii) scientific and meteorological data indicate the average PM 2.5 concentrations over any eight-hour period may be reasonably expected to remain below 60% of any state or federal ambient 24-hour standard for the next 24 hours.
 - b) “Watch” means
 - (i) ambient air PM concentrations averaged over an eight-hour period are between 60% and 80% of any state or federal ambient 24-hour standard established for PM 2.5, and
 - (ii) scientific and meteorological data indicate the average PM 2.5 concentrations over any eight-hour period may be reasonably expected to remain below 80% of any state or federal ambient 24-hour standard for the next 24 hours.
 - (c) “Poor” means
 - (i) ambient air PM concentrations averaged over an eight-hour period are 80% or more of any state or federal ambient 24-hour standard established for PM 2.5, and
 - (ii) scientific and meteorological data indicate the average PM 2.5 concentrations over any eight-hour period may be reasonably expected to exceed 80% of any state or federal ambient 24-hour standard for the next 24 hours.
- (3) “Board” means the Lewis and Clark City - County Board of Health.

- (4) “Bonfire” means a ceremonial fire or small recreational fire for the purpose of celebrating a particular organization related event, or for a social gathering, picnic, campout or other related event.
- (5) “Health Department” means the Lewis and Clark City - County Health Department.
- (6) “Incinerator” means any single- or multiple-chambered combustion device that burns combustible material, alone or with a supplemental fuel or with catalytic combustion assistance, primarily for the purpose of removal, destruction, disposal, or volume reduction of any portion of the input.

Incinerator does not include:

- (a) 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;
 - (b) Space heaters that burn used oil;
 - (c) Wood-fired boilers; or
 - (d) Wood waste burners, such as tepee, wigwam, truncated cone, or silo burners.
- (7) “Management burning” means any person conducting any outdoor burning for any purpose including but not limited to forestry/wildlife management, licensed landfill management, firefighter training exercises, commercial film productions or fuel hazard reduction that is designated as necessary by a fire protection agency.
 - (8) “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.
 - (9) “Open burning” means outdoor combustion of material with or without a receptacle, including but not limited to bonfires and small recreational fires.
 - (10) “Particulate matter” or “PM” 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. For the purposes of this definition, standard conditions are defined in the applicable test method in CFR 40 Part 50, Appendix L and Appendix J; Part 51, Appendix M; and Part 53.
 - (11) “PM 2.5” means particulate matter with an aerodynamic diameter of less than or equal to a nominal 2.5 micrometers as measured by a reference method based on

40 CFR Part 50, Appendix L and designated in accordance with 40 CFR Part 53, or by an equivalent method designated in accordance with 40 CFR Part 53.

- (12) “Pellet stove” means a commercially sold stove that burns only automatically fed biomass, pelletized fuels.
- (13) “Person” means any individual, partnership, institution, joint-stock company, unincorporated association, or society or government agency, or other corporation of any character whatsoever.
- (14) “Regulations” means the Lewis and Clark County Outdoor Air Quality Regulations.
- (15) “Solid fuel burning device” means any fireplace, fireplace insert, wood stove, wood burning heater, wood-fired boiler or similar device burning any solid fuel used for aesthetic, cooking, or heating purposes.

CHAPTER 3

AIR QUALITY ACTION STAGES

Rule 3.101 - Prohibitions and Actions

- (1) When the Health Department declares a Good stage no specific action is required.
- (2) When the Health Department declares a Watch stage it shall request voluntary reductions in the use of solid fuel burning devices.
- (3) When the Health Department declares a Poor stage:
 - (a) A person may not operate a solid fuel burning device unless it is exempt under Rule 5.101(4) or a variance or exemption has been granted under these regulations.
 - (b) A person owning, operating or in control of a solid fuel burning device may not cause, allow or discharge any emissions from such a device that are of an opacity greater than twenty percent. Emissions produced during the building of a new fire for a period or aggregated periods not exceeding 15 minutes in any 24-hour period are exempt from opacity requirements.
 - (c) A person may not idle diesel or locomotive engines for over two hours in any 12-hour period.
 - (d) A person may not conduct open burning.

- (e) A person may not operate an incinerator.
- (f) Operators of solid fuel burning devices have four (4) hours to discontinue their use before warnings and/or violation may be issued by the Health Department.
- (g) If the Poor rating lasts for longer than 48 hours, and meteorological data indicate that air quality may reasonably be expected to continue to decline, the Health Department may identify additional suspected significant contributors of particulates and may order suspected contributing activities/operations to cease. Such activities may include, but are not limited to construction activities, restaurants of a type known for particulate emissions, and management burns. The Health Department may pursue suspension of activities beyond the Air Pollution Control District that are suspected of contributing to deterioration of air quality within the District.

CHAPTER 4
SOLID FUEL/VISIBLE EMISSIONS//INCINERATION

Rule 4.101 - Prohibited Burning

- (1) Within the Air Pollution Control District, a person may not:
 - (a) Burn any material in a residential solid fuel burning device except regular black and white newsprint, untreated Kraft paper, untreated wood and lumber, and wood and paper products manufactured for the sole purpose of use as heating fuel;
 - (b) Burn coal as a solid fuel at any time.
- (2) A person may not operate an incinerator in violation of the requirements of §17.8.316, ARM which are hereby adopted and incorporated by reference.

Rule 4.102 - Visible Emissions

- (1) A person owning, operating, or in control of a residential solid fuel burning device may not cause, allow, or discharge emissions that exhibit an opacity of 40% or greater averaged over 6 consecutive minutes.
 - (a) Emissions produced during the building of a new fire for a period or aggregated periods not exceeding 15 minutes in any 24-hour period are exempt from opacity requirements.

- (2) Only Health Department personnel or designees who have successfully completed the Visual Emissions Evaluation Course and hold current certification may determine opacity.
- (3) An opacity determination must follow all requirements, procedures, specifications and guidelines set forth in 40 CFR Part 60, Appendix A, method 9 or by an in-stack transmissometer that complies with all requirements, procedures, specification and guidelines contained in 40 CFR Part 60, Appendix B, performance specification 1. Where the presence of uncombined water is the only reason for failure of an emission to meet an applicable opacity limitation contained in these regulations that limitation shall not apply.

CHAPTER 5

EXEMPTIONS AND VARIANCES

Rule 5.101 - Exemptions

- (1) A person who has an economic need to burn solid fuel for residential space heating purposes may apply for a low-income exemption to burn during Poor air quality days. A person may demonstrate such a need by certifying his or her eligibility for energy assistance according to economic guidelines established by the U.S. Office of Management and Budget under the Low Income Energy Assistance Program as administered by the Montana Department of Public Health and Human Services.
 - (a) The applicant shall attach proof of participation in one of the following programs:
 - (i) Low Income Energy Assistance Program (LIEAP)
 - (ii) Families Achieving Independence in Montana (FAIM)
 - (iii) Supplemental Security Income (SSI)
- (2) A person who has a heating system that is temporarily inoperable may apply for an exemption to burn on Poor air quality days.
 - (a) The applicant shall attach proof, from a licensed heating specialist, detailing why the heating system is inoperable and the estimated length of time that the system will be inoperable.
- (3) The application for an exemption shall contain the following information:
 - (a) The name and complete address of the applicant;

- (b) The reason for and estimated duration of the exemption; and
 - (c) The applicant's signature and date.
- (4) Solid fuel burning devices with average pm 2.5 particulate emission rates of less than 7.5 grams per hour as certified by EPA are exempt from these regulations, except in no case shall emissions from such stoves exceed 20% opacity during a Poor air quality episode.

Rule 5.102 - Variances

- (1) A person may operate a solid fuel burning device during a Poor air quality rating if the Health Board grants a variance from these regulations.
- (2) The Health Board may grant a person a variance or partial variance if it determines:
 - (a) Compliance with the requirements from which the variance is sought would produce hardship without equal or greater benefits to the public; and
 - (b) The emissions proposed to occur under a variance do not constitute an unreasonable danger to public health or safety.
- (3) Application for a variance shall be made on forms supplied by the Health Department.
- (4) The application for variance shall be submitted to the Environmental Services Administrator at least 14 working days prior to a regularly scheduled Health Board meeting.
- (5) After receiving a timely request under (4) above, the Environmental Services Division Administrator shall notify the Health Board Chair.
- (6) The Health Board Chair in consultation with the Health Officer and the Environmental Services Division Administrator will determine whether the variance request will be heard by the Health Board or by a hearing officer.
- (7) The Health Board Chair will instruct the Environmental Services Division Administrator to schedule the variance request for a public hearing.
- (8) If the variance request will be heard by a hearing officer, the Health Board Chair will appoint a hearing officer.

- (9) The hearing officer will conduct a public hearing and make a written recommendation to the Health Board
- (10) The recommendation of a hearing officer is subject to approval by a quorum of the Health Board at the next regularly scheduled Health Board meeting.
- (11) Any decision of the Health Board or a recommendation of a hearing officer must be supported by findings of fact.
- (12) The Health Board may not grant a variance authorizing any source to emit air pollutants in excess of standards set forth at §17.8.2 and 17.8.3, ARM.

ENFORCEMENT AND PENALTIES

Rule 6.101 - General Provisions

- (1) Action under this Rule is not a bar to enforcement of these regulations, or regulations or orders made pursuant thereto, by injunction or other appropriate remedy, as provided in §75-2-413, MCA. The Health Board or the Health Department may institute and maintain in the name of the county or the state any and all enforcement proceedings.
- (2) All fines collected under this chapter are deposited in the Outdoor Air Quality Fund 186.
- (3) It is the intention of the Health Board to impose absolute liability upon persons for conduct that violates any part, provision or order issued pursuant to these regulations. Unless otherwise specifically provided, a person may be guilty of an offense without having, with respect to each element of the offense, either knowledge, negligence, or specific intent.
- (4) It is the specific intention of the Health Board that these regulations impose liability upon persons for violations of a part, provision or order issued pursuant to these regulations.
- (5) A person is responsible for conduct which is an element of an offense if the conduct is either that of the person himself or that of another and he is legally accountable.
- (6) A person is legally accountable for the conduct of another under these regulations when he:
 - (a) causes another to perform the conduct, regardless of the legal capacity or mental state of the other person; or

- (b) either before or during the commission of an offense with the purpose to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid such other person in the planning or commission of the offense.

Rule 6.102 - Criminal Penalties

Except as provided for in Rule 6.104, a person who violates a provision, regulation, or rule enforced under these regulations, or an order made pursuant to these regulations, is guilty of an offense and upon conviction subject to a fine not to exceed ten thousand dollars (\$10,000.00). Each day of the violation constitutes a separate offense.

Rule 6.103 - Civil Penalties

- (1) Except as provided in Rule 6.104, a person who violates a provision, rule or order under these regulations, after notice thereof has been given by the Health Department, is subject to a civil penalty not to exceed ten thousand dollars (\$10,000) per violation. Each day a violation continues constitutes a separate violation.
- (2) Upon request of the Health Department the county attorney may petition the district court to impose, assess and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided in Rule 6.102.

Rule 6.104 - Penalties

- (1) Notwithstanding the provisions of Rule 6.102, a person who violates a provision of these regulations (Lewis and Clark Outdoor Air Quality Regulations) is guilty of a criminal offense and subject, upon conviction, to a fine not to exceed five hundred dollars (\$500.00). Each day a violation continues constitutes a separate offense.
- (2) Notwithstanding the provisions of Rule 6.103, any person who violates any of the provisions of these regulations is subject to a civil penalty not to exceed five hundred dollars (\$500.00). Each day a violation continues constitutes a separate violation. The civil penalty is in lieu of the criminal penalty provided for in Rule 6.102, and may be pursued in any court of competent jurisdiction.
- (3) The civil penalty or criminal fine for a violation of these regulations during the calendar year :

- First violation - Warning
- Second Violation – One Hundred Dollars (\$100)
- Third Violation – Two Hundred Dollars (\$200)
- Fourth Violation – Five Hundred Dollars (\$500)

Chapter 7
ADMINISTRATIVE PROCEDURES AND HEALTH BOARD HEARINGS

Rule 7.101 - Notice of Violation

- (1) Whenever the Health Department determines that there are reasonable grounds to believe that a violation of any provision of these regulations has occurred, the Health Department may issue a written notice to be served personally or by registered or certified mail on the alleged violator or his agent.
- (2) This notice must specify the provision of these regulations alleged to have been violated and the facts alleged to constitute the violation.
- (3) If the Health Department issues a Notice of Violation to a person for a first violation of any provision of these regulations, the Health Department shall provide such person with a summary of the regulations that affect solid fuel burning devices.

Rule 7.102 – Appearance Before the Health Board

The Health Department or Health Board may require alleged violators of these regulations to appear before the Health Board for a hearing at a time and place specified in the Notice of Violation.

Rule 7.103 – Other Remedies

Injunction under this Rule 8.101 does not bar enforcement of these regulations by injunction, seeking penalties or other appropriate remedy.

Rule 7.104 - Credible Evidence

For the purpose of establishing compliance with these regulations or establishing whether a person has violated or is in violation of any standard or limitation adopted pursuant to these regulations or Title 17, Chapter 8 of the Montana Code Annotated, nothing in these regulations precludes the use, including the exclusive use, of any relevant evidence.

Rule 7.105 - Administrative Review

- (1) A person subject to a Notice of Violation issued under the authority of these regulations may request an administrative review by the Health Officer or his or her designee (Hearing Officer).
- (2) A request for an administrative review must be received with fifteen (15) days of the issuance of a Notice of Violation.

- (3) A request for an administrative review does not suspend or delay the department's notice, order or action, except as otherwise provided for in these regulations.
- (4) The Hearing Officer shall schedule a review within ten (10) days after receipt of the request. The review may be scheduled beyond ten days after receipt of the request by mutual consent of the department and the party requesting the review.
- (5) The Hearing Officer shall provide written or verbal notice to the person requesting the review of the date, time and location of the scheduled hearing.
- (6) The Hearing Officer may continue the administrative review for a reasonable period following the hearing to obtain information necessary to make a decision.
- (7) The Hearing Officer shall affirm, modify, or revoke the Notice of Violation, Order to Take Corrective Action, or other action, in writing, following the completion of the administrative review. A copy of this decision must be sent by certified mail or hand delivered to the person who requested the review.

Rule 7.106 – Health Board Hearings

- (1) Any person subject to an Order to Take Corrective Action or an action taken by the department under the authority of these regulations may request a hearing before the Health Board following the conclusion of an administrative review.
- (2) The Health Board shall schedule a hearing within sixty (60) days after receipt of a written request and shall notify the applicant of that hearing.
- (3) The Health 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) Public hearings must proceed in the following order:
 - (a) first, the department shall present a staff report, if any.
 - (b) second, the person who requested the hearing shall present relevant evidence to the Health Board; and
 - (c) third, the Health Board shall hear any person in support of or in opposition to the issue being heard and shall accept any related letters, documents or materials.
- (5) After a hearing regarding an Order to Take Corrective Action, the Health Board shall issue a final decision that affirms, modifies or rescinds the department's Order to Take Corrective Action. In addition, the Health Board may issue an

appropriate order for the prevention, abatement or control of the emissions involved.

- (6) A person aggrieved by an order of the Health Board may apply for rehearing upon one or more of the following grounds and upon no other grounds:
 - (a) the Health Board acted without or in excess of its powers;
 - (b) the order was procured by fraud;
 - (c) the order is contrary to the evidence;
 - (d) the applicant has discovered new evidence, material to him which he could not with reasonable diligence have discovered and produced at the hearing; or
 - (e) competent evidence was excluded to the prejudice of the applicant.
- (7) The petition for a rehearing must be filed with the Health Board within thirty (30) days of the date of the Health Board's order.

Rule 7.107 - Judicial Review

- (1) Within thirty (30) days after the application for rehearing is denied, or if the application is granted, within thirty (30) days after the decision on the rehearing, a party aggrieved thereby may appeal to the District Court.
- (2) The appeal shall be taken by serving a written notice of appeal upon the chair of the Health Board, which service shall be made by the delivery of a copy of the notice to the chair and by filing the original with the Clerk of Court. Immediately after service upon the Health Board, the Health Board shall certify to the District Court the entire record and proceedings, including all testimony and evidence taken by the Health Board. Immediately upon receiving the certified record, the District Court shall fix a day for filing of briefs and hearing arguments on the cause and shall cause a notice of the same to be served upon the Health Board and the appellant.
- (3) The District Court shall hear and decide the cause upon the record of the Health Board. The District Court shall determine whether the Health Board regularly pursued its authority, whether the findings of the Health Board were supported by substantial competent evidence, and whether the Health Board made errors of law prejudicial to the appellant.
- (4) Either the Health Board or the person aggrieved may appeal from the decision of the District Court to the Supreme Court. The proceedings before the Supreme

Court are limited to a review of the record of the hearing before the Health Board and of the district court's review of the record

CHAPTER 8
REVIEW AND REVISIONS TO REGULATIONS

Rule 8.101 - Review

The Health Department shall periodically review the effectiveness of these regulations and shall make appropriate recommendations to the Lewis and Clark County Board of County Commissioners for revisions of these regulations. Such review shall include the levels of particulate matter measured as micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) contained in the ambient air within the Air Pollution Control District. Such review shall also take into account other air quality pollutants regulated by the EPA and DEQ, including but not limited to lead, carbon monoxide, sulfur dioxide and nitrous oxides.

Rule 8.102 - Amendments and Revisions

- (1) The Board of County Commissioners may enact any amendments or revisions to these regulations that have been approved by the Montana Board of Environmental Review.
- (2) The Board of County Commissioners grants to the Health Board the authority to establish the policies and procedures that provide for the implementation of the Lewis and Clark County Outdoor Air Regulations.

Rule 8.103 – Repealer and Effective Date

- (1) All previous rules, regulations, resolutions and ordinances as adopted by the Board of County Commissioners governing outdoor air quality in the Air Pollution Control District are hereby repealed.
- (2) These regulations will be in full force and effect upon final approval by the Montana Board of Environmental Review.

Reviewed and approved by the Montana Board of Environmental Review, by memorandum and order dated November ____, 2011.