

STATE OF MONTANA AIR QUALITY CONTROL IMPLEMENTATION PLAN	Subject: Butte/Silver Bow Air Quality Control Program
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BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the Application)
of Butte-Silver Bow Council of) FINDINGS,
Commissioners for Approval of) CONCLUSIONS
its Local Air Pollution Control) AND ORDER
Program)

Background

1. On October 1, 1991, the Butte-Silver Bow Council of Commissioners (BSCC) filed an application with the Board of Health and Environmental Sciences (Board), seeking approval of a local air pollution control program. A Stipulation between BSCC and the Department of Health and Environmental Sciences (Department) has been presented to the Board in this proceeding (Stipulation). In the Stipulation the Department and BSCC agree that the proposed local air pollution control program should be approved by the Board as consistent with Section 75-2-301, MCA. A copy of this Stipulation is attached to this order as Appendix A and by this reference is incorporated herein in its entirety as part of this document.

2. Pursuant to public notice, and on November 15, 1991, at the Cogswell Building, Helena, Montana, the Board conducted a hearing on the application of BSCC to establish a local air pollution control program. At the hearing, testimony and evidence on the application, including the Stipula-

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1 tion, were presented by BSCC and the Department. An oppor-
2 tunity to be heard was provided to all interested parties at
3 the hearing, and testimony and evidence on the application
4 was presented by the public. Based upon the record in this
5 proceeding, the Board enters the following Findings of Fact,
6 Conclusions of Law and Order.

7 Findings of Fact

8 3. On August 3, 1988, and after a public hearing, the
9 BSCC adopted an ordinance implementing a control program for
10 the regulation of emissions from residential wood burning.
11 On March 6, 1991, and after a public hearing, the BSCC
12 adopted Council Resolution No. 1107, establishing sanding and
13 chip seal material standards and street sweeping and flushing
14 policies to be followed by the City and County of Butte-
15 Silver Bow, in an effort to regulate emissions from reen-
16 trained road dust.

17 4. On July 24, 1991, and upon proper public notice,
18 the BSCC conducted a public hearing on both the ordinance and
19 resolution described above in Paragraph 3, and the establish-
20 ment of a local air pollution control program encompassing
21 the City of Butte and that portion of Silver Bow County with-
22 in the immediate vicinity of the boundaries of the City of
23 Butte, excluding the municipality of Walkerville. Upon con-
24 clusion of the hearing, the BSCC reaffirmed the adoption of
25 the above-mentioned ordinance and resolution, and approved

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1 the creation of the local air pollution control program de-
2 scribed above. Council Resolution No. 1307, dated March 6,
3 1991; Council Bill No. 330, Ordinance No. 330, dated August
4 3, 1991. A map and legal description of the area covered by
5 the proposed local air pollution control program is attached
6 as Exhibit A to the Stipulation between the Department and
7 BSCC (Appendix A).

8 5. On October 1, 1991, the BSCC filed an application
9 with the Board, seeking approval of its proposed local air
10 pollution control program, pursuant to Section 75-2-301, MCA.
11 A copy of the application, which includes the entire proposed
12 local air pollution control program is attached to this Order
13 as Appendix B and by this reference is incorporated herein in
14 its entirety as part of this document.

15 6. The location, character and extent of particular
16 concentrations of population and air contaminant sources, and
17 the geographic, topographic and meteorological considerations
18 involved, and combinations of the foregoing, are such as to
19 make impracticable the maintenance of appropriate levels of
20 air quality without an air pollution control program such as
21 that proposed by the BSCC in its application.

22 7. A local air pollution control program which in-
23 cludes the boundaries proposed herein is an acceptable alter-
24 native to direct state administration.

25 8. The proposed local air pollution control program

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1 provides for administrative organization, staff, financial
2 and other resources necessary to effectively and efficiently
3 carry out the program.

4 9. The proposed local air pollution control program
5 has been adopted into local law and includes the necessary
6 provisions for enforcement by administrative and judicial
7 process.

8 10. The local ordinance constituting the proposed local
9 air pollution control program which is the subject of this
10 proceeding is contained in Appendix B to this Order. The
11 Board finds that this local ordinance is compatible with,
12 more stringent, or more extensive than the corresponding
13 requirements under the Montana Clean Air Act, Title 75, Chap-
14 ter 2, MCA, and regulations adopted by the Board thereunder.

15 11. There are several sources within the boundaries of
16 the proposed Butte-Silver Bow Air Pollution Control Program
17 whose complexity and magnitude is beyond the reasonable capa-
18 bility of the program, and the control of which may be more
19 efficiently and economically performed at the state level.
20 These sources include the following: the copper and
21 molybdenum mine and concentrator located in Butte, currently
22 doing business as Montana Resources; the elemental phosphor-
23 ous plant located at Silver Bow, currently doing business as
24 Rhône-Poulenc; and the asphalt plants located in Butte, cur-
25 rently doing business as Rite-Way asphalt, Gilman Excavating,

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1 and Butte/Silver Bow Asphalt. In addition, the BSCC has
2 limited the scope of its proposed local air pollution control
3 program as follows:

4 This Ordinance applies to all persons, agencies,
5 institutions, businesses, industries or government
6 entities living in or located within the (bounda-
7 ries described above in Paragraph 4). Stationary
8 sources with the potential to emit more than 25
9 tons per year of any pollutant, with the exception
10 of five (5) tons per year of lead, regulated under
11 the Montana Clean Air Act, are not subject to this
12 Ordinance.

13 Council Bill No. 330, Ordinance No. 330, dated August 3,
14 1991, Section 3, entitled "Scope".

15 12. The Department should assume and retain control
16 over any source regulated by the Montana Clean Air Act, Title
17 75, Chapter 2, MCA, for which the BSCC has not provided by
18 ordinance or local law for requirements which are at least
19 compatible with those imposed by the Montana Clean Air Act or
20 regulations adopted thereunder.

21 13. The Board finds that, as part of the requisite
22 degree of authority necessary to administer its proposed
23 local air pollution control program, it is appropriate for
24 the BSCC to be responsible for emergency powers as provided
25 in Section 75-2-402, MCA, in regard to those sources gov-

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1 erned by the proposed local air pollution control program.
2 The Department should retain such emergency powers over all
3 other sources.

4 Conclusions of Law

5 1. Proper notice and an opportunity to participate in
6 this proceeding has been provided to both the Department and
7 BSCC, and the public. Title 2, Chapters 3 and 4, MCA.

8 2. The local air pollution control program proposed by
9 BSCC meets the requirements set forth by statute for approval
10 by the Board. Section 75-2-301, MCA.

11 3. The Department should assume and retain control
12 over any source regulated by the Montana Clean Air Act, Title
13 75, Chapter 2, MCA, for which BSCC has not provided by ordi-
14 nance or local law for requirements which are at least com-
15 patible with those imposed by the Montana Clean Air Act or
16 regulations adopted thereunder.

17 4. Pursuant to statute, and except for the emergency
18 powers provided for in Section 75-2-402, MCA, the Board may
19 not delegate to BSCC the authority to control the following
20 sources of air contaminants: those that require the prepara-
21 tion of an environmental impact statement pursuant to Title
22 75, Chapter 1, Part 2, MCA; those that are subject to regu-
23 lation under the Montana Major Facility Siting Act, Title 75,
24 Chapter 20, MCA; those that have the potential to emit 250
25 tons per year or more of any pollutant subject to regulation

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1 under the Montana Clean Air Act, Title 75, Chapter 2, MCA,
2 including fugitive emissions, unless the authority to control
3 the source was delegated to BSCC prior to January 1, 1991.
4 Section 75-2-301(4), MCA.

5 5. The Board may not delegate to BSCC the authority to
6 control those sources whose complexity and magnitude is
7 beyond the reasonable capability of BSCC, or the control of
8 which may be more efficiently and economically performed at
9 the state level. Section 75-2-301(9), MCA.

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

12 Order

13
14 1. The Board approves the local air pollution control
15 program proposed by the Butte-Silver Bow Council of Commis-
16 sioners, as contained in the application initiating this
17 proceeding.

18 2. The Board directs the Department of Health and
19 Environmental Sciences to assume and retain control over the
20 following sources of air contaminants: those listed in Sec-
21 tion 75-2-301(4), MCA; the copper and molybdenum mine and
22 concentrator located in Butte, currently doing business as
23 Montana Resources; the elemental phosphorous plant located at
24 Silver Bow, currently doing business as Rhône-Poulenc; and
25 the asphalt plants located in Butte, currently doing business

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1 as Rite-Way asphalt, Gilman Excavating, and Butte/Silver Bow
2 Asphalt.

3 3. The Board directs the Department of Health and
4 Environmental Sciences to assume and retain control over
5 those sources of air contaminants which are not intended to
6 be covered by the proposed local air pollution control pro-
7 gram, as described in Council Bill No. 330, Ordinance No.
8 330, dated August 3, 1991, Section 3, entitled "Scope".

9 4. The Board directs the Department of Health and
10 Environmental Sciences to assume and retain control over any
11 source regulated by the Montana Clean Air Act, Title 75,
12 Chapter 2, MCA, for which BSCC has not provided by ordinance
13 or local law for requirements which are at least compatible
14 with those imposed by the Montana Clean Air Act or regula-
15 tions adopted thereunder.

16 4. The Board orders that the BSCC shall be responsible
17 for emergency powers as provided in Section 75-2-402, MCA, in
18 regard to those sources governed by the proposed local air
19 pollution control program. The Department should retain such
20 emergency powers over all other sources.

21
22 DATED this 15 day of November, 1991.

23 David W. Simpson
24 David W. Simpson
25 Chairman

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