



**Missoula City-County Air Pollution Control Program
January 25, 2023**

**CHAPTER 5
GENERAL PROVISIONS**

Rule 5.101 - Inspections

- (1) A 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, 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) A person may not 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.
- (3) Any person subject to inspection under this Program shall provide a proper testing port, with reasonable access, on all stacks and chimneys.
- (4) A person may not refuse entry or access to any authorized member or representative of the Control Board or department who requests entry for the purposes of inspecting a stationary source that is required by Rule 4.106(2) to have an emergency episode abatement plan and is operating within Missoula County during a Warning, Emergency or Crisis episode.

Rule 5.102 - Testing Requirements

- (1) Any person or persons responsible for the emission of any air pollutant into the outdoor atmosphere shall upon written request of the department provide the facilities and necessary equipment including instruments and sensing devices and shall conduct tests, emission or ambient, for such periods of time as may be necessary using methods approved by the department. Such emission or ambient tests must include, but are not limited to, a determination of the nature, extent, and quantity of air pollutants that are emitted as a result of such operation at all sampling points designated by the department. The source shall maintain this data for at least one year and shall have it available for review by the department. Such testing and sampling facilities may be either permanent or temporary at the discretion of the person responsible for their provision, and must conform to all applicable laws and regulations concerning safe construction or safe practice.
- (2) All sources subject to the requirements of 40 CFR Part 51 Appendix P shall install, calibrate, maintain, and operate equipment for continuously monitoring and recording emissions. All subject sources shall have installed all necessary equipment and begun monitoring and recording emissions data in accordance with Appendix P by January 31, 1988. A copy of 40 CFR Part 51 Appendix P may be obtained from the DEQ, P O Box 200901, Helena, MT 59620.

Rule 5.103 - Malfunctions

- (1) The Control Officer or his designated representative must be notified promptly by phone whenever a malfunction occurs that can be expected to create emissions in excess of any applicable emission limitation, or to continue for a period greater than 4 hours. If telephone notification is not immediately possible, notification at the beginning of the next working day is acceptable. The notification must include the following information:

- (a) identification of the emission points and equipment causing the excess emissions;
 - (b) magnitude, nature, and cause of the excess emissions;
 - (c) time and duration of the excess emissions;
 - (d) description of the corrective actions taken to remedy the malfunction and to limit excess emissions;
 - (e) information sufficient to assure the department that the failure to operate in a normal manner by the air pollution control equipment, process equipment or processes was not caused entirely or in part by poor maintenance, careless operation, poor design, or any other preventable upset condition or preventable equipment breakdown; and
 - (f) readings from any continuous emission monitor on the emission point and readings from any ambient monitors near the emission point.
- (2) Upon receipt of notification, the department shall investigate and determine whether a malfunction has occurred.
- (3) If a malfunction occurs and creates emissions in excess of any applicable emission limitation, the department may elect to take no enforcement action if:
- (a) the owner or operator of the source submits the notification as required by Section (1) above;
 - (b) the malfunction does not interfere with the attainment and maintenance of any state or federal ambient air quality standards; and
 - (c) the owner or operator of the source immediately undertakes appropriate corrective measures.
- (4) Within one week after a malfunction has been corrected, the owner or operator shall submit a written report to the department which includes:
- (a) a statement that the malfunction has been corrected, the date of correction, and proof of compliance with all applicable air quality standards contained in this chapter or a statement that the source is planning to install or has installed temporary replacement equipment in accordance with the requirements of (7) and (8) of this rule;
 - (b) a specific statement of the causes of the malfunction;
 - (c) a description of the preventive measures undertaken and/or to be undertaken to avoid such a malfunction in the future;
 - (d) a statement affirming that the failure to operate in a normal manner by the air pollution control equipment, process equipment, or processes was not caused entirely or in part by poor maintenance, careless operation, poor design, or any other preventable upset condition or preventable equipment breakdown; and
 - (e) any information required by Section (1) not previously given to the department.
- (5) The burden of proof is on the owner or operator of the source to provide sufficient information to demonstrate that a malfunction did occur.
- (6) A person may not falsely claim a malfunction has occurred or submit to the department information, pursuant to this rule, that is false.
- (7) Malfunctioning process or emission control equipment may be temporarily replaced without obtaining an air quality permit as required in Chapter 6, subchapter 1, if the department has been notified of the malfunction in compliance with this rule and if continued operation or non-operation of the malfunctioning equipment would:

- (a) create a health or safety hazard for the public;
 - (b) cause a violation of any applicable air quality rule;
 - (c) damage other process or control equipment; or
 - (d) cause a source to lay-off or suspend a substantial portion of its workforce for an extended period.
- (8) Any source that constructs, installs or uses temporary replacement equipment under (7) above shall comply with the following conditions:
- (a) Prior to operation of the temporary replacement equipment, the source shall notify the department in writing of its intent to construct, install or use such equipment;
 - (b) Prior to operation of the temporary replacement equipment, the source shall demonstrate to the department that the estimated actual emissions from the equipment, operating at its maximum expected operating rate, are not greater than the potential to emit of the malfunctioning process or control equipment prior to the malfunction;
 - (c) The source shall record and at the department's request submit operating information sufficient to demonstrate that the temporary replacement equipment operated within the maximum expected operating rate;
 - (d) The temporary replacement equipment and the malfunctioning process or emission control equipment may not be operated simultaneously, except during a brief shakedown period or as otherwise approved in writing by the department; and
 - (e) The temporary replacement equipment must be removed or rendered inoperable within 180 days after initial startup of the temporary replacement equipment, or within 30 days after startup of the repaired malfunctioning equipment, whichever is earlier, unless the source has submitted to the department an application for an air quality permit for the temporary equipment or the department has approved a plan for removing the equipment or rendering it inoperable by a specific date.

Rule 5.104 - Reserved

Rule 5.105 - Circumvention

- (1) A person may not cause or permit the installation or use of any device or any means that, without resulting in reduction in the total amount of air pollutant emitted, conceals or dilutes an emission of air pollutant that would otherwise violate an air pollution control regulation.
- (2) A person may not divide or partition a property or properties used for a single activity, either by time or areas, in order to avoid regulation by this Program.
- (3) A person may not knowingly:
 - (a) make false statements, representation, or certification in, or omit information from, or knowingly alter, conceal, or fail to file or maintain any notice, application, record, report, plan or other document required pursuant to this Program to be either filed or maintained;
 - (b) fail to notify or report as required under this Program; or
 - (c) falsify, tamper with, render inaccurate, or fail to install any monitoring device or method required to be maintained or followed under this Program.

Rule 5.106 - Public Nuisance

A person may not cause, suffer or allow any emissions of air pollutants beyond his property line in such a manner as to create a public nuisance.

Rule 5.107 - Reserved

Rule 5.108 - Permit Fees

- (1) The Control Board shall establish a schedule for the payment of fees for inspections and issuance of permits or renewals under this Program. Such fees may be based upon factors including, but not limited to, the size of the unit inspected, the time involved in the inspection, the time involved in issuing the permit, the cost of administering and ensuring compliance of the regulations and any other factors the Control Board determines produces a fair and reasonable fee. Fees may be adopted or changed at any regularly scheduled meeting of the Control Board providing that the action is scheduled on the Control Board agenda and public comment is allowed. (See Attachment A for current fee schedule.)
- (2) The fees must adequately compensate, but may not exceed, the direct and indirect costs to the department of administering the Program.
- (3) For sources that are permitted by both DEQ pursuant to MCA 75-2-217 and this Program, the fee structure must be established after consultation with DEQ in a manner that is fair and equitable taking into account the fees paid to this Program and the DEQ, and the services rendered by each agency.
- (4) All fees required under this subchapter are a debt due and owing under this Program that may be collected in a civil suit by the Control Board. All fees collected must be deposited in the Missoula County Health Fund.
- (5) For fees based on estimated emissions, the owner or operator of a source may appeal any portion or all of the fee by requesting, in writing, an administrative review within 20 days of receipt of the department's fee assessment. If any portion of the fee is not appealed to the department, that portion is due 30 days after receipt of the department's fee assessment. Any remaining fee that is due after the completion of an appeal is due immediately upon the completion of the administrative appeals process or upon completion of any judicial review of the Control Board's decision.

Rule 5.109 and Rule 5.110 - Reserved

Rule 5.111 - Rule Changes to the Missoula City-County Air Pollution Control Program

- (1) The Control Board must hold a noticed public hearing for any proposed rule changes to the Missoula City County Air Pollution Control Program.
 - (a) The department shall maintain a list of interested persons who wish to be informed of actions related to rules adopted under this air pollution control program.
 - (b) At least 30 days before the hearing, the department shall give written notice of the intended action. The notice must include the following:
 - (i) a statement of the terms or substance of the intended action or a description of the subjects and issues affected by the intended action;
 - (ii) an explanation of the procedure for a person to be included on the list of interested persons established pursuant to subsection (1)(a) of this rule;
 - (iii) an explanation of the procedures and deadlines for presentation of oral or written comments related to the intended action; and
 - (iv) a rationale for the intended action(s) which explains why the intended action is reasonably necessary to implement the goals and purposes of the air pollution control program.
 - (c) The department shall provide a copy of the proposed rule changes to the list of interested persons established pursuant to Rule 5.111(1)(a) who have made timely request to be included on the list.
 - (d) The department shall prepare a written response to all comments submitted in writing or presented at

the public hearing for consideration by the Control Board prior to adoption, revision, or repeal of the proposed rule.

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

(f) Rule changes to this Program may be approved by a majority vote of the Control Board after a noticed public hearing.

- (2) The Board of County Commissioners and the City Council may approve or veto the Control Board's amendments and revisions by resolution after a public hearing.
- (3) Upon approval by the City Council and Board of County Commissioners, the Control Board shall forward the amendments or revisions to the Montana Board of Environmental Review for final approval. Unless otherwise provided for in the amendment or revision, the amendments and revisions are effective upon approval of the Montana Board of Environmental Review.

Rule 5.112 - Compliance With Other Statutes And Rules

Nothing in the provisions of this Program relieves any permittee of the responsibility for complying with any applicable City, County, federal or Montana statute, rule, or standard except as specifically provided in this Program.

Rule 5.113 - Severability Clause

If any Section or part thereof of this Program is declared invalid by a court of competent jurisdiction, such decision does not affect the remainder of the Program or any part thereunder.

Rule 5.114 - Limitations

Nothing in this Program:

- (1) Grants the Control Board any jurisdiction or authority with respect to air pollution existing solely within buildings.
- (2) Supersedes or limits the applicability of any law or regulation relating to sanitation, industrial health or safety.