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Sent: Friday, May 15, 2009 2:14 PM

To: Benjamin Schmidt

Cc: Mamie Colburn; Merchant, Eric; Wolfe, Debra; Shannon Therriault

Subject: Comments on Proposed Revisions to Missoula AQ Rules

Ben-

Here are DEQ's comments on the Missoula City/County Health Department's (Missoula) air program rules, both the latest proposed changes and the existing rules:

- One comment in general on all the Missoula rules. Rule language which requires an agency to do certain things itself is considered 'poor form' in modern rule writing. DEQ realizes this type of language is commonly found in local and state rules but we should try to avoid adding any new rules of this type. Ask yourself this question: How do we enforce this rule? If you can't provide a good answer than it probably shouldn't be a rule – it should be in policy or as an expression of intent in the administrative record for the rule adoption process. For example, look at Missoula rule 4.108, which reads in part,

During a Stage I Alert, the department shall:

(a) advise citizens via public media and the department's Air Pollution Hotline of the actions listed under an Alert, and of medical precautions.

(b) shall suspend outdoor burning.

(c) may require construction companies to take additional effective dust-control action for roads under construction or repair.

The first part (a) of the rule is not enforceable. If the Missoula didn't contact the public and the media, what would happen? Would the agency issue itself an NOV or would the County Sheriff cite the Health Department? This language belongs in policy document and the rest of the 4.108 snippet would something like this:

During a Stage I Alert:

(a) outdoor burning is suspended.

(b) construction companies shall take additional effective dust-control action for roads under construction or repair.

- As I'm sure you're aware, some definitions need to be added to Chapter 2. Chapter 4 includes the term 'Impact Zone M' and it looks like it will be defined in Rule 2.101(23) but I couldn't find a revised Chapter 2 on the website. Also, a definition for 'PM2.5' should be added to Chapter 2.
- Chapter 4, rule 4.102(5) – shouldn't the provisions of this chapter apply, as described in this Rule, to sources in Missoula County that are permitted by DEQ **AND the Missoula County?**
- Chapter 4, rule 4.103(1) – what is the 'Wildfire Smoke Emergency Episode Avoidance Plan' and should it be defined in Chapter 2?
- Chapter 4, rule 4.103(2) – should the words 'toxic chemicals' or 'toxic air pollution' be modified to refer to 'hazardous air pollutants' or 'HAP', which are defined already in Chapter 2?

- Chapter 4, rule 4.104 – DEQ believes the particulate matter levels (concentrations) which trigger declarations of the various air pollution control stages should be expressed as percentage of the NAAQS and not as absolute numeric concentrations. For example, instead of using language like “*whenever the ambient concentration of PM_{2.5} meets or exceeds 28 ug/m³ averaged over an eight hour average*”, revise the language to read something like “*whenever the ambient concentration of PM_{2.5} meets or exceeds 80.0% of the 24-hour PM_{2.5} NAAQS averaged over an eight hour period.*” DEQ strongly encourages Missoula to revise the form of their PM_{2.5} and PM₁₀ trigger levels in the Missoula rules from the ug/m³ form to a ‘percent of the applicable NAAQS’ form. As we both know, the federal Clean Air Act requires EPA to review and revise the NAAQS every five years, and EPA is currently reviewing the PM NAAQS. The probability is high that EPA will revise the PM NAAQS within the next few years and it’s equally probable the level of the PM_{2.5} standards will be lowered. If the Missoula rules employed ‘percentage of the PM NAAQS’ language, then Missoula might be able to avoid revising its air rules again in the next few years when the PM NAAQS are revised.
- Chapter 4, rule 4.104(5) – DEQ has no authority to approve reference or equivalent methods for monitoring air pollutants in the ambient air. EPA does and the language should be revised to refer to EPA’s approved list of reference and equivalent ambient air monitoring methods (see 40 CFR 53). Referring back to an earlier comment, this is another example of language that doesn’t belong in an administrative rule; it should be in a policy document.
- Chapter 4, new rule 4.112 – DEQ is concerned that new rule 4.112 could conflict with Missoula rule 4.111 and Montana’s Emergency Episode Avoidance Plan. In 1980 after the Mount St. Helena volcano erupted, most of the PM in the Missoula airshed for several days was NOT from local industrial sources, yet those sources were shutdown as were many others in western Montana under the emergency episode plan. A similar situation would exist today if PM_{2.5} concentrations in the ambient air rose high enough, wildfire event or not, then industrial operations should be curtailed or shutdown. Also, in general, most of the language in this proposed rule shouldn’t be there. Most of the language attempts to justify and explain the rule. As mentioned early in our comments, this type of language belongs in policy or as an expression of intent in the administrative record for the rule adoption process. However, notwithstanding DEQ’s comments above about emergency episode plans and proposed exemptions for industrial sources during wildfire events with high PM_{2.5} levels, this exemption language might be better located in the rules associated with the applicable air pollution control stage, e.g., rule 4.110(3) and rule 4.111(3).
- Chapter 6, new rule 6.102(2)(c) – revise the proposed language so it reads “Solid fuel burning equipment with a heat input capacity of 1,000,000 BTU/hr or more”.
- Chapter 6, new rule 6.502(2) – revise the proposed language so it reads “For solid fuel burning equipment constructed or installed after xx-xx-xxxx with a heat input capacity of 1,000,000 BTU/hr or more, a person may not cause or allow particulate matter in excess of 0.10 lbs per million BTU’s heat input to be discharged from any stack, opening or chimney into the atmosphere.”
- Chapter 6, rule 6.104(1) – this rule addresses synthetic minor permits issued to avoid permitting requirements mandated by Montana’s major source operating permit rules. Missoula does not have the authority to issue synthetic minor permits under the Title V operating permit program and the rule should be deleted.

We appreciate the cooperative relationship between DEQ and Missoula. Thanks for asking for our comments.

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