

STATE OF MONTANA
AIR QUALITY CONTROL
IMPLEMENTATION PLAN

Subject:
Butte/Silver Bow
Air Quality Control
Program

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

3 In the Matter of the Application)
4 of the Butte-Silver Bow Council of)
5 Commissioners for Approval of) FINDINGS OF FACT,
Amendments to its Local Air) CONCLUSIONS OF LAW
Pollution Control Program.) AND ORDER

6
7 BACKGROUND

8 1. The Butte-Silver Bow Council of Commissioners
9 (BSCC) have requested that the Board of Health and Environ-
10 mental Sciences ("Board"), approve substantial amendments to
11 its local air pollution control program.

12 2. Pursuant to public notice, and on May 20, 1994, at
13 the Cogswell Building, Helena, Montana, the Board conducted a
14 hearing on this matter. At the hearing, testimony and evi-
15 dence were presented by the Department of Health and Environ-
16 mental Sciences ("Department"). An opportunity to be heard
17 was provided to all interested parties at the hearing. Based
18 upon the record of this proceeding, the Board enters the
19 following Findings of Facts, Conclusions of Law and Order.

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22 FINDINGS OF FACT

23 3. On November 15, 1991, and pursuant to Section
24 75-2-301, MCA, the Board approved a local air pollution con-
25 trol program for the City of Butte and the County of Silver
26 Bow, encompassing the City of Butte and that portion of Sil-
27 ver Bow County within the immediate vicinity of the bound-
aries of the City of Butte, excluding the municipality of

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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,

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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-

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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 proval 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,

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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.

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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

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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.

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ORDER

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1. The Board approves the local air pollution control

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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

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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.

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6 DATED this 20th day of May, 1994.

7
8 BOARD OF HEALTH AND
9 ENVIRONMENTAL SCIENCES

10 
11 RAYMOND W. "RIB" GUSTAFSON
12 Chairman
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