

## **CHAPTER 14 ENFORCEMENT AND ADMINISTRATIVE PROCEDURES**

### **Rule 14.101 - Notice of Violation**

- (1) Whenever the department determines that there are reasonable grounds to believe that a violation of any provision of this Program or a condition or limitation imposed by a permit issued by the department has occurred, the 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 the Program or permit condition alleged to have been violated and the facts alleged to constitute the violation.
- (3) If the department issues a Notice of Violation to a person for a first violation of any provision of Chapter 9 (Solid Fuel Burning Devices) during any one burning season, as defined in that Chapter, the department shall provide such person with a summary of the regulations that affect solid fuel burning devices.

### **Rule 14.102 - Order to Take Corrective Action**

- (1) A Notice of Violation may include an Order to Take Corrective Action within a reasonable period of time stated in the order.
- (2) The order may:
  - (a) require the production of information and records;
  - (b) may prescribe the date by which the violation must cease; and
  - (c) may prescribe time limits for particular actions in preventing, abating, or controlling the emissions.
- (3) The order becomes final unless, within twenty (20) days after the Notice and Order is received, the person named requests in writing an administrative review as provided for in Rule 14.106.

### **Rule 14.103 - Appearance Before the Control Board**

- (1) The department or the Control Board may require alleged violators of this Program to appear before the Control Board for a hearing at a time and place specified in the notice.

### **Rule 14.104 - Other Remedies**

- (1) Action under this Chapter does not bar enforcement of this Program by injunction, seeking penalties or other appropriate remedy.
- (2) Nothing in this Chapter may be construed to require a hearing prior to the issuance of an emergency order pursuant to Chapter 4 of this Program. When applicable, the emergency procedures of the Missoula County Air Stagnation Plan, Chapter 4 supersede the provisions of this Chapter.

### **Rule 14.105 - Credible Evidence**

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

**Rule 14.106 - Administrative Review**

- (1) A person subject to a Notice of Violation or Order to Take Corrective Action issued under the authority of this Program may request an administrative review by the Health Officer or his or her designee (Hearing Officer).
- (2) A request for an administrative review does not suspend or delay the department's notice or order except as otherwise provided for in this Program.
- (3) 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.
- (4) 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.
- (5) The Hearing Officer may continue the administrative review for a reasonable period following the hearing to obtain information necessary to make a decision.
- (6) The Hearing Officer shall affirm, modify, or revoke the Notice of Violation, Order to Take Corrective 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 14.107 - Control Board Hearings**

- (1) Any person subject to an Order to Take Corrective Action issued under the authority of this Program may request a hearing before the Control Board following the conclusion of an administrative review.
- (2) A person that is adversely affected by the department's decision to issue, modify or deny a permit under the authority of this Program may request a hearing before the Control Board. A request for a hearing must be received with fifteen (15) days of the department's final decision to issue, modify or deny a permit. The request for a hearing must state in writing specific grounds for issuing the permit, for not issuing the permit or for modifying the permit.
- (3) The Control Board shall schedule a hearing within sixty (60) days after receipt of a written request and shall notify the applicant of that hearing.
- (4) The Control Board may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of the parties.
- (5) 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 Board; and
  - (c) third, the 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.
- (6) After a hearing regarding an Order to Take Corrective Action, the Control Board shall issue a final decision that affirms, modifies or rescinds the department's Order to Take Corrective Action. In addition, the Control Board may issue an appropriate order for the prevention, abatement or control of the emissions involved.
- (7) After a hearing regarding a permitting action, the Control Board shall issue, deny, modify, suspend or revoke the permit within 30 days following the conclusion of the hearing.

- (8) A person aggrieved by an order of the Control Board may apply for rehearing upon one or more of the following grounds and upon no other grounds:
  - (a) the Control 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.
- (9) The petition for a rehearing must be filed with the Control Board within thirty (30) days of the date of the Control Board's order.

**Rule 14.108 - 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 Fourth Judicial District Court.
- (2) The appeal shall be taken by serving a written notice of appeal upon the chair of the Control 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 of the Fourth Judicial District. Immediately after service upon the Control Board, the Control Board shall certify to the District Court the entire record and proceedings, including all testimony and evidence taken by the Control 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 Control Board and the appellant.
- (3) The District Court shall hear and decide the cause upon the record of the Control Board. The District Court shall determine whether the Control Board regularly pursued its authority, whether the findings of the Control Board were supported by substantial competent evidence, and whether the Control Board made errors of law prejudicial to the appellant.
- (4) Either the Control 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 Control Board and of the district court's review of the record.