

LEWIS AND CLARK COUNTY CLEAN AIR ORDINANCE

SECTION 1. TITLE

1.1 This shall be known and cited as: The Lewis and Clark County Clean Air Ordinance.

SECTION 2. AUTHORITY

The authority to promulgate this Ordinance is provided in Article XI, Section 4(B) of the Constitution of the State of Montana and specifically in Section 75-2-301, MCA.

SECTION 3. INTENT

3.1 This Ordinance is necessary for the protection of the health and welfare of the people of Lewis and Clark County.

3.2 The intent of this Ordinance is to maintain or reduce the level of air pollutants at or below those standards found in the Administrative Rules of Montana Title 16, Chapter 8 Sub-Chapters 8 and 9, and in effect as of 10/15/85.

SECTION 4. SCOPE

4.1 This Ordinance applies to all persons, agencies, institutions, businesses, industries or government entities living in or located within the area defined in the attached District Map and legal description. Stationary sources required to obtain a permit from the Montana Department of Health and Environmental Sciences Environmental Quality (DEQ) under Administrative Rules of Montana, Title 16, Chapter 8, Subchapter 11 are not subject to this Ordinance.

POLICY It is the purpose of this Ordinance to preserve, protect, improve, achieve and maintain such levels of air quality as will protect human health in Lewis and Clark County. To this end it is the intention of this Ordinance to:

- a. prohibit the operation of wood, coal or paper burning devices, or intentional open burning on defined "POOR" Air Quality days. "POOR" Air Quality is defined in Section 5.11 of this the Ordinance;
- b. prohibit the burning of coal as a solid fuel at any time unless an exemption has been granted under Section 9.2 of this the Ordinance;
- c. allow the burning of only those materials listed in Section 6.1 of this the Ordinance in a solid fuel heating device or open burning of materials approved by DEQ at any time;
- d. prohibit the idling of diesel or locomotive engines in excess of two (2) hours on "POOR" Air Quality days; and
- e. limit smoke from chimneys to an opacity reading of 40 percent or less at all times.

SECTION 5. COMPLIANCE

5.1 After the effective date of this Ordinance, no person shall operate a wood, paper or exempted coal burning device when the air quality reaches the "Poor" stage, unless a variance or exemption has been granted under this Ordinance.

5.11 Air Quality shall be deemed "Poor" when the level of particulates 10 microns in size and under (as measured by PM-10 sampler) reaches a concentration of 75 ug/m³ or when meteorological conditions indicate 75 ug/m³ will be exceeded if burning is not prohibited.

5.12 For determining whether a "POOR" stage of air quality has been reached, measuring 10 microns or less in size shall be measured using any monitoring method approved by DEQ.

~~5.13~~ ~~When the "Poor" stage has been declared, the Health Department shall publicize that declaration and make it available at least 1 hour before initiating enforcement action.~~

POLICY Completion of the following operating procedures will increase precision and accuracy of data collected by the monitoring network of Lewis and Clark County.

a. One PM-10 sampler will be colocated with one ~~nephelometer T.E.O.M. sampler. A second PM-10 sampler will be located at a different locatin and both~~ All samplers will operate in the Air Pollution Control District. Site selection for the samplers is based on Environmental Protection Agency (EPA) requirements and ~~State Health and Environmental~~ DEQ approval.

b. From November 1st to March 1st, the PM-10 ~~and nephelometer~~ samplers will operate on a 24 hour (plus or minus one hour) schedule allowing for a time frame to complete episode reporting and daily, timely public announcements. During the months of March 1st through October 31st, the (PM-10 sampler) will operate on a reporting schedule of one day sampled every six days (EPA network schedule). ~~The T.E.O.M. will operate continuously throughout the year.~~

c. ~~Filters will be weighed at the Lewis & Clark Health Department before use in the sampler. Pre-weighed filters will be provided by DEQ.~~

d. ~~Filters will be dried and weighed at the Lewis & Clark Health Department after the allotted exposure period. Exposed filters will be returned to DEQ as soon as possible.~~

e. Based on air flow calibrations for the PM10 sampler and mass of particulates impacted on the filters during exposure, particulate concentration will be determined.

Air quality shall be deemed to be "Poor" when:

1. the levels of particulates less than 10 um in size reach a concentration of 75 ug/m³ or,
2. meterological data indicate that the concentrations are likely to exceed the 75 ug/m³ level if a "POOR" status is not declared.

- f. If a "POOR" status is declared below the 75 ug/m³ level the following guidelines will be followed:
1. PM-10 particulate matter will have reached a minimum concentration of 60 ug/m³, and
 2. a meteorological inversion has been declared by the Weather Service that is expected to continue for at least 24 hours from the time a "POOR" status is declared. (Inversions are declared during periods of reverse temperature gradients when normal atmospheric mixing is prevented. This trapping of a cool air layer near the ground surface is accompanied by little or no precipitation and very little wind, resulting in a rapid and heavy build-up of pollutant concentrations. The Weather Service can predict the strength and severity of an inversion and approximate time of breaking point.)
- g. The PM10 samplers will be calibrated on a monthly basis from November through February and quarterly from March through October. Calibrations will follow the PM10 Calibration Procedure as outlined in Section 2.1.3 (June 1985 Revision) of the Quality Assurance Manual of the State Health & Environmental Sciences Department DEQ. For purposes of quality control calibration results must yield a correlation of .991 or greater, with the calculated slope between .02 and .04.

~~5.13 When the "Poor" stage has been declared, the Health Department shall publicize that declaration and make it available at least 1 hour before initiating enforcement action.~~

POLICY

The monitoring season in Lewis and Clark County shall extend from ~~January 1 to December 31~~ November 1 to March 1 of each year. ~~During these months,~~ The Health Department shall determine the current air quality stage, either good, watch or poor, no later than 4:00 pm each day. This determination is in effect for a 24 hour period, unless prevailing weather conditions reduce the amount of particulate in the air. ~~During the period from November 1 to March 1,~~ in order that residents are aware of the current air quality conditions, the following public notification procedure shall be followed. ~~During the remainder of the year, public notification will only be done during "WATCH" and "POOR" episodes.~~

- a. The Health Department shall make available the above information to the local television and radio stations in order that they may air public service announcements. Current conditions are also included with the local news programs of all stations.
- b. The Health Department shall make available the above information to the daily newspaper in order that the paper may publish the air quality prediction and instructions to call the 24 hour Air Quality phone for the most up-to-date information.
- c. The two-line 24 hour Air Quality phone shall carry a recorded message stating the most current stage of air quality, i.e. good, watch, poor.
- d. Days with a "POOR" stage of air quality, shall also carry an additional message on the 24 hour Air Quality phone giving notice that an enforcement procedure is in effect. Should

weather conditions alter a "POOR" stage to a WATCH or GOOD stage all media will be notified of the change, the 24 hour Air Quality phone updated and the enforcement procedure cancelled.

- e. Area school districts and day care centers shall be notified of the "POOR" stage and advised to keep children indoors.
- f. Businesses operating incinerators shall be notified by phone to cease all burning during "POOR" stages.

5.2 It shall be a violation of this Ordinance to allow diesel fuel burning vehicles or locomotives to idle over a period exceeding two (2) hours during "POOR" air quality periods.

POLICY On days determined to be "POOR" Air Quality, the Health Department will employ the following notification procedure for informing appropriate persons and agencies of the two (2) hour limitation of idling of diesel fueled engines.

- a. Upon determination of a "POOR" Air Quality day the Trainmaster of Burlington Northern will be notified.
- b. The Husky Truck Station east of Helena, a congregation point of diesel drivers, will be notified on "POOR" Air Quality days.
- c. Public Service Announcements on the local television and radio station will be requested to announce the current air quality conditions. (See also Section 5.13-Policy)
- d. The local daily newspaper will be requested to print an air quality prediction and a 24 hour Air Quality phone number to call for current conditions.
- e. Complaints made to the ~~County~~ Health Department concerning excessive idling will be answered. For enforcement purposes the two (2) hour period will begin being clocked when the complaint is answered by Health Department officials.

SECTION 6. PROHIBITED FUELS

6.1 Within the air pollution control district no person or entity shall burn any material in a residential solid fuel burning device except regular black and white newsprint, untreated kraft paper, untreated wood and lumber and products manufactured for the sole purpose of use as fuel. Colored newspaper is prohibited for use in solid fuel burning devices.

~~Only those materials specifically approved by DEQ may be burned in an open burn.~~ The use of coal is prohibited as a solid fuel at anytime unless an exemption has been granted as outlined in Section 9.2 of this Ordinance.

6.2 Incinerators must comply with Section 16.8.1406 of the Administrative Rules of Montana, and in effect as of 10/15/85.

SECTION 7. VISIBLE EMISSIONS

- 7.1 No person owning or operating a residential solid fuel burning device shall cause, allow, or discharge emissions from such device which are of an opacity greater than forty (40) percent.
- 7.2 The provisions of subsection 7.1 shall not apply to emissions during the building of a new fire, for a period or periods aggregating no more than fifteen (15) minutes in any four (4) hour period.
- 7.3 No person owning, operating or in control of a residential solid fuel burning device for which a variance or exemption has been issued shall cause, allow, or discharge any emissions from such device which are of an opacity greater than twenty (20) percent during a poor air quality episode declared by the Health Department pursuant to Section 5.

POLICY Opacity shall be determined only by Health Department personnel who have successfully completed the Visual Emissions Evaluation Course and hold a current qualification.

SECTION 8. VARIANCES

- 8.1 Lewis & Clark City-County Board of Health may grant an individual or categorical variance or partial variance if it finds that compliance with the requirements from which variance is sought would produce hardship without equal or greater benefits to the public. In no event shall any such variance authorize any source to emit air pollutants in excess of levels authorized in ARM Title 16, Chapter 8, Subchapter 14 (Emission Standards), or in a manner which causes or contributes to an exceedance of any standard set forth in ARM Title 16, Chapter 8, Subchapter 8 (Ambient Air Quality Standards). A variance may not be issued from ARM Title 16, Chapter 8, Subchapter 14, Sections 1406 and 1427 (Incinerators and Odors).

POLICY Any individual or entity may apply to the Health Department for a variance from the provisions of this Ordinance. A variance may be requested for, but not limited to: permission to burn on "POOR" Air Quality days because of the type of burning device, economical hardship or for permission to use certain prohibited fuels.

The application, available from the Health Department on provided forms, shall contain information and data as the Board of Health may require. The Health Department may grant a variance if:

- a. The emissions proposed to occur do not constitute a danger to the public health and safety, and
- b. Compliance with the provisions of this Ordinance would produce hardship without equal or greater benefits to the public.

In the event that an application for a variance is denied by the Health Department, a written letter stating the reasons for denial will be forwarded to the applicant as well as information outlining the following procedure.

a1. A written request for a variance from this the Ordinance may be made to the Board of Health.

b2. This request must be submitted to the Environmental Health Supervisor ten (10)

calendar days prior to the regularly scheduled Board of Health meeting.

- c.3- After receiving the written request the Environmental Health Supervisor will include the request on the Board of Health agenda.
- d.4- The Board of Health shall take action on such requests during a public hearing conducted during a regular monthly meeting of the Board of Health.
- e.5- The Board of Health, upon notification by the Environmental Health Supervisor of such a request, shall within thirty (30) days act upon the request.
- f.6- The hearing shall be conducted by a majority of the Board of Health or by a Hearings Officer pursuant to the Board of Health's policy.

A variance may be granted for a limited time period depending on the reasons the variance is sought.

SECTION 9. EXEMPTIONS

- 9.1 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 on "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 (LIEAP) as administered by Lewis & Clark Human Services.

POLICY Application for a low income exemption may be obtained by submitting an application on provided forms to the Health Department providing validation of qualification for the LIEAP program. A low income exemption is valid until November 1st of the next year.

- 9.2 Coal Burning Exemption - The use of coal as a solid fuel is prohibited within the Air Pollution Control District. A person or entity may apply to the Health Department for an exemption to allow the burning of low sulphur coal on days not determined as a POOR Air Quality Day. Low sulphur coal shall be defined as coal containing less than .28 pounds of sulphur per million BTU's. Application for this exemption must be made within six (6) months of the date of final approval of this Ordinance by the State Board of Health. Such an exemption shall be granted only upon the submission of credible evidence to the Health Department that coal has been burned as a source of heat prior to the effective date of the Ordinance.

POLICY After the effective date of this Ordinance, no person or entity shall burn solid or liquid fuels containing more sulphur than .28 pounds of sulphur per million BTU's within the Lewis and Clark County Air Pollution District.

After the effective date of this Ordinance, no person or entity shall burn solid or liquid fuel containing more sulphur than .28 pounds of sulphur per million BTU;s (low sulphur coal) within the Lewis and Clark County Air Pollution District unless substantial credible evidence is submitted to the Lewis and Clark County Health Department that a coal-burning stove or furnace was purchased or delivered to the person or entity prior to the effective date of this Ordinance, and that the coal-burning stove or furnance was used as source of heat prior to the effective date of this Ordinance, and the Department issues a

written variance.

Nothing herein allows a person or entity to operate any coal-burning stove or furnace when the air quality reaches a "POOR" stage (as defined in Section 5 of this Ordinance), unless a variance has been issued pursuant to Section 8 of this Ordinance.

SECTION 10. PENALTIES FOR VIOLATION

- 10.1 Upon a person or entity's first violation of this Ordinance, a warning shall be issued from the ~~Health~~ Department, including a summary of the Lewis and Clark ~~County~~ Clean Air Ordinance and educational materials.
- 10.2 Persons or entities violating this Ordinance within a five (5) year period after being issued a warning or within five (5) years after having been convicted of violating this Ordinance shall be issued a Violation Notice.
- 10.3 A Violation Notice shall direct the person or entity to appear at a certain date and time before the Justice of the Peace for Lewis and Clark County. A hearing will be scheduled to determine whether or not the person or entity has violated a provision of this Act.
- 10.4 The Provisions of this Ordinance shall be enforced by the ~~Lewis and Clark~~ City-County Health Department health authorities or the appropriate City or County law enforcement official.
- 10.5 A person or entity who is convicted of violating a regulation contained within the Lewis and Clark County Clean Air Ordinance shall be subject to a penalty of not more than \$25.00. For a second conviction under this Ordinance a person or entity shall be subject to a penalty of not more than \$50.00. Upon a third or subsequent conviction under this Ordinance, a person or entity shall be subject to a penalty of not more than \$75.00 per offense. The penalty provisions of this section are adopted pursuant to the provisions of Sections 75-2-412 and 75-2-413, MCA.
- 10.6 No person or entity shall be cited for a violation of this Ordinance more than once in any calendar day. However, each calendar day of violation may be considered a separate offense.
- 10.7 For purposes of Section 10.5, only those convictions of ~~this~~ the Ordinance by a person or entity which have occurred within five (5) years of a violation shall be considered as prior convictions.

SECTION 11. EVALUATION

The Lewis and Clark City-County Board of Health and the Lewis and Clark City-County Health Department shall review the effectiveness of this Ordinance on a yearly basis and shall make appropriate recommendations to the Lewis and Clark Board of County Commissioners for revisions of this Ordinance. Such review shall focus on the mean level of total suspended particulate matter measured as micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) contained in the ambient air within the Air Quality District ~~in the annual period from November 1 to March 1~~. Such review shall also take into account the number of air inversions lasting for more than 24 hours which occur within the same annual period.

SECTION 12. AMENDMENTS & REVISIONS

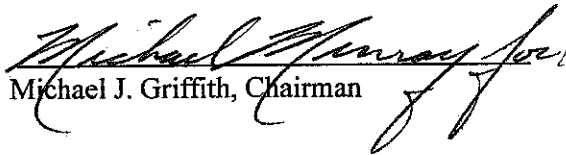
The Lewis and Clark County Board of County Commissioners may enact any amendments or revisions of this Ordinance which have been approved by the State Department of Health and Environmental Sciences. DEQ

- 12.1 The Lewis and Clark Board of County Commissioners grants to the Lewis and Clark City-County Board of Health the authority to establish the policies and procedures that will provide for the implementation of the Clean Air Ordinance.


The Policy Section of this Ordinance may be amended and revised by the Lewis and Clark City-County Board of Health in order to remain consistent with the Clean Air Ordinance.

Adopted this 6th day of April, 1999

LEWIS AND CLARK COUNTY
BOARD OF COUNTY COMMISSIONERS


Michael J. Griffith, Chairman

ATTEST:


Paulette DeHart, Clerk of the Board