



STATE OF MONTANA  
AIR QUALITY CONTROL  
IMPLEMENTATION PLAN

Subject:  
Butte/Silver Bow  
Air Quality Control  
Program

1 Walkerville. The Board issued a Findings of Fact, Conclu-  
2 sions of Law and Order, the contents of which it now takes  
3 administrative notice. Administration and implementation of  
4 the program is currently under the direction and control of  
5 the BSCC.

6 4. That pursuant to section 172 of the federal Clean  
7 Air Act (42 U.S.C. section 7503), state implementation plans  
8 for nonattainment areas are required to contain specific  
9 contingency measures that become effective without further  
10 action if the nonattainment area fails either to make reason-  
11 able further progress, or to attain the national primary  
12 ambient standard by the applicable attainment date.

13 5. On April 20, 1994, the BSCC adopted Ordinance No.  
14 468, which amends its air pollution control program by con-  
15 ditionally adopting regulations for the use of chemical de-  
16 icers in lieu of conventional sanding materials, to be fol-  
17 lowed by the City and County of Butte-Silver Bow, and the  
18 Montana Department of Transportation. These regulations are  
19 to become automatically effective if compliance with the  
20 particulate matter NAAQS is either not demonstrated by Decem-  
21 ber 31, 1994, or not maintained after that date. A copy of  
22 Ordinance No. 468 is attached as Exhibit A to this Order, and  
23 is incorporated herein in its entirety by this reference.

24 6. In this proceeding, BSCC is seeking approval of the  
25 above-described amendments to its local air pollution control  
26 program.

27 7. On April 20, 1994, and upon proper public notice,

STATE OF MONTANA  
AIR QUALITY CONTROL  
IMPLEMENTATION PLAN

Subject:  
Butte/Silver Bow  
Air Quality Control  
Program

1 the BSCC conducted a public hearing on proposed Ordinance No.  
2 468 which amends the local air pollution control program, and  
3 which is the subject of this proceeding before the Board.

4 8. In its Order of November 15, 1991, the Board found  
5 that the location, character, and extent of particular con-  
6 centrations of population and air contaminant sources, and  
7 the geographic, topographic and meteorological considerations  
8 involved, and combinations of the foregoing, were such as to  
9 make impracticable the maintenance of appropriate levels of  
10 air quality without a local air pollution control program  
11 such as that administered by the BSCC (Finding No. 6). The  
12 Board also found that the local air pollution control program  
13 was an acceptable alternative to direct state administration  
14 (Finding No. 7). The Board reaffirms the appropriateness of  
15 these findings, as they relate to the BSCC local program, as  
16 amended by this application.

17 9. In its Order of November 15, 1991, the Board found  
18 that the local air pollution control program provided for  
19 administrative organization, staff, financial and other re-  
20 sources necessary to effectively and efficiently carry out  
21 the program (Finding No. 8). The Board reaffirms the appro-  
22 priateness of these findings, as they relate to the BSCC  
23 local program, as amended by this application.

24 10. In its Order of November 15, 1991, the Board found  
25 that the local air pollution control program administered by  
26 BSCC had been adopted into local law and included the neces-  
27 sary provisions for enforcement by administrative and judi-

3

Replaces Pages:

May 20, 1994

Dated:

Page 47.2.5 (4)

Page 4 of 9

STATE OF MONTANA  
AIR QUALITY CONTROL  
IMPLEMENTATION PLAN

Subject:  
Butte/Silver Bow  
Air Quality Control  
Program

1 cial process (Finding No. 9). The Board reaffirms the appro-  
2 priateness of these findings, as they relate to the BSCC  
3 local program, as amended by this application.

4 11. Exhibit A to this Order contains local Ordinance  
5 No. 468, which constitutes the proposed amendments to the  
6 local air pollution control program that are the subject of  
7 this proceeding. The Board finds that Ordinance No. 468 is  
8 compatible with, more stringent, or more extensive than the  
9 corresponding requirements under the Montana Clean Air Act,  
10 Title 75, Chapter 2, MCA, and regulations adopted by the  
11 Board thereunder.

12 12. The Board finds that, as amended by this applica-  
13 tion, BSCC is only seeking authority to operate a local air  
14 pollution control program which regulates certain defined  
15 activities (concerning roads and solid fuel burning devices)  
16 in discrete geographical areas (the air pollution control  
17 district).

18 13. Consistent with the Board's previous Order, imple-  
19 mentation of the local air pollution control program, as pro-  
20 posed to be amended in this proceeding, is not intended in  
21 any way to interfere with the retention of jurisdiction for  
22 the Department over those sources and activities not subject  
23 to the BSCC local program. See, In the Matter of the Appli-  
24 cation of Butte-Silver Bow Council of Commissioners for Ap-  
25 preoval of its Local Air Pollution Control Program, dated  
26 November 15, 1991, Findings, Conclusions and Order, Finding  
27 No. 11, Conclusion Nos. 3, 4 and 5, Order para. Nos. 2, 3,

4

Replaces Pages:

Dated:

May 20, 1994

Page 47.2.5 (5)

Page 5 of 9

STATE OF MONTANA  
AIR QUALITY CONTROL  
IMPLEMENTATION PLAN

Subject:  
Butte/Silver Bow  
Air Quality Control  
Program

1 and 4.

2 14. The Board finds that the Department should assume  
3 and retain control over any source regulated by the Montana  
4 Clean Air Act, Title 75, Chapter 2, MCA, for which BSCC has  
5 not provided by ordinance or local law for requirements com-  
6 patible with, more stringent than, or more extensive than  
7 those imposed by the Montana Clean Air Act or regulations  
8 adopted thereunder.

9 15. The Board finds that, as part of the requisite  
10 degree of authority necessary to administer its proposed  
11 local air pollution control program, it is appropriate for  
12 BSCC to be responsible for emergency powers as provided in  
13 Section 75-2-402, MCA, in regard to those sources and activi-  
14 ties governed by the local air pollution control program, as  
15 amended. The Department shall retain such emergency powers  
16 over all other sources.

17

18

CONCLUSIONS OF LAW

19

1. Proper notice and an opportunity to participate in  
20 this proceeding has been provided to the Department, the  
21 applicant, and the public. Title 2, Chapters 3 and 4, MCA.

22

2. The local air pollution control program adminis-  
23 tered by the BSCC, and as amended by the application in this  
24 proceeding, meets the requirements set forth by statute for  
25 approval by the Board. Section 75-2-301, MCA.

26

3. The Department should assume and retain control  
27 over any source regulated by the Montana Clean Air Act, Title

STATE OF MONTANA  
AIR QUALITY CONTROL  
IMPLEMENTATION PLAN

Subject:  
Butte/Silver Bow  
Air Quality Control  
Program

1 75, Chapter 2, MCA, for which BSCC has not provided by ordi-  
2 nance or local law for requirements which are at least com-  
3 patible with those imposed by the Montana Clean Air Act or  
4 regulations adopted thereunder.

5 4. Pursuant to statute, and except for the emergency  
6 powers provided for in Section 75-2-402, MCA, the Board may  
7 not delegate to BSCC the authority to control the following  
8 sources of air contaminants: those that require the prepara-  
9 tion of an environmental impact statement pursuant to Title  
10 75, Chapter 1, Part 2, MCA; those that are subject to regula-  
11 tion under the Montana Major Facility Siting Act, Title 75,  
12 Chapter 20, MCA, and; those that have the potential to emit  
13 250 tons per year or more of any pollutant subject to regula-  
14 tion under the Montana Clean Air Act, Title 75, Chapter 2,  
15 MCA, including fugitive emissions, unless the authority to  
16 control the source was delegated to BSCC prior to January 1,  
17 1991. Section 75-2-301(4), MCA.

18 5. The Board may not delegate to BSCC the authority to  
19 control those sources whose complexity and magnitude are  
20 beyond the reasonable capability of the applicants, or the  
21 control of which may be more efficiently and economically  
22 performed at the state level. Section 75-2-301(9), MCA.

23 6. The Findings of Fact contained in this Order are  
24 hereby adopted as Conclusions of Law.

25

26

ORDER

27

1. The Board approves the local air pollution control

STATE OF MONTANA  
AIR QUALITY CONTROL  
IMPLEMENTATION PLAN

Subject:  
Butte/Silver Bow  
Air Quality Control  
Program

1 program currently being administered by BSCC, as amended by  
2 the application in this proceeding.

3 2. The Board directs the Department of Health and  
4 Environmental Sciences to assume and retain control over the  
5 following sources of air contaminants:

- 6 a. those listed in Section 75-2-301(4), MCA;
- 7 b. the copper and molybdenum mine and concentrator lo-  
8 cated in Butte, currently doing business as Montana  
9 Resources;
- 10 c. the elemental phosphorous plant located at Silver  
11 Bow, currently doing business as Rhone Poulenc;
- 12 d. the asphalt plants located in Butte, currently  
13 doing business as Rite-Way Asphalt, Gilman Excavat-  
14 ing, and Butte/Silver Bow Asphalt;
- 15 e. any source regulated by the Montana Clean Air Act,  
16 Title 75, Chapter 2, MCA, for which BSCC has not  
17 provided by ordinance or local law for requirements  
18 which are at least as compatible with those imposed  
19 by the Montana Clean Air Act or regulations adopted  
20 thereunder; and
- 21 f. those sources of air contaminants which are not in-  
22 tended to be covered by the approved local air  
23 pollution control program, as amended, as described  
24 in Paragraphs 12 and 13 of the Findings of Fact  
25 herein.

26 3. The Board orders that BSCC shall be responsible for  
27 emergency powers as provided in Section 75-2-402, MCA in

7

Replaces Pages:

Dated:

May 20, 1994

Page 47.2.5 (8)

Page 8 of 9

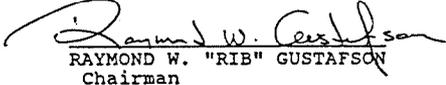
STATE OF MONTANA  
AIR QUALITY CONTROL  
IMPLEMENTATION PLAN

Subject:  
Butte/Silver Bow  
Air Quality Control  
Program

1 regard to those sources and activities governed by the ap-  
2 proved local air pollution control program, as amended. The  
3 Department shall retain such emergency powers over all other  
4 sources.

5  
6 DATED this 20<sup>th</sup> day of May, 1994.

7  
8 BOARD OF HEALTH AND  
ENVIRONMENTAL SCIENCES

9  
10   
11 RAYMOND W. "RIB" GUSTAFSON  
Chairman  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

8

Replaces Pages:

May 20, 1994

Dated:

Page 47.2.5 (9)

Page 9 of 9