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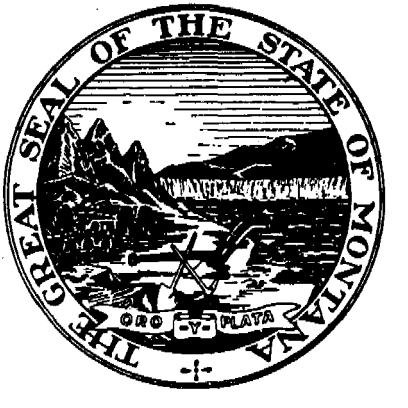

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 11

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NOTICE SECTION

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the amendment of rule ARM 16-2.14(1)-S1410, defining a term used in the air quality rules	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE ARM 16-2.14(1)-S1410 (Definitions)

1. On October 20, 1978, at 9:00 a.m., or as soon thereafter as practicable, a public hearing will be held in the auditorium of the Department of Social and Rehabilitation Services building, 111 Sanders, Helena, Montana, to consider the amendment of Rule ARM 16-2.14(1)-S1410.

2. The proposed amendment will change the catchphrase of the rule and add a definition for "opacity".

3. The proposed change of catchphrase and definition of "opacity" are as follows:

16-2.14(1)-S1410 ~~LIMITATION OF LEVELS OF EMISSIONS~~ DEFINITIONS

"Opacity" means the degree, expressed in percent, to which emissions reduce the transmission of light and obscure the view of an object in the background. Where the presence of uncombined water is the only reason for failure of an emission to meet an applicable opacity limitation contained in this chapter, that limitation shall not apply. For the purpose of this chapter, opacity determination shall follow all requirements, procedures, specifications, and guidelines contained in Method 9, Appendix A, Part 60.275 (Test Methods and Procedures), Title 40, Code of Federal Regulations, as revised July 1, 1977, or by an in-stack transmissometer which complies with all requirements, procedures, specifications and guidelines contained in Performance Specification 1, Appendix B, Part 60.275 (Test Methods and Procedures), Title 40, Code of Federal Regulations as revised July 1, 1977.

4. The Board is proposing this amendment to provide a definition for the term "opacity", which is used in rules promulgated under the authority of the Clean Air Act of Montana and to provide a catchphrase which reflects the content of the rule.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing.

6. C. W. Leaphart, Jr., 1 N. Last Chance Gulch, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendment is based on Section 69-3909(1), R.C.M. 1947.

JOHN W. BARTLETT, Chairman

Certified to the Secretary of State September 5, 1978

11-9/14/78

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the amendment of rule ARM 16-2.14(1)-S1420, establishing standards for incinerators	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE ARM 16-2.14(1)-S1420 (Incinerators)

1. On October 20, 1978, at 9:00 a.m., or as soon thereafter as can be heard, a public hearing will be held before the Board, in the basement auditorium of the SRS building, Capitol Complex, 111 Sanders Street, Helena, Montana, to consider the amendment of rule ARM 16-2.14(1)-S1420.

2. The proposed amendment replaces present rule 16-2.14(1)-S1420 found in the Administrative Rules of Montana, pages 16-49 and 16-49.1. The proposed amendment would delete obsolete language and reorganize the rule in preparation for its submittal to the U.S. Environmental Protection Agency as a revision to the Montana State Implementation Plan (S.I.P.) of the Federal Clean Air Act.

3. The rule as proposed to be amended provides as follows:

16-2.14(1)-S1420 INCINERATORS

(1) ~~Existing incinerators.--No person shall cause, suffer, or allow to be discharged into the outdoor atmosphere from any incinerator constructed, installed or significantly modified prior to September 5, 1975, particulate matter to exceed 0.3 grains per standard cubic foot of dry flue gas, adjusted to 12% carbon dioxide and calculated as if no auxiliary fuel had been used, for incinerators designed for burning not more than 200 pounds of refuse per hour or to exceed 0.2 grains per standard cubic foot of dry flue gas, adjusted to 12% carbon dioxide and calculated as if no auxiliary fuel had been used, for incinerators designed for burning more than 200 pounds of refuse per hour.~~ No incinerator shall be used for the burning of refuse unless such incinerator is a multiple chamber incinerator or one of other design of equal effectiveness approved by the department prior to installation or use.

(2) ~~New incinerators.--No person shall cause, suffer or allow to be discharged into the outdoor atmosphere from any incinerator constructed, installed or significantly modified on or after September 5, 1975, particulate matter to exceed 0.10 grains per standard cubic foot of dry flue gas, adjusted to 12% carbon dioxide and calculated as if no auxiliary fuel had been used.~~ No person shall cause or authorize to be discharged into the outdoor atmosphere from any incinerator, particulate matter in excess of 0.10 grains per standard cubic foot of dry flue gas, adjusted to twelve percent (12%) carbon dioxide and calculated as if no auxiliary fuel had been used.

~~(3) No incinerator shall be used for the burning of refuse unless such incinerator is a multiple chamber incinerator or other design of equal effectiveness approved by the administrator prior to installation or use. Existing incinerators which are not multiple chamber incinerators may be altered, modified or rebuilt as may be necessary to meet this requirement. The administrator may approve any other alteration or modification to an existing incinerator if such be found by him to be equally effective for the purpose of air pollution control as a modification or alteration which would result in a multiple chamber incinerator. All new incinerators shall be multiple chamber incinerators, provided that the administrator may approve any other kind of incinerator if he finds in advance of construction or installation that such other kind of incinerator is equally effective for purposes of air pollution control as an approved multiple chamber incinerator.~~ No person shall cause or authorize to be discharged into the outdoor atmosphere from any incinerator emissions which exhibit an opacity of ten percent (10%) or greater averaged over six (6) consecutive minutes.

(4) ~~Incinerators constructed, installed or significantly modified prior to September 5, 1975, shall comply with section (2) of this rule by September 30, 1977.~~ The department may, for purposes of evaluating compliance with this rule, direct that no person shall operate or cause or authorize the operation of any incinerator at any time other than between the hours of 8:00 a.m. and 5:00 p.m. At those times when the operation of incinerators is prohibited by the department, the owner or operator of the incinerator shall store the refuse in a manner that will not create a fire hazard or arrange for the removal and disposal of the refuse in a manner consistent with ARM 16-2.14(8)-S14315, Solid Waste Management.

(5) ~~The administrator may direct for purposes of evaluating compliance with this rule that no person shall operate or cause or permit the operation of any incinerator at any time other than between the hours of 8:00 a.m. and 5:00 p.m. During the time the order to burn between the hours indicated is in effect, the owner or operator of the incinerator shall store the combustibles in a manner that will not create a fire hazard or arrange for the removal of the material to be disposed of in a manner consistent with the rule for proper disposal of solid waste materials.~~ The provisions of this rule are applicable to performance tests for determining emissions of particulate matter from incinerators. All performance tests shall be conducted while the affected facility is operating at or above the maximum refuse charging rate at which such facility will be operated and the refuse burned shall be representative of normal operation and under such other relevant conditions as the department shall specify based on representative performance of the affected facility. Test methods set forth in Title 40, Part 60, Code of Federal Regulations, or

equivalent methods approved by the department shall be used.

~~(6)--No-person-shall-cause,-suffer-or-allow-to-be-discharged-into-the-outdoor-atmosphere-from-any-incinerator emissions-which-are-of-a-shade-or-density-darker-than-number 1/2-on-the-Ringelmann-chart-or-of-greater-than-10%-opacity.~~

~~(7)--The-provisions-of-this-rule-are-applicable-to-performance-tests-for-determining-emissions-of-particulate-matter-from-incinerators.--All-performance-tests-shall-be-conducted-while-the-affected-facility-is-operating-at-or-above-the-maximum-refuse-charging-rate-at-which-such-facility-will be-operated-and-the-solid-waste-burned-shall-be-rperesentative-of-normal-operation-and-under-such-other-relevant-conditions-as-the-administrator-shall-specify-based-on-representative-performance-of-the-affected-facility.--Test-methods set-forth-in-Title-40,-Part-60,-Code-of-Federal-Regulations, or-equivalent-methods-approved-by-the-administrator-shall-be used.~~

4. The board is proposing to amend this rule to reorganize the rule and implement minor changes. The present rule distinguishes between existing and new incinerators but since all incinerators had to meet the same standards by September 30, 1977, the proposed rule does not differentiate between the two. The proposed rule would also require that approval for modifications of incinerators be received from the department instead of from the administrator of the department's environmental sciences division. Reference to the Ringelmann chart for determining compliance with opacity was dropped to reflect a change in testing methods as found in the proposed "opacity" definition, ARM 16-2.14(1)-S1410.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing.

6. C. W. Leaphart, Jr., of 1 N. Last Chance Gulch, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority of the Board to make the proposed amendment is based on section 69-3913, R.C.M. 1947.

JOHN W. BARTLETT, Chairman

Certified to the Secretary of State September 5, 1978

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the amendment of rule ARM 16-2.14(1)-S14082, setting standards of performance for new stationary sources and rule ARM 16-2.14(1)-S14084, emission standards for hazardous air pollutants	) NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE ARM 16-2.14(1)-S14082 (Stationary Sources) AND RULE ARM 16-2.14(1)-S14084 (Hazardous Air Pollutants)

1. On October 20, 1978, at 9:00 a.m., or as soon thereafter as practicable, a public hearing will be held in the basement auditorium of the Department of Social and Rehabilitation Services building, 111 Sanders, Helena, Montana, to consider the amendment of rules ARM 16-2.14(1)-S14082 and ARM 16-2.14(1)-S14084.

2. The proposed amendments modify the present rules ARM 16-2.14(1)-S14082 and 16-2.14(1)-S14084 found in the Administrative Rules of Montana. The proposed amendment to rule ARM 16-2.14(1)-S14082 would add three new sources and cite the latest (1977-78) amendments to Title 40, Part 60, Code of Federal Regulations. The proposed amendment to rule ARM 16-2.14(1)-S14084 would cite the latest (1977-78) amendments to Title 40, Part 61, Code of Federal Regulations.

3. The rules, as proposed to be amended, provide as follows: (Matter to be stricken has been interlined, new material has been underlined.)

16-2.14(1)-S14082 STANDARD OF PERFORMANCE FOR NEW STATIONARY SOURCES (1) This rule shall apply to the following new stationary sources: fossil fuel-fired steam generators, incinerators, portland cement plants, nitric acid plants, sulfuric acid plants, asphalt concrete plants, petroleum refineries, storage vessels for petroleum liquids, secondary lead smelters, secondary brass and bronze ingot production plants, iron and steel plants, sewage treatment plants, primary copper smelters, primary lead smelters, primary zinc smelters, primary aluminum reduction plants, wet process phosphoric acid plants, superphosphoric acid plants, diammonium phosphate plants, triple superphosphate plants, granular triple superphosphate ~~plants~~ storage facilities, coal preparation plants, ferroalloy production facilities, ~~and~~ steel plant electric arc furnaces, kraft pulp mills, and lime manufacturing plants as defined in section (2) of this rule.

(2) All new stationary sources shall comply with the provisions of Title 40, Part 60, Code of Federal Regulations, July 1, ~~1975~~ 1977, as amended at ~~40 FR 33152-33166, August 6, 1975, 40 FR 43850-43854, September 23, 1975, 40 FR 46250-46271, October 6, 1975, 40 FR 58416-58420, December 16, 1975, 40 FR 59204-59205, December 22, 1975, 41 FR 2232-2235, and 2332-2341, January 15, 1976, and 41 FR 3826-3830, January 26, 1976,~~ 42 FR 37000, July 19, 1977,

42 FR 37936-37938, July 25, 1977, 42 FR 38178, July 27, 1977, 42 FR 39389, August 4, 1977, 42 FR 41122, August 15, 1977, 42 FR 41424, August 17, 1977, 42 FR 41754-41789, August 18, 1977, 42 FR 44812, September 7, 1977, 42 FR 55796-55797, October 18, 1977, 42 FR 57125-57126, November 1, 1977, 42 FR 58520-58521, November 10, 1977, 42 FR 61537, December 5, 1977, 43 FR 1494-1498, January 10, 1978, 43 FR 7568-7596, February 23, 1978, 43 FR 8799-8800, March 3, 1978, 43 FR 9276-9278 and 9452-9454, March 7, 1978, 43 FR 10866-10873, March 15, 1978, 43 FR 11984-11986, March 23, 1978, and 43 FR 15600-15602, April 13, 1978, with the following exceptions: 40 ~~CRF~~ CFR 60.10 and 40 CFR 60.20-60.29 ~~is~~ are deleted. Copies of the federal regulations are available at the air quality bureau of the department, Cogswell Building, Helena, Montana, phone: (406) 449-3454.

16-2.14(1)-S14084 EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

(1) This rule shall apply to the owner or operator of any stationary source for which an emission standard for hazardous air pollutants is prescribed by section (2) of this rule.

(2) The owner or operator of any stationary source shall comply with the provisions of Title 40, Part 61, Code of Federal Regulations, July 1, ~~1975~~ 1977, as amended at ~~40 FR 48292 48311, October 14, 1975,~~ 42 FR 41424, August 17, 1977, 42 FR 51574, September 29, 1977, 43 FR 8800, March 3, 1978, and 43 FR 26373-26374, June 19, 1978, with the following exception: 40 CFR 61.16 is deleted.

(3) A listing of affected stationary sources as defined in 40 CFR 61 shall be maintained by and available from the air quality bureau of the department. Copies of the federal regulations are also available from the air quality bureau of the department, Cogswell Building, Helena, Montana, phone: (406) 449-3454.

4. The Board is proposing to amend these rules because, to be delegated enforcement authority by EPA over sources regulated by these amendments, the State must develop adequate enforcement procedures. Previously, the State chose to adopt by reference the standards in the federal regulations and these amendments reflect the most recent changes in those regulations.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing.

6. C. W. Leaphart, Jr., 1 N. Last Chance Gulch, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority of the Board to make the proposed amendments is based on section 69-3913, R.C.M. 1947.

John W. Bartlett

JOHN W. BARTLETT, Chairman

Certified to the Secretary of State September 5, 1978

MAR Notice No. 16-2-95 11-9/14/78

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the amendment of Rule ARM 16-2.14(1)-S1460, restrictions on visible air contaminants	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE ARM 16-2.14(1)-S1460 (Visible air contaminants, Restrictions)

1. On October 20, 1978, at 9:00 a.m., or as soon thereafter as the matter can be heard, a public hearing will be held in the basement auditorium of the Social and Rehabilitation Services building, 111 N. Sanders, Capitol Complex, Helena, Montana, to consider the amendment of rule ARM 16-2.14(1)-S1460.

2. The proposed amendment replaces present rule ARM 16-2.14(1)-S1460 found in the Administrative Rules of Montana. The proposed amendment would substitute the term "opacity" for references to the Ringelmann chart and modify the exclusions section of the existing rule.

3. The rule as proposed to be amended provides as follows:

16-2.14(1)-S1460 VISIBLE AIR CONTAMINANTS, RESTRICTIONS

(1) ~~No person shall cause, suffer, allow or permit emissions from any installations which are:~~

~~(a) of a shade or density darker than that designated as No. 2 on the Ringelmann Chart, or~~

~~(b) of such opacity as to obscure an observer's view to a degree greater than does smoke described in subsection (1)(a) of this regulation.~~

~~This section does not apply to existing incinerators or existing wood waste burners.~~ No person shall cause or authorize emissions to be discharged into the outdoor atmosphere from any source installed on or before November 23, 1968, which exhibit an opacity of forty percent (40%) or greater averaged over six (6) consecutive minutes.

(2) ~~No person shall discharge into the atmosphere from any single source of emission whatsoever any air contaminant:~~

~~(a) Shade or density darker than that designated as No. 1 on the Ringelmann Chart, or~~

~~(b) of such opacity as to obscure an observer's view to a degree greater than does smoke described in subsection (2)(a) of this regulation.~~ No person shall cause or authorize emissions to be discharged into the outdoor atmosphere from any source installed after November 23, 1968, which exhibits an opacity of twenty percent (20%) or greater averaged over six (6) consecutive minutes.

(3) ~~The provisions of sections (1) and (2) of this rule shall not apply to emissions during the building of a new fire, cleaning of fires or soot blowing, the shade or density~~

~~of which is less than No. 3 on the Ringelmann Smoke Chart or of such opacity as to obscure an observer's view to a degree greater than does smoke designated as No. 3 on the Ringelmann Smoke Chart for a period or periods aggregating no more than four minutes in any 60 minutes.~~

~~Where the presence of uncombined water is the only reason for failure of an emission to meet the requirements of sections (1) and (2) of this regulation, such sections shall not apply.~~

~~The provisions of Section (1) of this regulation shall not apply to the following:~~

~~(a) Transfer of molten metals.~~

~~(b) Emissions from transfer ladles.~~

During the building of new fires, cleaning of grates, or soot blowing, the provisions of sections (1) and (2) shall apply, except that a maximum average opacity of sixty percent (60%) shall be permissible for not more than one (1) four-minute period in any sixty (60) consecutive minutes. Such a four-minute period shall mean any four (4) consecutive minutes.

(4) This rule shall not apply to emissions from:

(a) Wood-waste burners

(b) Incinerators

(c) Motor vehicles

(d) Those new stationary sources listed in ARM 16-2.14(1)-S14082 for which a visible emission standard has been promulgated.

4. The Department is proposing that the Board amend this rule to implement several changes prior to submitting the rule to the U. S. Environmental Protection Agency (EPA) as a revision to the state implementation plan (S.I.P.) of the Federal Clean Air Act. The Department is proposing to utilize EPA testing methods for opacity in lieu of the Ringelmann Chart for determining compliance with this rule. Therefore, the term opacity as it would be defined in ARM 16-2.14(1)-S1410 is proposed to be substituted for references in this rule to the Ringelmann Chart. That proposed definition would exclude the presence of uncombined water from opacity and so this rule would eliminate it.

The section of the existing rule which excludes certain sources from the rule's applicability would be modified under the department's proposal. Existing exclusions would be discontinued and new ones created. The department believes adequate coverage exists in other rules for some of these sources and that other changes should be made to reflect department policy.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing.

6. C. W. Leaphart, Jr., 1 N. Last Chance Gulch, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendment is based on section 69-3913, R.C.M. 1947.

In the matter of the amendment of Rule ARM 16-2.14(1)-S14030, air quality standards for wood-waste burners	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE ARM 16-2.14(1)-S14030 (Wood-Waste Burners)

1. On October 20, 1978, at 9:00 a.m., or as soon thereafter as the matter can be heard, a public hearing will be held before the Board in the basement auditorium of the Social and Rehabilitation Services building, 111 N. Sanders, Capitol Complex, Helena, Montana, to consider the amendment of rule ARM 16-2.14(1)-S14030.

2. The proposed amendment replaces present rule ARM 16-2.14(1)-S14030 found in the Administrative Rules of Montana. The proposed amendment would delete obsolete language differentiating between existing and new wood-waste burners, substitute opacity for references to the Ringelmann Chart, drop the requirement that wood-waste burner operators submit the names and duties of their employees and reorganize the rule.

3. The rule as proposed to be amended provides as follows:

16-2.14(1)-S14030 WOOD-WASTE BURNERS

(1) Construction, reconstruction, or substantial alteration of wood-waste burners is prohibited ~~after the effective date of this regulation unless plans and specifications have been submitted to, and approved by, the director.~~ unless the requirements of the permit rule, ARM 16-2.14(1)-S have been met.

~~(2) Emission standards for Wood-Waste Burners constructed, Reconstructed, or Substantially Altered after the Effective Date of this Regulations.~~

~~(a) There shall not be discharged into the atmosphere from any wood-waste burner any air contaminant for a period or periods aggregating more than four minutes in any one hour which is:~~

~~(i) Darker in shade than that designated as No. 1 of the Ringelmann Chart.~~

~~(ii) Of such opacity as to obscure an observer's view to a degree greater than that described in subsection (i) of this section.~~

~~(b) Particulate matter shall not be discharged from a wood-waste burner in excess of 0.2 grains per standard cubic foot corrected to 12 percent CO_2 for existing installations or in excess of 0.1 grains per standard cubic foot corrected to 12 percent CO_2 for new installations.~~ No person shall cause or authorize to be discharged into the outdoor atmosphere from any wood-waste burner any emissions which exhibit

an opacity of twenty percent (20%) or greater averaged over six (6) consecutive minutes.

~~(3) Existing wood waste burners shall comply with emission standards of this regulation within 18 months from the effective date of this regulation. All new wood waste burners shall comply with the emission standards set forth in section (2) of this rule.~~ No person shall cause or authorize to be discharged into the outdoor atmosphere from any wood-waste burner particulate matter in excess of 0.1 grains per standard cubic foot corrected to twelve percent (12%) CO_2.

~~(4) Existing wood waste burners shall comply within 18 months from the effective date of this regulation and new wood waste burners with the following:~~

~~(a) A thermocouple and recording pyrometer or other approve temperature measurement and recording devices shall be installed and maintained. The thermocouple shall be installed on the burner at a location six inches above and near the center of the horizontal screen or at another approved location.~~

~~(b) A daily written log of the wood waste burner operation shall be maintained to determine optimum patterns of operation for various fuel and atmospheric conditions. The log shall include, but not be limited to, the time of day, draft settings, exit gas temperature, type of fuel, and atmospheric conditions. The log or a copy shall be submitted to the director within ten days upon request.~~

~~(c) Rubber products, asphaltic materials, or materials which cause dense smoke discharge shall not be burned or disposed of in wood waste burners.~~

A thermocouple and a recording pyrometer or other temperature measurement and recording device approved by the department shall be installed and maintained on each wood-waste burner. The thermocouple shall be installed at a location six (6) inches above and near the center of the horizontal screen or at another location approved by the department.

~~(5) The owners or operators of all wood waste burners shall submit the names of operating and maintenance personnel and specify their duties regarding burner operations and control and any other duties not associated with burner operation control. It must be shown that there is adequate responsibility delegated for proper burner operation, control and maintenance. The owner is responsible for having an operator trained and competent in the operation of wood waste burners in charge of the wood waste burner.~~ A daily written log of the wood-waste burner's operation shall be maintained by the owner or operator to determine optimum patterns of operations for various fuel and atmospheric conditions. The log shall include, but not be limited to, the time of day, draft settings, exit gas temperature, type of fuel, and atmospheric conditions. The log or a copy of it shall be submitted to the department within ten (10) days after it is requested.

(6) No person shall use a wood-waste burner for the burning of other than production process wood-waste transported to the burner by continuous flow conveying methods.

(7) ~~New-wood-waste-burner-definition:~~

~~(a)--Any-wood-waste-burner-constructed-or-installed after-the-effective-date-of-this-regulation;~~

~~(b)--Any-wood-waste-burner-replaced-or-altered-after the-effective-date-of-this-regulation-as-to-have-any-effect on-the-production-or-control-of-air-contaminants;~~

~~(c)--Any-wood-waste-burner-moved-after-the-effective date-of-this-regulation-to-another-premise-involving-a-change of-address;~~

~~(d)--Any-wood-waste-burner-purchased-or-otherwise-acquired-and-to-be-operated-after-the-effective-date-of-this regulation-by-a-new-owner-or-when-a-new-lessee-desires-to operate-such-burner.~~

Rubber products, asphaltic materials, or materials which cause dense smoke discharge shall not be burned or disposed of in wood-waste burners.

(8) Exception: For building of fires in wood-waste burners, ~~the-darkness-or-opacity-provision-and-the-particulate provisions-under-section-(2)-of-this-regulation-may-be-exceeded-for-not-more-than-60-minutes-in-8-hours;~~ the provisions of sections (2) and (3) of this rule may be exceeded for not more than sixty (60) minutes in eight (8) hours.

4. The amendment to this rule is proposed for purposes of eliminating obsolete and unnecessary language, implementing a change in methods for determining compliance with the visibility restrictions under section (2), and reorganizing the rule. Existing and new wood-waste burners have had to meet the same standards for a number of years and so they are all treated as one class under the proposed rule. The department is desirous of utilizing the U. S. Environmental Protection Agency's (EPA) opacity method for determining compliance with visible air contaminant standards and so the references to the Ringelmann Chart have been replaced by opacity. Opacity is to be defined under a proposed amendment to ARM 16-2.14(1)-S1410. The existing requirement for reporting employee names and their duties to the department is unnecessary and thus proposed to be discontinued.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing.

6. C. W. Leaphart, Jr., 1 N. Last Chance Gulch, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority of the Board to make the proposed amendment is based on section 69-3913, R.C.M. 1947.

JOHN W. BARTLETT, Chairman

Certified to the Secretary of State September 5, 1978

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the adoption of a rule establishing standards for stack heights and dispersion techniques used for air pollutant emission limitations	)))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE REGULATING STACK HEIGHTS AND DISPERSION TECHNIQUES

1. On October 20, 1978, at 9:00 a.m., or as soon as the matter can be heard, a public hearing will be held in the basement auditorium of the Social and Rehabilitation Services building, Capitol Complex, 111 N. Sanders, Helena, Montana, to consider the adoption of a rule for the regulation of stack heights and other dispersion techniques used to control air pollutant emissions.

2. The proposed rule does not replace or modify any section currently found in the Administrative Rules of Montana.

3. The proposed rule provides as follows:

16-2.14(1)-S____ STACK HEIGHTS AND DISPERSION TECHNIQUES

(1) Any source whose stack emissions are controlled in order to attain and maintain any national ambient air quality standard or to prevent significant deterioration of the air quality shall accomplish such control through emission limitation alone. The degree of emission limitation so required of any source for control of any air contaminant shall not be affected by so much of that source's stack height that exceeds good engineering practice or by any other dispersion technique, except as provided in section (3) of this rule.

(2) For purposes of this rule, the following definitions apply:

(a) "Stack" means any point in a source, designed to emit solids, liquids, or gases into the air, including a pipe, duct, or flare.

(b) "In existence" means that the stack is physically complete.

(c) "Dispersion technique" means any method which is intended to affect the concentration of an air contaminant in the ambient air by

(i) use of that portion of a stack which exceeds good engineering practice stack height,

(ii) varying the rate of emission of an air contaminant according to atmospheric conditions or ambient concentrations of that air contaminant, or

(iii) the manipulation of source process parameters or selective handling of exhaust gas streams. The preceding sentence does not include the reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream.

(d) "Good engineering practice stack height" means that

stack height necessary to ensure that emissions from the stack do not result in excessive concentrations of any air contaminant in the immediate vicinity of the source as a result of atmospheric downwash, eddies, and wakes which may be created by the source itself, nearby structures or nearby terrain obstacles and shall not exceed as appropriate:

(i) 30 meters, for stacks uninfluenced by structures or terrain;

(ii) $H_G = H + 1.5 L$

where H = height of structure or nearby structure
L = lesser dimension (height or width) of the structure or nearby structure;
for stacks influenced by structures;

(iii) such height as an owner or operator of a source demonstrates is necessary through the use of field studies or fluid models after notice and opportunity for public hearing.

(e) "Excessive concentrations" for the purpose of determining good engineering practice stack heights in fluid modeling studies means a maximum concentration of any air contaminant in excess of an ambient air quality standard, due in part or whole to downwash, wakes or eddies which is at least 40 percent in excess of the maximum concentration of any air contaminant experienced in the absence of downwash, wakes or eddy effects produced by nearby structures or terrain.

(3) This rule shall not apply to stack heights in existence, or dispersion techniques implemented, prior to December 31, 1970.

4. The adoption of this rule is proposed by the Board in order to submit to the U. S. Environmental Protection Agency a state implementation plan implementing Section 123 of the Federal Clean Air Act, as amended on August 7, 1977. This proposed rule parallels the proposed federal rule implementing that section. All stacks are subject to the rule with the exception of those which had completed construction prior to December 31, 1970. A stack's height will not receive any credit as an emission limitation control for air contaminants for that part, if any, which is in excess of the "good engineering practice stack height", as that term is defined.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing.

6. C. W. Leaphart, Jr., 1 N. Last Chance Gulch, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rule is based on Sections 69-3909 and 69-3913, R.C.M. 1947.

John W. Bartlett

JOHN W. BARTLETT, Chairman

Certified to the Secretary of State September 5, 1978

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the adoption of Rule ARM 16-2.14(1)-S_____, a rule for the prevention of significant deterioration of air quality in Montana	))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE FOR THE PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY

1. On or about October 20, 1978 at 9:00 a.m., or as soon thereafter as practicable, a public hearing will be held in the basement auditorium of the Department of Social and Rehabilitation Services building, lll Sanders, Helena, Montana, to consider the adoption of a rule for the prevention of significant deterioration of air quality in the State of Montana.

2. The proposed rule is new and does not replace any section currently found in the Administrative Rules of Montana.

3. On December 5, 1974, the Environmental Protection Agency (EPA) published regulations under the 1970 version of the Federal Clean Air Act (Pub.L. 91-604) for the prevention of significant air quality deterioration (PSD). These regulations, codified at 40 CFR 52.21, established a program for protecting areas with air quality cleaner than the national ambient air quality standards.

Under EPA's regulatory program, clean areas of the United States could be designated under any of three "Classes." Specified numerical "increments" of sulfur dioxide and particulate matter were permitted under each class up to a level considered to be "significant" for that area. Class I increments permitted only minor air quality deterioration; class II increments, moderate deterioration; class III increments, deterioration up to the secondary national ambient air quality standards.

EPA initially designated all clean areas of the United States as class II. States, Indian Governing Bodies, and officials having control over federal lands (federal land managers) were given authority to redesignate their lands under specified procedures. The area classification system was administered and enforced through a preconstruction permit program for nineteen specified types of stationary air pollution sources. This preconstruction review in addition to limiting future air quality deterioration required that any source subject to the requirements would apply best available control technology.

On August 7, 1977, the Federal Clean Air Act Amendments of 1977 became law. The 1977 amendments changed the 1970 act and EPA's regulations in many respects, particularly with regard to PSD. [See Clean Air Act sections 160-169, 42 U.S.C. 7470-79 (Clean Air Act Amendments of 1977, Pub.L. 95-95, 127(a), 91 Stat. 731), as amended, Pub.L. 95-190, section 14(a) (40)-(54), 91 Stat. 1401-02 (November 16, 1977) (technical and con-

forming amendments).] In addition to mandating certain immediately effective changes to EPA's PSD regulations, the new Federal Clean Air Act, in sections 160-169, contains comprehensive new PSD requirements. These new requirements are to be incorporated by states into their implementation plans (under section 110 of the act). Revisions of state implementation plans implementing these new requirements are due March 19, 1979.

The rule proposed for the prevention of significant deterioration in Montana is based on the amended federal PSD regulations (43 Federal Register 26403) and conform to the EPA requirements for plans revisions (43 Federal Register 26382). The proposed rule provides in summary as follows:

Section (1) contains definitions of terms used in the rule. The definitions in the proposed Montana rule differ from the definitions of the federal regulations for the terms: "major modification," "source," "facility." The proposed Montana rule adds a definition of "temporary" and omits the definitions of "high terrain" and "low terrain" found in the federal regulations.

Section (2) defines the limitations on increases in concentrations of sulfur dioxide and particulate matter over the baseline concentration in areas designated Class I, II or III, and allows that for any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

Section (3) provides that no concentration of these pollutants shall exceed applicable national ambient air quality standards.

Section (4) defines the restrictions on the classification of particular areas in the state.

Section (5) defines the pollution concentrations which shall be excluded in determining compliance with maximum allowable increases.

Section (6) describes the procedures to be followed and the requirements to be met before the classification of an area can be changed.

Section (7) provides that the degree of emission limitation required for control of any air pollutant shall not be affected by a stack height in existence before December 31, 1970 which exceeds good engineering practice, or any other dispersion technique implemented before that time.

Section (8) prohibits construction of any major stationary source or of any major modification which does not meet the minimum requirements described in this rule. This section also defines when the minimum requirements are not applicable.

Section (9) describes the emission standards which are applied to a major stationary source or to a major modification. In addition it defines technological standards which a major stationary source or major modification must meet.

Section (10) describes when a proposed major stationary source or major modification may be exempt from the requirements of an impact analysis described in Sections 11, 13 and 15.

Section (11) requires the operator of a source or modification to demonstrate that the increase will not violate any applicable ambient air standard or any maximum allowable increase over the baseline concentration in any area.

Section (12) defines the modeling techniques upon which any estimates of ambient concentrations are to be based.

Section (13) defines monitoring requirements for any proposed source.

Section (14) requires the operator of any proposed source to submit information about the source and defines the information needed to include information from the air quality in-growth impacts of the proposed source or modification.

Section (15) requires the operator of a proposed source to analyze impacts of growth caused by the source upon the visibility, soils, and vegetation and upon the air quality of the area.

Section (16) provides for denial of an application due to adverse impact on air quality-related values of any federal mandatory Class I lands. The Montana rule does not provide for any of the variances described in the federal regulation.

Section (17) provides for public participation prior to the final decision on an application including public inspection of information, notice and opportunity for comment, public hearing and submission of written comments.

A copy of the entire proposed rule may be obtained by contacting Michael Roach, Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59601 (449-3454, 3455).

4. The proposed rule is required to comply with the federal Clean Air Act, 42 U.S.C. 7410, 7470-79.

5. Interested persons may submit their data, views, or arguments concerning the proposed adoption either orally or in writing at the hearing. Written data, views, or arguments may be submitted to Michael Roach at the address stated above.

6. C. W. Leaphart, Jr., 1 N. Last Chance Gulch, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority of the Board to make the proposed rule is based on Section 69-3913, R.C.M. 1947.

John W. Bartlett

JOHN W. BARTLETT, Chairman

Certified to the Secretary of State September 5, 1978

BEFORE THE BOARD OF PARDONS AND PAROLE
OF THE STATE OF MONTANA

In the Matter of the Proposed Revision of the Rules of the Board of Pardons and Parole.	))))	NOTICE OF PROPOSED AMENDMENT OF RULES (Arm T.20, subtitle 3) NO PUBLIC HEARING CONTEMPLATED

1. At its meeting October, 1978, in Deer Lodge, Montana the Board of Pardons proposes to revise its rules now published at pages 20-3 through 20-15 of the Administrative Rules of Montana.

2. Since rule-making by the Board is exempted from the notice and comment or opportunity for hearing requirements of the Montana Administrative Procedure Act, this notice is published in the Administrative Register as a courtesy to those persons who may wish to offer comments and suggestions before the Board makes its final decision.

3. The text of the proposed revision has been mailed to each district judge and county attorney and to the Montana Defender Project, UM School of Law and the Montana State Prison. This text will be mailed to any other person who requests a copy by writing to Nick Rotering, Legal Counsel, Department of Institutions, 1539 11th Avenue, Helena, Montana 59601.

4. Among the more significant policy changes contemplated in this revision are the list of standard and optional conditions on parole (the Board would adopt the same list of conditions which the Department of Institutions adopted on August 15, 1978 (MAR P. 1330)), deletion of the "Additional Information Required" rule for parole applications now published as 20-3.10(6) - S10070, and adoption of new procedures for revocation and rescission hearings. Many other changes are proposed merely to arrange the rules more logically or to conform to amendments of the statutes enacted in recent legislative sessions.

5. Comments and suggestions concerning the proposed revision will be considered by the Board if sent, prior to October 12, 1978, to: Henry Burgess, Chairman, Board of Pardons and Parole, Montana State Prison, Deer Lodge, Montana.

6. Authority to adopt the proposed changes is based upon sections 95-3214, 95-3223 and 95-3229, R.C.M.1947.

Henry E. Burgess

HENRY E. BURGESS, Chairman
Montana Board of Pardons & Parole

Certified to the Secretary of State, September 1, 1978.

STATE OF MONTANA
BEFORE THE DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING

IN THE MATTER of the proposed) NOTICE OF PROPOSED ADOPTION
Adoption of rules for discovery) OF RULES OF DISCOVERY

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 14, 1978, the Department of Professional and Occupational Licensing proposes to adopt a rule relating to rules of discovery for contested cases.

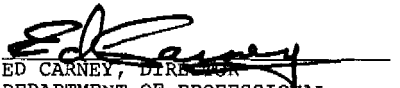
2. The Department proposes this adoption as one rule which will incorporate by reference the Attorney General's Model Rule 13 as proposed at page 458 in the September 1977 issue of the Montana Administrative Register. This proposed adoption would point out that with only minor exceptions stated therein, said Model Rule 13 adopts the Rules of Discovery established by the legislature for all proceedings in the District Courts in the State of Montana. Said rules are printed in full in the parent volume and supplement to Title 93 Revised Codes of Montana, 1947 as amended.

The reason for the proposed adoption in that such is mandated by the legislature under Section 82-4220 R.C.M. 1947. While the Department is entitled to adopt its own set of rules, for the sake of uniformity and because of the well studied and tested precedent established in the civil rules, the Department has elected to adopt them.

While this adoption will not automatically apply to the various boards within the Department, again for the sake of uniformity, the director will encourage said boards to adopt the same.

3. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to the Department of Professional and Occupational Licensing, Lalonde Building, Helena, Montana 59601, no later that October 12, 1978.

4. The authority of the Department to make the proposed rule is based on Section 82-4203 R.C.M. 1947.



ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State September 14, 1978.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF ARCHITECTS

IN THE MATTER of the proposed amendment of ARM 40-3.10(6)-S10050 (5) Standards of Professional Conduct	))))	NOTICE OF PROPOSED AMENDMENT OF RULE ARM 40-3.10(6)-S10050 (5) STANDARDS OF PROFESSIONAL CONDUCT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 14, 1978, the Board of Architects proposes to amend rule ARM 40-3.10(6)-S10050 (5) which is related to solicitation of employment under standards of professional conduct.

2. The proposed amendment deletes the last sentence of paragraph 2 of sub-section (5) of the above stated rule and reads as follows: (deleted matter interlined)

"(5) SOLICITATION OF EMPLOYMENT The architect shall not pay, solicit nor offer directly or indirectly, any bribe or commission for professional employment with the exception of his payment of the usual commission for securing salaried positions through licensed employment agencies.

The architect shall seek professional employment on the basis of qualifications and competence for proper accomplishment of the work. ~~He shall not knowingly solicit or submit proposals for professional services on the basis of competitive bidding.~~

The architect shall not falsify or permit misrepresentation of his or his associates' academic or professional qualifications. He shall not misrepresent or exaggerate his degree of responsibility in or for the subject matter of prior assignments.

Brochures or other presentations incidental to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint-ventures, or his or their past accomplishments with the intent and purposes of enhancing his qualifications and his work."

3. The rule is proposed to be amended to respond to a letter of August 4, 1978 from the Attorney General stating this sentence in the rule was in violation of both state and federal anti-trust laws. Copies of the letter may be obtained from the Board of Architects.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Architects, Lalonde Building, Helena, Montana 59601, no later than October 12, 1978.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written

comments he has to the Board of Architects, Lalonde Building, Helena, Montana 59601, no later than October 12, 1978.

6. If the Board receives requests for a public hearing on the proposed amendment from more than 10% or 25 or more persons who are directly affected by the proposed amendment, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority of the board to make the proposed amendment is based on section 66-102 and 103, R.C.M. 1947.

BOARD OF ARCHITECTS
HAROLD C. ROSE', PRESIDENT

BY: 
ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, September 14, 1978.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In The Matter of the Department of Agriculture Amending a Rule for the Plant Industry Division Apiculture Rules	NOTICE OF AMENDMENT OF RULE 4.14.000

TO: All Interested Persons:

1. On July 10, 1978, the Montana Department of Agriculture held a Public Hearing in the Highway Auditorium, on Sixth and Roberts Streets, Helena, Montana, for the purpose of amending the present language of Rule 4.14.000, Limitations of Registration.

2. The Department of Agriculture has amended the rule based on the testimony and response received. The proposed amendment to the rule is as follows:

4.14.000 REGISTRATION OF APIARIES AND LIMITATIONS OF REGISTRATION. (1) Definitions.

(a) Landowner means the person who has the actual use and exclusive possession of the land. Persons leasing land for the primary purpose of establishing an apiary thereon shall not be considered landowners.

(b) Family unit means two or more persons living together in the same dwelling, house or other place of residence.

(c) Other terms used in this rule shall have the same meaning as defined in Section 3-3101, R.C.M. 1947, unless the context requires otherwise.

(d) The word "Department" shall mean the Department of Agriculture of the State of Montana.

(2) Classes of Apiary Registrations. Each person wishing to register an apiary shall specify the type of apiary registration for which he wishes to apply. There shall be four classes of apiary registrations as follows:

(a) General Apiary Registrations. The Department may grant general apiary registrations under the following conditions:

(i) except as provided in subsection (iv) hereof, general apiary must be located three or more miles away from general apiaries registered by other persons.

(ii) an applicant may register a general apiary within three miles of a general apiary registered by himself as long as the general apiary being applied for is three or more miles from general apiaries registered by other persons.

(iii) a general apiary may be registered within three miles of any registered limited landowner, hobbyist or pollination apiary.

(iv) an applicant with an existing registered non-restricted apiary which is located less than three miles from a registered non-restricted apiary registered by another person may register said apiary as a "general apiary" under the following conditions:

(aa) said apiary was established and registered with

the Department before the enactment of this rule by the Department;

(bb) said apiary is presently registered with the Department; and

(cc) the registration of said apiary has not been forfeited or abandoned under the provisions of Sections 3-3103(9) and 3-3105, R.C.M. 1947.

(b) Limited Pollination Apiary Registrations. The Department may grant limited pollination apiary registrations to commercial seed, fruit, or other agricultural producers under the following conditions:

(i) the applicant must own, lease or rent the land upon which the pollination apiary is to be located, and the applicant must use said land for the purpose of growing thereon a commercial seed, fruit or other crop which is dependent upon bees or other insects for pollination. The applicant does not own the bees or the hives which are to be placed upon the pollination apiary and that the only purpose of the apiary shall be the pollination of a commercial agricultural crop.

(ii) the applicant shall provide the Department with all pertinent data and information necessary for the Department to determine if pollination apiaries are needed to adequately pollinate the applicant's crop.

(iii) the Department may refuse pollination apiary registration based upon its own investigation, or if approving the application it may specify the number and location of pollination apiaries needed for the purpose of adequately pollinating the applicant's crop.

(iv) a pollination apiary registration shall be valid only for the time period specified by the Department. All pollination apiaries shall be removed within two weeks after full bloom period of the crop to be pollinated.

(v) a registered pollination apiary may not be sold, leased, transferred or rented to another person.

(c) Limited Landowner Registrations. The Department may grant limited landowner apiary registrations under the following conditions:

(i) the applicant must be a landowner as defined in this rule and must own the land upon which the apiary will be located.

(ii) the applicant must own the bees and the hives.

(iii) the bees and the hives must be personally managed and operated by the applicant.

(iv) a registered landowner apiary may not be sold, transferred, rented or leased to another person.

(d) Limited Hobbyist Registrations. The Department may grant limited hobbyist apiary registrations under the following conditions:

(i) the applicant must not own a total of more than five hives and all the hives must be placed on the hobbyist apiary.

(ii) the applicant must own the bees and the hives and must personally manage and operate the bees and hives.

(iii) only one hobbyist apiary registration shall be allowed per applicant, and only two hobbyist apiary registrations shall be allowed per family unit.

(iv) if the Department determines that too many hobbyist apiaries are being registered within too close proximity of each other, the Department may refuse to grant any further hobbyist apiary registrations in accordance with Section 3-3103(6), R.C.M. 1947.

(v) a registered hobbyist apiary may not be sold, transferred, leased or rented to another person.

(3) Prior Registrations. This rule, as amended, shall apply to and govern the registration of apiaries and the issuance of certificates of registration therefore from and after its effective date. Nothing contained in this rule shall be construed as invalidating, cancelling, amending, terminating or extending any certificate of registration issued by the Department prior to the effective date of this rule. All such previously issued certificates of registration shall remain in effect for the period for which they were issued, subject, however, to forfeiture, lapse, abandonment and termination in the manner provided by law.

3. The reasons for the proposed amendment are to clearly spell out that all apiaries in Montana are to be registered with the Department of Agriculture, that all apiaries, bees, hives and beekeeping equipment located or brought into the state are subject to inspection by the Department, to classify the types of apiaries and the certificates (permits) of registration that the Department will issue, to more clearly define the permitted proximity of apiaries, and the exceptions that will be allowed to the basic three (3) mile rule on the proximity of apiaries.

W. GORDON McOMBER

Director, Dept. of Agriculture

Certified to Secretary of State September 5, 1978.

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of the repeal of Rule 18-2.10(2)-S1010, Gas Tax Regulations and the repeal of Rule 18-3.14(1)-01400, Board of Highway Appeals Organizational Rule.	)))))	NOTICE OF REPEAL OF RULES

To: All Interested Persons:

1. On July 27, 1978, the Department of Highways published notice of proposed repeal of Rule 18-2.10(2)-S1010, Gas Tax Regulations, at page 1009 of the 1978 Montana Administrative Register, issue No. 8.

2. The Department has repealed the rule as proposed.

3. No comments or testimony were received. The Importer's Gasoline Tax law was repealed by the 1977 Legislature in Section 1 of Chapter 375, and the repealing of this rule complies with Legislative mandate.

1. Also, on July 27, 1978, the Department of Highways published notice of proposed repeal of Rule 18-3.14(1)-01400, Board Organization - Board of Highway Appeals, at page 1009 of the 1978 Montana Administrative Register, issue No. 8.

2. The Department has repealed the rule as proposed.

3. No comments or testimony were received. The Board of Highway Appeals was abolished by the 1974 Legislature by Section 3 of Chapter 28. The repeal of this rule is to comply with Legislative mandate.

Ronald P. Richards
Director of Highways

Certified to the Secretary of State September 5, 1978.

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 20-2.2(1) - P200 relating to model rules of administrative procedure.	))))	NOTICE OF AMENDMENT OF RULE

1. On July 27, 1978, the Department of Institutions gave notice (MAR notice no. 20-2-10 at p. 1010) that it would amend its rule no. 20-2.2(1) - P200.

2. No comments or testimony were received.

3. The Department has amended the rule as proposed, except to renumber it 20.2.101 in accordance with the new simplified numbering system. The reasons for making the change are to update references to the Montana Administrative Procedure Act and the Attorney General's model rules, as they have been amended recently.

4. The amendment is effective September 15, 1978.

LAWRENCE M. ZANTO, Director
Department of Institutions

Certified to the Secretary of State 9-1, 1978.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rule ARM 46-2.10(18)-S11440, pertaining to medical assistance.	)))	NOTICE OF THE ADOPTION OF THE AMENDMENT TO RULE 46-2.10(18)-S11440

TO: All Interested Persons

1. On June 23, 1978, the State Department of Social and Rehabilitation Services published notice of a proposed amendment to Rule 46-2.10(18)-S11440 which pertains to medical assistance at pages 866-869 of the 1978 Montana Administrative Register, issue number 6.

2. The agency has amended the rule as proposed with the following changes:

(i) Each patient must be placed in a nursing home under the direction and care of a physician. ~~A level of care evaluation Form EA 9 must be completed by the admitting physician and a social information evaluation prepared by a social worker so that the valid classification of the patient in the nursing home may be determined.~~ Applicants for nursing home admission who are Medicaid recipients ~~or potential Medicaid recipients~~ and persons making applications for Medicaid while residents of nursing homes shall be reviewed by a pre-admission screening team.

NON-MEDICAID APPLICANTS FOR ADMISSION TO A NURSING HOME MAY VOLUNTARILY SUBMIT TO PRE-ADMISSION SCREENING. THE PRE-ADMISSION SCREENING TEAM MAY SCREEN THOSE NON-MEDICAID APPLICANTS AS THE TEAM'S CASELOAD PERMITS.

~~(aa) Potential medicaid recipients means those persons who may reasonably be expected to apply for medicaid within six (6) months.~~

~~(ab)~~ (aa) Same as proposed rule.

~~(ac)~~ (ab) Same as proposed rule.

(aaa) Same as proposed rule.

(aab) Same as proposed rule.

(aac) Same as proposed rule.

(aad) Same as proposed rule.

(aae) Deleted in its entirety.

(aae) THE DECISIONS OF THE SCREENING TEAM MAY BE APPEALED AT THE REQUEST OF THE RECIPIENT, THE RECIPIENT'S REPRESENTATIVE, THE ATTENDING PHYSICIAN, OR THE DEPARTMENT BY REQUESTING A HEARING BEFORE A HEARING OFFICER APPOINTED AND COMPENSATED BY THE DEPARTMENT. SUCH FAIR HEARING WILL BE PROVIDED BY THE DEPARTMENT AND SHALL MEET THE PROCEDURAL REQUIREMENTS OF SECTION 82-4209 THROUGH 82-4214 RCM 1947, THE MONTANA ADMINISTRATIVE PROCEDURES ACT, AND ARM 46-2.2(2)-P210 THROUGH P2070. CLAIMANTS IN A FAIR HEARING SHALL BE ENTITLED TO APPEAL A DECISION RENDERED BY A HEARING OFFICER IN A CONTESTED CASE TO A REVIEW BOARD APPOINTED BY THE FOUNDATION WHICH SHALL REVIEW THE

RECORD OF THE FAIR HEARING AND EITHER AFFIRM OR REVERSE THE HEARING OFFICERS DECISIONS. THE DECISION OF A HEARING OFFICER IF NOT APPEALED WITHIN 30 DAYS SHALL BE AFFIRMED BY THE REVIEW BOARD. THE DECISION OF THE REVIEW BOARD ON AN APPEAL IS A BINDING AND FINAL ADMINISTRATIVE DECISION FOR PURPOSES OF PAYMENT AND JUDICIAL REVIEW PURSUANT TO SECTION 82-4216 RCM 1947.

~~(ad)~~(ac) The screening team shall also be actively involved in discharge planning for nursing home residents WHO ARE MEDICAID RECIPIENTS and shall have access to the resident's medical record in the long term care facility.

~~(ac)~~(ad) Hospitalized Medicaid recipients and ~~potential~~ MEDICAID APPLICANTS ~~recipients~~ being considered for nursing home placement upon discharge from the hospital shall be reviewed by the screening team before placement is made and payments are made in their behalf. If the hospital provides Medical Social Services, the screening teams will coordinate their activities with the hospital's social work staff in such a way as to supplement services already provided and to avoid duplication of effort. IN SUCH CASES A HOSPITAL AFFILIATED MEDICAL SOCIAL WORKER MAY PARTICIPATE ON THE PRE-ADMISSION SCREENING TEAM.

~~(af)~~(ae) Nursing home administrators shall be responsible to request pre-admission screening of medicaid recipients or ~~potential~~ MEDICAID ~~recipients~~ APPLICANTS for placement in their respective nursing homes.

~~(ag)~~(af) Same as proposed rule.

(iv) Same as proposed rule.

(v) ~~All recipients will be evaluated by a utilization review team or committee to determine that they are properly classified.~~ All nursing home residents who are recipients ~~or potential recipients~~ of medicaid shall be evaluated on a continuing basis by a ~~utilization review team or committee to determine that they are receiving appropriate care~~ THE DESIGNATED PROFESSIONAL STANDARDS REVIEW ORGANIZATION.

NON-MEDICAID NURSING HOME RESIDENTS MAY VOLUNTARILY SUBMIT TO EVALUATION BY THE PSRO, AND THE PSRO MAY EVALUATE THE APPROPRIATENESS OF CORE RECEIVED BY THOSE PERSONS AS THE PSRO'S CASELOAD PERMITS.

(vi) Same as proposed rule.

(aa) Same as proposed rule.

(ab) Intermediate care A is that service extended to those patients not requiring 24 hour nursing service, but who do need limited nursing and are receiving care in a facility where there is a nurse on duty at least one eight-hour shift and nursing services available on call during the remaining period of the day. Intermediate care A is based on the evaluation of the patient's needs as ~~prescribed in the BA 9, level of Care Evaluation, by the attending physician and the nurse in charge of services according to the guidelines developed~~

~~by the department~~ DETERMINED BY THE DESIGNATED PROFESSIONAL STANDARDS REVIEW ORGANIZATION.

(ac) Same as proposed rule.

(aaa) There is no limit to the length of stay available for nursing home care so long as it is considered necessary ~~by the attending physician,~~ AND to be in the patient's best interests ~~and there is a valid evaluation~~ as determined by the ~~utilization review team or committee~~ DESIGNATED PROFESSIONAL STANDARDS REVIEW ORGANIZATION.

(aab) No payment or subsidy will be made to a nursing home for holding a bed while the recipient is receiving medical services elsewhere, such as in a hospital except in a situation where a nursing home is full and has a waiting list of potential residents. A NURSING HOME WILL BE CONSIDERED FULL IF ITS BEDS ARE OCCUPIED OR BEING HELD FOR A PATIENT TEMPORARILY IN A HOSPITAL. In this exceptional instance, a payment may be made for holding a bed while the resident is temporarily receiving care in a hospital, is expected to return to the nursing home, and the cost of holding the nursing home bed will evidently be less costly than the possible cost of extending the hospital stay until an appropriate nursing home bed would otherwise become available. Furthermore, payment in this exceptional instance, may be made only upon approval from the Director of the Department or his designee.

3. On June 15, 1978, the Director of the Montana Department of Social and Rehabilitation Services certified to the Secretary of State MAR Notice 46-2-151, expressing the Department's intent to amend ARM 46-2.10(18)-S11440. That Notice of Intent to Amend was published in the Montana Administrative Register June 23, 1978. Pursuant to that notice, a hearing was held on the proposed amendments at the offices of the Montana Department of Social and Rehabilitation Services, 111 Sanders Street, Helena, Montana, on July 13, 1978. The Department received written comments until July 21, 1978.

The rationale of the Department in adopting this rule as stated in the Notice of Intent to Amend was to clarify the scope and nature of services provided by the Department in the Medicaid program. At the hearing the Department presented further testimony indicating that the rule was intended to permit Medicaid recipients to remain at home for longer periods of time, or in a less restrictive environment than a nursing home, if the needs of the recipients could best be met in alternative settings. The Department further indicated that the rule was intended to promote the utilization of existing community resources and accelerate the development of a wide spectrum of medical, health and social services, in the community

and in the existing institutions. As a result of the use of alternative community resources, more nursing home beds should become available for those recipients who are in need of nursing care. In addition, the amendments should result in a cost saving to the Medicaid program. According to the Department, the ultimate aim of the rule is to assure that all patients receive appropriate care in view of their medical, psychological, and social needs.

Numerous oral and written comments were received by the Department. The comments and the Department's responses are as follows:

A. The comment was received that the pre-admissions screening program had been implemented at least 30 days prior to the hearing on the amendments to the rule.

Response: Although the Montana Foundation for Medical Care may have performed pre-admission screening prior to the hearing on the amendment to the rule, that action does not effect the Department's authority to implement the program, nor the validity of rules properly adopted or amended.

B. The comment was received that the requirement that all potential Medicaid patients be subject to pre-admission screening was unworkable because of the difficulty or impossibility of determining which private patients would become Medicaid eligible and because the requirement would result in an invasion of the privacy of non-Medicaid nursing home patients.

Response: The Department has recognized the difficulties posed by the requirement that all "potential" Medicaid patients be subject to pre-admission screening, and so has deleted all references to potential Medicaid patients. The proposed amendment has been altered to provide that non-Medicaid patients may voluntarily submit to pre-admission screening. This change reflects the Department's acceptance of the comment that the ultimate responsibility for seeking alternative types of care lies with the patient and not with the nursing home administrator nor the Montana Department of Social and Rehabilitation Services.

C. The comment was received that the rule subjected non-Medicaid patients to ongoing utilization review and discharge planning, and so violated their right of privacy.

Response: As stated above, the Department recognizes that the ultimate responsibility for locating appropriate medical and social services as an alternative to skilled or intermediate nursing care for non-Medicaid patients lies with the

patient. The proposed amendment has been altered to allow private patients to submit voluntarily to the utilization review and discharge planning.

D. The comment was received that by allowing reimbursement retroactively to the date of nursing home admission only when screening is not performed within seven (7) days of admission, the proposed amendment will result in longer hospital stays pending pre-admission screening because nursing homes may prove unwilling to provide up to seven days of free care while awaiting pre-admission screening.

Response: The intent of the Department in denying reimbursement retroactively to the date of nursing home admission is to assure that the needs of all Medicaid patients are reviewed prior to placement in a nursing home. The Department recognizes that in some cases additional costs will be incurred by the program because of lengthened hospital stays of patients awaiting pre-admission screening. However, the assurance of screening prior to nursing home admission in all cases will benefit the program by assuring the appropriateness of all nursing home placements, and will benefit Medicaid patients by avoiding the trauma of unnecessary transfers from hospitals to a nursing home to alternative care settings.

If the program is operated efficiently and as designed, all but a negligible percentage of patients will be screened while in a hospital or in their home prior to nursing home admission. Reducing the time allowed for screening after nursing home admission will not affect the efficiency of the program, but rather could make it economically feasible for nursing homes to admit patients who have not been screened. This is contrary to the aim of the pre-admission screening program, and may ultimately work to the detriment of the program and the patients.

While cost saving is of great concern to the Department, the primary purpose of the proposed amendment is to assure that all Medicaid patients receive needed care in the most appropriate setting. If it becomes apparent that the cost of achieving this goal is prohibitive, the Department will alter the program as necessary.

E. The comment was received that many hospitals across the State have functioning social work staffs, and the existing resources in these hospitals should be utilized in the pre-admission screening program.

Response: The proposed amendment has been altered to allow existing medical social workers on hospital staffs to participate on the pre-admission screening team. The Department recognizes that there is a great body of professional expertise available in this area, and is very willing to utilize that resource.

F. The comment was received that the proposed amendment does not allow the nursing home industry to play a part in the formulation of guidelines or standards to be applied in the pre-admission screening program.

Response: The guidelines and standards to be applied in the pre-admission screening program will be formulated by the Montana Foundation for Medical Care, which has experience and expertise in determining appropriateness of care. These standards will be applied by a team which has the professional expertise of a physician, a nurse and a medical social worker. In addition, it must be recognized that a conflict of interest may exist if the nursing home industry is allowed to determine whether the care provided by that industry to Medicaid patients is appropriate.

G. The comment was received that the guidelines and standards to be applied in the pre-admission screening program should be published as rules.

Response: The ultimate standards to be relied upon in determining whether nursing home care is appropriate for a Medicaid patient, are the federal regulations and state rules defining skilled nursing and intermediate care. The guidelines and standards developed by the Montana Foundation for Medical Care will comport with those federal regulations and state rules. The guidelines and standards are not intended to have the force of law, but are merely intended to provide a working tool for the screening teams.

H. The comment was received that the proposed amendment ignores the concept of "the whole person" and does not provide for a consideration of the psychological and social needs of patients.

Response: The Medicaid program is intended primarily to meet the medical needs of eligible persons. The Department recognizes that in addition to medical needs, all patients have certain psychological and social needs which must be met as well. However, in all cases, the Medicaid eligible person must have some medical need in order to be eligible for nursing home

care. The medical social workers participating on the pre-admission screening teams will assure that the psychological and social needs as well as the medical needs of the patients are considered in determining the appropriateness of nursing home care.

I. Comments were received regarding the role of the physician-advisor as arbiter of conflicting opinions within the pre-admission screening team and as the ultimate decision maker in disputes with the attending physician. Comments were received indicating that there is a divergence of opinion on whether the physician-advisor's decisions should be final and binding.

Response: Due to the fact that most disagreements will be over the medical necessity of nursing home care, the final and binding decision on that issue must be made by a physician who is aware of all relevent social and medical facts, who is competent in the field, and who is objective in his approach to the problem. Because attending physicians may become subject to family or other pressures, a qualified and unbiased third party must make the ultimate decision. In any case, the decision of the physician-advisor is subject to the appeals process provided in the rule.

J. The comment was received that the hearing process provided in the rules allows only for an appeal to the Montana Foundation for Medical Care and does not comport with the requirements of the Montana Administrative Procedures Act.

Response: The proposed amendment has been altered to provide that a formal fair hearing will be conducted by the Department when the decision of the physician-advisor is contested. All fair hearing decisions will be reviewed, and either affirmed or denied by the Montana Foundation for Medical Care, which will make the final and binding decision for payment purposes, as required by federal law. This appeal process will assure that due process is provided to the recipient and that the decisions of the pre-admissions screening team will be subject to review, with appeal as of right to a court of competent jurisdiction.

K. The comment was received that nursing care providers should have access to the appeal procedure for pre-admission screening decisions.

Response: Only those persons whose rights or entitlements are affected by an administrative decision are entitled to appeal that decision. The rights of an applicant for or recipient of nursing home care will be adequately protected by

appeals by the attending physician, the recipient's legal representative or the recipient. The nursing care provider has no independent right or entitlement which is affected by a pre-admission screening decision.

L. The comment was received that the proposed amendment eliminated patients classified as Intermediate Care B from eligibility for Medicaid.

Response: As stated above, all Medicaid eligible persons who are in need of nursing home services will be provided those services in the most appropriate setting. For some time, the Department and the PSRO have not been classifying nursing home patients as Intermediate Care A or Intermediate Care B patients. The proposed amendment still allows the provision of the full range of medical services, and the provision of social services to those in need of nursing services within the nursing home setting. The proposed amendment will only affect those individuals who have no need of nursing care and whose personal social and psychological needs can be met in a setting other than the nursing home environment.

M. The comment was received that the concept of the pre-admission screening team should be altered to encompass a pre-admission screening process, and that hospitals with existing social service staffs should be allowed to perform that pre-admission screening process.

Response: The Department recognizes that pre-admission screening is a process. As stated above, hospital affiliated medical social workers will be allowed to participate on the pre-admission screening teams. The Department and the Montana Foundation for Medical Care have determined that a delegation of the pre-admission screening process to hospital and nursing home providers would be inappropriate. Employment of a pre-admissions screening team composed of a nurse coordinator, physician-advisor, and a social worker will result in the most efficient and fair decision-making process.

N. Comment was received that the provision of the proposed amendment restricting payment for reserved beds to cases in which the facility is "full" is unclear, and will not resolve the problem of extended hospital stays because beds cannot be reserved.

Response: The provision of the proposed amendment governing reserved beds has been altered to clarify the term "full", thus providing for payment for reserved beds when beds are unavailable

in a nursing home by reason of patient transfers to hospitals.

O. The comment was received that the provision governing payment for reserved beds, which required approval of the director of the department or his designee, is administratively cumbersome, and nullifies the beneficial effect of the provision.

Response: In order to detect and prevent abuse of the payment for reserve bed provisions, the necessity for reserving a bed must be reviewed. The decision to approve or disapprove payment for reserve beds by the director or his designee, will be made timely and impartially. Because the provision does not require that beds be reserved, individual nursing home administrators may determine whether to accept the risk of later disapproval of payment.

P. The comment was received that if cost saving is one of the goals of the department in amending the rule, this goal will not be accomplished because alternative care is at least as costly as nursing home care.

Response: The intent of the amendment is to assure that each Medicaid patient is receiving the needed care in the most appropriate setting. The rule intends to spare patients the quasi-institutional environment of nursing homes when community based resources are appropriate and available to meet the needs of the person. The needs of the patients must be the foremost consideration.

Keith P. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State August 23, 1978.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of rules relating to a Class 5 teaching certificate	)))	NOTICE OF THE AMENDMENT OF RULE 48-2.10(1)-S1040

TO: All Interested Persons:

1. On March 24, 1978, the Board of Public Education published notice of proposed amendment of a rule relating to a Class 5 teaching certificate at page 369 of the 1978 Montana Administrative Register, issue number 3.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The Board has amended the rule to bring Board of Public Education certification procedures into line with statutory change and to reduce confusion for applicants by bringing the rule into line with other periods of time for certification.

Earl J. Barlow

EARL J. BARLOW, CHAIRMAN
BOARD OF PUBLIC EDUCATION

Certified to the Secretary of State September 5, 1978.

VOLUME NO. 37 OPINION NO. 156

WORKERS COMPENSATION - Municipal policemen, salary payments after disabling injury;
MUNICIPAL CORPORATIONS - Municipal policemen, salary payments after disabling injury;
POLICE - Municipal police, salary payments after disabling injury;
SECTIONS - 11-1822.1; 92-701.1; 92-701.6; 92-439,; 92-440; 92-441; 92-702.1; 92-703.1.

HELD: Section 11-1822.1 requires a municipality to pay an injured policeman's full salary during the period of disability or one year, whichever ends first. The Workers Compensation Fund is not liable for any wage loss benefits during that period because the municipality pays the policeman in full and he has suffered no wage loss.

14 August, 1978

Norman H. Grosfield
Division of Workers' Compensation
815 Front Street
Helena, Montana 59601

Dear Mr. Grosfield:

You have requested my opinion on the following question:

> Does Section 11-1822.1 require a municipality to pay an injured policeman's full salary during a period of disability, or must the State Compensation Insurance Fund pay workers' compensation benefits to the disabled policeman, with any remaining balance of the policeman's salary being paid by the municipality?

Section 11-1822.1, a part of the Metropolitan Police Law, was enacted in 1977, and provides:

> A member of a municipal law enforcement agency of a first or second class municipality who is injured in the performance of his duties so as to necessitate medical or other remedial treatment and render him unable to perform his duties shall be paid by the municipality by which he is employed the

> full amount of his regular salary, less any amount he may receive from workers' compensation, until his disability has ceased or for a period not to exceed one year whichever shall first occur.

The Act was entitled an "act to provide that municipalities ... shall continue to pay the salaries of police officers injured in the performance of their duties...." Despite the title's clarity, an ambiguity arises because of the statute's exclusion from the "full amount of...regular salary " the municipality must pay of "any amounts [the policeman] may receive from workers' compensation."

An injured worker can receive both wage loss (Section 92-701.1) and medical (Section 92-706.1) workers' compensaton benefits. Since Section 11-1822.1 is expressly intended to insure a policeman's wage replacement, it is only related, if at all, to the lost wage compensation provisions of the Workers' Compensation Law. Otherwise the explicit intent of that section, that the policeman receive his full salary, would be frustrated if it were reduced by the amounts of medical and hospital benefits that he received. In some cases, the medical and hospital benefits would greatly exceed the policeman's salary, leaving him with nothing. That is clearly not the intent of Section 11-1822.1.

When an attempt is made to reconcile Section 11-1822.1 with the wage loss provisions of the workers compensation law, however, a situation arises which was evidently not contemplated by the drafters of that Section. An injured worker is entitled to wage loss benefits only to the extent that he in fact has suffered a loss in wages. See Sections 92-439, 92-440, 92-441, 92-701.1, 92-702.1 and 92-703.1. It is evident that if the injured policeman receives "the full amount of his regular salary" from the municipality pursuant to Section 11-1822.1, he is not entitled to wage loss benefits from the Workers Compensation Fund. Thus, the amount he "may receive" from workers' compensation is zero, and the municipality is responsible for his entire salary.

This conclusion is consistent with both the explicit language of Section 11-1822.1 and the remainder of the act (Laws of Montana (1977) Ch. 451). Sections 11.1822.2 through 11-1822.7 show clear legislative intent to supplant the ordinary provisions in Title 92 for determining workers' compensation benefits for injured policemen. The municipality determines whether there has been a work-related injury and whether it resulted in disability. (Section

11-1822.2). The municipality's physician periodically examines the policeman to determine whether he is able to perform his duties (Section 11-1822.3). The municipality has a cause of action against a third party tortfeasor who caused the policeman's injuries (Section 11-1822.7).

The legislature has chosen to enact this entirely separate system for wage replacement for injured policemen. Section 11-1822.1 cannot be construed to require the municipality to pay only the difference between the policeman's full salary and the amount he would get as wage loss worker's compensation benefits. Otherwise the injured policeman would be subject to two disability determinations, two medical examinations, possibly differing determinations of how long the disability lasts, etc. He might receive the "difference" amount from the city and nothing from workers' compensation, or vice versa. These situations would frustrate the express intent of Section 11-1822.1 that the injured policeman receive the "full amount of his regular salary."

This does not limit the policeman's medical and hospital benefits under workers compensation laws, and the municipality's obligation ceases after a maximum of one year. If the policeman is still disabled after one year, then he is eligible for wage loss workers compensation benefits.

THEREFORE, IT IS MY OPINION:

> Section 11-1822.1 requires a municipality to pay an injured policeman's full salary during the period of disability or one year, whichever ends first. The Workers' Compensation Fund is not liable for any wage loss benefits during that period because the municipality pays the policeman in full and he has suffered no wage loss.

Very truly yours,

MIKE GREELY
Attorney General

MG/ABC/ar

VOLUME 37 OPINION NO. 158

BONDS - Constitutional and statutory limitations on municipal indebtedness inapplicable to revenue bonds;
CITIES AND TOWNS - Constitutional and statutory limitations on municipal indebtedness inapplicable to revenue bonds;
MUNICIPALITIES - Constitutional and statutory limitations on municipal indebtedness inapplicable to revenue bonds.
SECTIONS - 11-2303, 11-2408 and 11-2409, R.C.M. 1947.

HELD: Revenue bonds issued under the Revenue Bond Act of 1939, whether for municipally owned and operated sewage and water facilities or other permissible purposes, do not create indebtedness within the meaning of Section 11-2303, R.C.M. 1947, and are not subject to the debt ceiling established by that section.

31 August 1978

Ben Berg, Jr.
Bozeman City Attorney
411 East Main Street
Bozeman, Montana 59715

Dear Mr. Berg:

You have requested an opinion concerning the following question:

> Are revenue bonds subject to the municipal debt limitations prescribed by Section 11-2303, R.C.M. 1947, when issued to finance the construction of a municipal sewage filtration plant and the renovation and expansion of municipal water supply facilities?

Your question relates to a proposed revenue bond issue by the city of Bozeman. The bonds would be issued pursuant to the Revenue Bond Act of 1939, Sections 11-2401 et seq., R.C.M. 1947, to finance the construction of a federally required filtration plant and the renovation and expansion of Bozeman water supply facilities. Both the projects are or will be municipally owned and operated.

Your specific concern is whether the proposed bonds are municipal "debts" within the meaning of Section 11-2303, R.C.M. 1947, and therefore subject to the municipal

indebtedness ceiling established by that section. Section 11-2303 provides:

> No city or town may issue bonds for any purpose in an amount which with all outstanding and unpaid indebtedness will exceed 18% of the taxable value of the property therein subject to taxation, to be ascertained by the last assessment for state and county taxes. For the purpose of constructing a sewerage system, procuring a water supply, or constructing or acquiring a water system for a city or town which shall own and control the water supply and water system and devote the revenues therefrom to the payment of the debt, a city or town may incur an additional indebtedness by borrowing money or issuing bonds. The additional total indebtedness that may be incurred by borrowing money or issuing bonds for the construction of a sewerage system, for the procurement of a water supply, or for both such purposes, including all indebtedness theretofore contracted which is unpaid or outstanding, may not in the aggregate exceed 10% over and above the 18% heretofore referred to of the total taxable value of the property therein subject to taxation as ascertained by the last assessment for state and county taxes. The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness.

It is well settled that revenue bonds are exempt from constitutional and statutory limitations upon governmental indebtedness. Cases decided under debt limitation provisions established by the 1889 Montana Constitution and implementing statutes thereunder have uniformly held that revenue bonds do not create indebtedness or liabilities within the meaning of the constitutional and statutory provisions. Fickes v. Missoula County, 155 Mont. 258, 264, 470 P.2d 278 (1970), and cases cited therein. The common characteristic of the revenue bonds considered in those cases was express provision in the enabling acts that the bonds issued thereunder did not obligate the credit or taxing power of the issuing public body. Id. The Revenue Bond Act of 1939 contains such a provision, providing in Section 11-2409, R.C.M. 1947, that the undertakings must be self-supporting. In Section 11-2408, R.C.M. 1947, no bond holder of any bond issued thereunder "shall ever have the

right to compel any exercise of taxing power of the municipality" and any bond issued thereunder "does not constitute a debt of a municipality within the meaning of any constitutional or statutory limitation or provision."

The Revenue Bond Act of 1939 was enacted prior to the 1972 Constitution but Sections 11-2408 and 11-2409 have not been repealed. It is my opinion that neither the limitations imposed by the 1972 Montana Constitution upon local government indebtedness nor Section 11-2303 require a different result than reached in Fickes and its ancestors.

Section 10, Article VIII, 1972 Montana Constitution requires the Montana Legislature to establish debt ceilings for local government. It is the counterpart of Sections 5 and 6, Article XIII, 1889 Montana Constitution. The 1889 provisions were controlling in Fickes, and differ from the 1972 provision in that they directly established fifty-nine percent of the value of taxable property as the debt ceiling for counties, cities, towns and school districts. The 1889 provisions were self-executing. Colwell v. City of Great Falls, 117 Mont. 126, 157 P.2d 1013 (1945). The 1972 provision mandates that the Legislature fix debt ceilings for local government but clearly carries forward an intention to limit local governments' ability to create obligations which must be met and paid for by future tax revenues. There is no basis for concluding that the 1972 provision requires any different treatment of revenue bonds than accorded under the 1889 Constitution.

Similarly, there is nothing in the language of Section 11-2303 indicating that the Legislature intends to treat revenue bonds as municipal obligations or debts. The Section is within the chapter dealing with general obligation bonds; general obligation bonds pledge the credit and taxing power of a municipality and have always been considered debts subject to statutory and constitutional debt ceilings. See Yovetich v. McClintock, 165 Mont. 80, 85, 526 P.2d 999 (1974); Montana-Dakota Utilities Co. v. City of Havre, 109, 164, 172, 94 P.2d 660 (1939). More importantly, interpretation subjecting revenue bonds within the limitations of Section 11-2303 would conflict with the express provision of Section 11-2408. Statutes must be reconciled and harmonized if possible, Fletcher v. Paige, 124 Mont. 114, 220 P.2d 484 (1950). Section 11-2408 can readily be harmonized with Section 11-2303 by defining "municipal indebtedness and obligations" in their traditional sense.

The second sentence of Section 11-2303, which is underlined, requires no different conclusion in the case of revenue bonds issued to finance sewage or water systems than revenue bonds issued for other purposes. Sewage and water systems may be financed through revenue bonds, see Section 11-2402(a), R.C.M. 1947, or general obligation bonds, see Sections 11-966 and 11-2302, R.C.M. 1947. Although the second sentence of Section 11-2303 refers to dedication of revenues to payment of the underlying bonds, a characteristic of revenue bonds, that language refers back to a municipal debt. The second sentence does not single out revenue bonds issued for purposes of constructing sewage and water supply systems for different treatment than other revenue bonds, but rather contemplates a hybrid situation where general obligation bonds pledge the revenues of the sewage or water supply system to payment of the issue. Since the pledge creates an expectation that the project will pay its way, subject ultimately to the taxing ability of the municipality to make up any deficiencies, the Legislature provided for a higher debt limitation for these hybrid bonds.

THEREFORE, IT IS MY OPINION:

> Revenue bonds issued under the Revenue Bond Act of 1939, whether for municipally owned and operated sewage and water facilities or other permissible purposes, do not create indebtedness within the meaning of Section 11-2303, R.C.M. 1947, and are not subject to the debt ceiling established by that section.

Very truly yours,

MIKE GREELY
Attorney General

MG/MMcC/br