

AIR QUALITY ADVISORY COUNCIL
Draft Minutes – September 6, 2011

Members/alternates present: Garon Smith, Jan Hoem, Bert Chessin, John Garberson, Guy Hanson, Mark Loeffelbein, Bill Flanery, Patricia Hogan, Tova Sardot

Members/alternates absent: Beth Berlin, Sue Spanke

Staff: Sarah Coefield, Jim Carlson

Public: Brennan Skrutvold

1. **John Garberson called the meeting to order**
2. **Excused absences recognized:** Beth Berlin was absent.
3. **Agenda approved**
4. **Minutes:** approved with correction of one typo, Mark Loeffelbein's and Bert Chessin's attendance and clarification of the John Garberson's Air Pollution Control Board meeting report
5. **Public comment on non-agenda items:** n/a

6. Article Presentation: George will present next week

Jan Hoem presented three articles. The first article, "Are climate change models too conservative?" from *Ars Technica* discusses a commentary in *Nature Geoscience* that argued that current climate models "fail to simulate abrupt changes we've seen in the past, and therefore may be unable to predict similar events in the future." The commentary's author said climate models may be too stable and therefore risk underestimating the possibility of rapid events.

The other two articles, "Artificial leaf turns sunlight into a cheap energy source" and "Outlook brightens for plastic solar cells," were both published in *Science* and discuss solar energy. Jan said the articles make her hopeful that we're on the way to finding a solution to the hurdles associated with clean energy. The group also discussed the falling prices of solar panels.

7. Presentation on the Clean Air Act and the relationships between state, federal and local air quality programs: Jim Carlson, Environmental Health Director

Note: The following is a near-transcript of Jim's talk and the following Q&A session.

Jim Carlson: A lot of people don't understand how our legislative delegation process works in Montana. All forms of local government, cities, counties, etc. get their power from the Montana constitution and the legislature. In Montana, we have city governments and county governments. In most cases, the county government can only make laws if the legislature adopts it. If you want authority to do anything in the county, it has to be specifically authorized by the legislature. Cities, on the other hand, can adopt regulations as long as they aren't prohibited by the legislature. A lot of people who live in the county think commissioners can just pass rules, but they are very limited.

We get our power at local government from the Montana Clean Air Act. There's a section that deals specifically with local programs. The programs must be approved by the Montana Board of Environmental Review. Each municipality must also approve the program. When we pass air pollution control program regulations, we have to get it approved first by the Air Board, and then by county commissioners and the city council and the Board of Environmental Review. If it's part of a SIP it also becomes federally enforceable law, and has to be approved by the EPA.

The department may adopt emission standards, stack standards, etc. as long as they are compatible with, more stringent than or more extensive than those in state requirements. Under the Clean Air Act (CAA), the AQAC is required to exist because the state has a council. We have all the authorities of the CAA except the section that authorizes the state to adopt ambient standards, which protect human health, vegetation, plants and materials. Local programs can adopt regulations to meet the ambient air quality standards, but cannot adopt their own standards; that's set at the state and federal level.

Local programs have to provide for administration, staff, etc., and can collect fees for permits.

We have to be at least as stringent as the state, and can be more stringent. But later the legislature came back and changed the law that says if you are more stringent, you're under subsection 4 that says we can adopt more stringent standards only if a public hearing is held, public comment is allowed, we make a written finding that the requirement protects health and the environment, is achievable, is backed up by scientific studies, etc etc etc. In addition to approving regulations, the Air Board is going through these documents.

For the past 20 years, the state has relied of federal ambient standards.

Brennan Skrutvold: We are more stringent than federal requirements...what kind of processes are there to get that revoked or changed back?

Jim Carlson: When we adopted the standard for emissions for woodstoves, we had a huge amount of scientific data showing how much wood smoke was in the air, what the current levels were, and what the standard was we were violating.

Brennan Skrutvold: What about changing it back?

Jim Carlson: You'd have to go through this whole process of getting everyone to approve it, including EPA because that standard is part of the SIP.

Garon Smith: Usually as the Board we have to show current rule isn't protective of human health. We also look at if rule will make a difference and is the technology available.

Jim Carlson: It's important to understand that the state and federal ambient standards are the backbone target against which all other activities are measured. We are required to do what's necessary to meet those standards, because they are based on what's necessary to protect most people from health impacts. We're required to come up with enforceable plans to meet ambient air standards.

Patricia Hogan: I'm confused. How can they tell a state whether or not they can adopt ambient standards or not? How does that fit in the constitution?

Jim Carlson: I'll get there. There are also some limitations of what DEQ can delegate to local programs. They cannot delegate, and we have emergency powers, by the way...under emergency powers, for example when there's an air pollution emergency, state permitted sources have to comply with our standards. DEQ cannot delegate a source that requires an environmental impact statement, if it's under the major facility siting act or emits 250 tons/yr or more. In Missoula

County, there is only one source, and that is the particle board plant (Roseberg). The rest are under our jurisdiction. There are Title V sources, but they remain under state because feds say so.

Other requirements say if a local program isn't doing its job, the state can pull that program back or give notice so we have to fix it. Missoula County deals with all aspects the state allows us to administer. It's the most complete local program in the state. If the state feels that some source we have is beyond our comprehension they can retain it.

There's a process for changing rules that are in state law that have to go with notifying the public, having an interested parties list, responding to comments, etc. You'll see us do a lot of things at meetings that are required by state law. The requirement to have justification for stricter regulations; I think that's a good idea.

The federal Clean Air Act is an evolution of state/federal enforcement and coordination. There are CAA type laws that date back to 1955. That's sort of when this country got into the realization (via killer smogs) that they had to start dealing with industrial and transportation sources of pollution. The first regulation of automobiles at federal level in 1965 reduced hydrocarbons, which are heavily involved in photochemical smog as well as particulates. California was the state that started regulating automobile exhaust, not the federal government.

The Air Quality Act of 1967 was really the beginning of the state/federal relationship. They started to recognize that California had different problems than New York and Pennsylvania, etc. The government started to require the compilation and publishing of the health and welfare effects on populations and began recognition of the fact that we needed plans implemented at the state level to come into compliance with federal health standards. States are still not required to submit plans, but if they don't do it, the federal government is required to develop enforceable standards for areas that don't meet the standards. The main logic for federal enforcement of air is that it doesn't stay in a state – it crosses boundaries. The wind blows and the guy that's generating the stuff may not be the state that's receiving the negative aspects of economic development. Air moves.

Patricia Hogan: How does that line up with the Constitution? Do they call that commerce?

Jim Carlson: That's part of it.

Bill Flanery: How do they enforce areas that cover more than one state?

Jim Carlson: There are interstate agreements in the SIP as to how each state will take care of it. They had to say we need some minimal emission standards. They manage air quality over state lines, which necessitates federal refereeing. There may be different implementation plans, but there are no longer different federally-set standards. Local areas may have more stringent standards. The really important part of 1967 act is the SIP. That's the plan that, when approved by the federal government, becomes federally enforceable.

Jan Hoem: What can a state like Maine do that doesn't have coal-fired power plants but gets stuff from other states?

Jim Carlson: EPA looks at that.

Guy Hanson: What about tribes?

Jim Carlson: Tribal governments can get authority similar to our local program, but it is administered directly under the feds.

The real incentive for states to cooperate in this is there are monies given to enforce the federal standards. The other part is that if the states don't want to enforce federal ambient standards, then the feds will step in and do it. Primacy authorizing – feds give states primacy to enforce. If that

primacy is withdrawn, the feds enforce. Historically, they have made a point of being not as friendly. They fine and order companies to do things on a very quick basis. Industry begs states to get the primacy back.

With the CAA of 1970 came the creation of EPA, and NAAQS (National Ambient Air Quality Standards). Primary NAAQS protect public health. Secondary NAAQS protect public welfare. The CAA also adopted criteria pollutants. They were originally carbon monoxide, nitrogen dioxide, TSP, hydrocarbons, and oxidants (ozone). Lead was added in 1976 – we had a lot in gasoline. Hydrocarbons were removed from the list in 1983.

The CAA identified nonattainment areas, where people needed a SIP, NSPS were adopted and set by the EPA. It also adopted standards for emissions of hazardous air pollutants – initially for beryllium, mercury, asbestos, etc. and congressional control of automobile emissions.

The 1977 CAA started talking about PSD (Prevention of Significant Deterioration). One of the big reasons for prevention of significant deterioration was a group of power plants proposed for the four-corners area, outside of California. There was air to get dirty out there. It was an appropriate economic choice to make. If you've got dirty air you had to clean it up to a level, if you have clean air, you can dirty it up to that level. Congress said that if you have pristine air, you can only get a little bit dirtier, not all the way to the standard. If you want to be classified as class 3, you have to petition the EPA. A Class I area is a pristine area, such as the Flathead Reservation.

One of the things that's interesting: it's when we first started to control CFCs for ozone hole.

The 1990 CAA included amendments sponsored by Max Baucus. In 1990, 96 cities violated ozone standards. Nonattainment areas were divided into different classifications and told when they had to attain standards. New sources in nonattainment areas must achieve lowest achievable emission rates, which we used with our pellet stoves. Reasonably achievable control technology is more stringent than NSPS.

The list of HAPs (Hazardous Air Pollutants) expanded – we had to spend a lot of time trying to figure out if we had a problem with formaldehyde. The pulp mill had to do a huge amount of work on a number of emissions they had to come into compliance with MACT (Maximum Achievable Control Technology). The 1990 CAA ultimately had the effect of also starting to cause international agreements on the reduction of CFCs. It was the first time we identified a global program with air quality. We were lucky that we found technological alternatives. It's a little harder for CO₂. As a planet we banned the manufacture, limited the use of CFCs, did a good job of reversing and nearly eliminating ozone problem.

The CAA 1997 had some revisions, but the last time it was really amended was 1990.

Jan Hoem: I'm getting back to the letter we wrote. Was there a better procedure we could have followed?

Jim Carlson: When you're in this legal, regulatory environment, you're not allowed to change the rules after the umpire has said the first pitch has been pitched. That's after the permit has been submitted. If you want to look forward to changes, you have to do it before the game starts. Once the game starts, if you want to point out deficiencies about future planning, that's appropriate, perhaps more appropriate once we look back a little. If you find problems with applicable rules, regulations, as applies to a source, those are the sort of comments you can make. There's nothing

wrong with the goal of clean air and not having impact on people, but there's a structure.

Jan Hoem: We were way late once we found out about this.

Jim Carlson: Once the application is submitted it's too late to try to change the rules.

Garon Smith: The Board can only look at the rules at the time.

Tova Sardot: We can say ok, now we know what we can look at next meeting.

Garon Smith: Maybe you want to look at having larger facilities reduce emissions in the air shed through other means as part of permitting process. That would be a change in the rules for whoever comes next.

Jan Hoem: Let's consider putting that on the agenda at some point. This may never come up again for this group and it's hard to sit on our hands.

Guy Hanson: Are federal projects bound by the same rules? Would a federal project be bound by the same process?

Jim Carlson: The federal government has some sort of special...it depends on what kind of federal project. There are secrets and national security, etc., but for the most part that's not going to be the case.

Garon Smith: I served on the state board, and came away with you have to play with the rules that are in place. Also, in a quasi-judicial role, you can only base decision on testimony heard in the case, not personal knowledge. You don't want to be too restrictive, because then there can be efforts made to take authority away. You have to sort of be a little diplomatic in how hard you push.

Jim Carlson: Although, we're under specific legal constructs - when the legislature starts, it is politics. We've not had a problem in the air pollution control program because it's based on good science. A lot of people disagreed with what we did with woodstoves, but the data was there. We were very open to listening to alternatives, as long as they would bring us into the standard, but when 70% of the problem is woodstoves, that's what needs to be addressed.

John Garberson: Let's take the direction of who directs whom to a more local level – the Council, the Board and Department. I don't see the line of control in our regs from the health department. I see guidance and directions should come from Garon - I don't see how it can come from Ellen. There have been several instances when we have tried to go in one direction and immediately before we take off in that direction we get a counter directive. Is there a link in the program? What kind of, how many lines of control do we have?

Jim Carlson: Ellen is ultimately the administrator of the Air Pollution Control Program - the active branches of government, and the department is the administrative branch. It's our responsibility to administer the program. There are policies from the Board. The agency is the administrator of its program.

John Garberson: We as a council should look to get direction from the board and the department?

Garon Smith: There's something in the by-laws that says Council action needs to be approved by the Board or Administrator.

John Garberson: your response tells me we take direction from whichever direction it comes.

Jim Carlson: Sometimes we advise the board, sometimes you guys advise us. This isn't supposed to be autocratic. Historically, this council has been involved in some of the first industrial regulations - dealing with wood-fired boilers way back in the 1970s, the rendering plant, burning of tires, a huge amount of things we assume would never happen anymore that used to. During the '70s when we started working on wood regulations, this board expanded to have a number of members, we had four committees, and they all came up with recommendations and directions to take. This has been a very important part of government and public health protection in this county for four decades. It's not something we take lightly. It's part of how we do business. If we've made someone feel unimportant or diminished it's not because we don't think you're important. Try to look forward and where we may be in the future and what we need to do to comply with the

standards.

Jan Hoem: I think the things you said were really important for the group. A lot of us were feeling demoralized.

Garon Smith: I try not to sway this group in what your actions are, because the Board needs to hear what your thoughts are, not a mirror of my thoughts.

George Hart: We are not allowed as a council to express our opinions to anyone?

Jim Carlson: We want your advice - you advise the board and department, not the public.

Garon Smith: Part of the reason of requiring permission from department or board is to meet legal requirements.

George Hart: why can Missoulian be here?

Jim Carlson: It's an open meeting. Montana has a very good public process. Every piece of information we have in this department is public information with the exception of ongoing criminal investigations, medical files, etc.

Garon Smith: If there's more than a quorum of the Board present, it must be declared a public meeting. When traveling we had to go on separate airplanes so no one airplane would have a quorum.

Bill Flanery: It was helpful to be made aware the of the limitations and requirements on a local air control program. I see now there are limits to what you can do.

Jim Carlson: our purpose is sometimes you need to get penalties to get cooperation, but our purpose is to get compliance.

Bert Chessin: I'm curious – where does public pressure go through? Does it get shifted to this council first, or does it depend on the request?

Jim Carlson: Sometimes it comes to AQAC first. You guys have gotten requests from individuals, and we've asked that they come through this process. In democratic governments, and Missoula County is very open to public comment, sometimes we get requests through the county commissioners or city council and the department takes care of them.

Garon Smith: During the woodstove regulations, we had hearings with AQAC with hundreds of people. The department and board get a sense of where regulations should land, so by time comes to board hearing, people have had their say.

George Hart: I understand how we cannot contact anybody except department and board and the press can report on what we talk about. Where or how might we be allowed to solicit public comment on an item that is within the scope of what we're looking at.

Jim Carlson: I think you could do that at anytime, depending on the subject. If you're going somewhere we have no authority, it would be off the scale. For the most part, soliciting comments is one thing, but representing yourselves as this is our public position – the board is the policy arm of the Air Pollution Control Program – not the council.

Guy Hanson: We're allowed to seek information from anyone, we're not allowed to act as activists or represent an opinion.

John Garberson: Along those lines of who we can talk to, if the press does talk to you, it's all right to talk to them, but you should out of courtesy let the department know you were contacted and what you said.

Jim Carlson: Along those lines, it's important to understand that when I talk to the press or Ellen talks to the press, etc., we let each other know.

John Garberson: Clearly identify to them what the council's opinion is versus what your opinion is.

8. Action item: Hi Country Mini Motors/EnviroHeat's request for solid fuel burning device regulation change.

Brennan Skrutvold returned to the Council to petition for his company's pellet stoves, which have greater emissions than are permitted in the Air Stagnation Zone. The pellet stoves Hi Country Mini Motors/Enviroheat sell have PM2.5 emissions of 1.8-2.5 g/h, but also have a relatively high heat output. Brennan said, "The technology has evolved. I'm focused on pellet stoves that are at 1.8-2.5 g/h. It's still well below the federal standard of 4.5. At the last meeting you said you make a decision based on if it will benefit the current air quality. I can't say it will benefit air quality. I can say it will benefit the economy by lowering fuel prices, putting money into local businesses, etc. The pellet stoves that we sell at Hi Country are made in the U.S. It was brought to my attention the second time we met that the Council felt I should call the company and get them to bring emissions down just for Missoula County. Frankly, that's not going to work. They aren't going to get omnitesting done for anywhere from 1-500 stoves sold per year."

The Council members reiterated their stance that air quality concerns trumped economics and Brennan needed to present solid numbers that demonstrate the stoves' efficiencies. They suggested he gather information on how many grams of particulates the stoves emit per BTU. George Hart said, "If your stove is so much better, what we're looking for is the science, the math...it should be a physics capability to look at your stoves in the same lens we look at other stoves." Brennan said gathering those statistics would be extremely expensive and the corporation isn't going to go out of its way for a market this small.

Guy Hanson said there are pellet stoves made by the same company Brennan was referencing that meet Missoula's requirements. He also told Brennan that his opportunity isn't to change the standard for pellet stoves, but rather to show that his stoves are as good as those that are already on the approved stoves list. The Council discussed looking at adjusting the regulations to look at using BTUs for stoves rather than gross emissions, but Guy reminded them that the subject has been visited before at length, and the County stood by setting gross emissions standards for units under 1 million BTUs.

Jan Hoem pointed out that this was Brennan's third time before the Council, and it may be time for him to move on. She said, "I'm wondering if there's anything more we can give you, other than that you need to come forward with additional information or science. I'm also wondering if this shouldn't go next to the Board. We can say we've met with you and we see some logic in what you're saying, but you haven't made the air quality connection." She emphasized that it would not be a recommendation from the Council that the regulations be changed.

After some more discussion, the Council recommended Brennan return to his conversations with Ben Schmidt (Air Quality Specialist with the Missoula City-County Health Department) to talk about emission tests that would be acceptable to the department.

9. Staff report:

Sarah Coefield gave the staff report. The Missoula City-County Health Department Administration has decided to make a decision about the Administrative Review of the UM boiler permit – the decision should be out September 12, 2011. Wildfires have led to poor air quality for the past couple of weeks, and the trend will likely continue for the near future. Outdoor burning is still closed throughout the county due to fire danger and the online outdoor burn permit program is still

in the works – staff have looked at the prototype and requested some changes before continuing with the system’s construction. The oxygenated fuel season starts November 1st.

10. Public comment:

Tom Javins spoke about woodstove efficiency and said it make him think of the Green Blocks program as a way to reduce air pollution from pellet stoves. If there was some linkage between window quality, insulation, etc., it might mean a little more holistic approach toward stove efficiency rather than looking at the stove itself.

11. Announcements

Guy Hanson attended the Community Health Assessment Focus Group to represent the Council and air quality. He said the group discussed a multitude of health impacts and a lot of new ideas were presented. The groups’ goal is to drill down and see the health concerns in the county. There wasn’t anything significantly new or different for air quality, except that he requested the group show trending numbers that show if air quality is getting better or worse. He said there was a snapshot view of what we’re up against for air quality in the Missoula Valley. Guy said he would be the Council’s official representative to the group.

Patricia Hogan reminded the group that the next discussion of the Povarello siting issue would be the following evening at the First United Methodist Church at 6pm.

12. Adjourn