

HOUSE BILL NO. 377

INTRODUCED BY RANEY, WEEDING, HARP, T. BECK, YELLOWTAIL,  
DRISCOLL, GILBERT  
BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

IN THE HOUSE

JANUARY 24, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON NATURAL RESOURCES.

                                      FIRST READING.

FEBRUARY 12, 1991                   COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 13, 1991                   PRINTING REPORT.

FEBRUARY 14, 1991                   ON MOTION, CONSIDERATION PASSED

FEBRUARY 15, 1991                   SECOND READING, DO PASS AS AMENDED.

FEBRUARY 16, 1991                   ENGROSSING REPORT.

FEBRUARY 18, 1991                   THIRD READING, PASSED.  
AYES, 96; NOES, 4.

                                      TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 19, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON NATURAL RESOURCES.

                                      FIRST READING.

APRIL 2, 1991                       COMMITTEE RECOMMEND BILL BE  
CONCURRED IN. REPORT ADOPTED.

APRIL 4, 1991                       SECOND READING, CONCURRED IN.

APRIL 5, 1991                       THIRD READING, CONCURRED IN.  
AYES, 37; NOES, 13.

                                      RETURNED TO HOUSE.

IN THE HOUSE

APRIL 5, 1991                       RECEIVED FROM SENATE.

                                      SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 377  
2 INTRODUCED BY Randy Leachman HARR T. Baul

3 BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL  
4 Yellowtail Dussell Hubert

5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A  
6 CERTIFICATION AND LICENSING PROCESS FOR MEGALANDFILLS;  
7 PROVIDING FOR CONTRACTS FOR INFORMATION; REQUIRING THE  
8 SUBMISSION OF LONG-RANGE PLANS; REQUIRING A CERTIFICATE OF  
9 SITE ACCEPTABILITY; SPECIFYING ENVIRONMENTAL FACTORS TO BE  
10 EVALUATED; REQUIRING A FILING FEE; PROVIDING A CONTESTED  
11 CASE HEARINGS PROCESS; SPECIFYING DECISIONMAKING CRITERIA;  
12 REQUIRING A LICENSE; REQUIRING MONITORING; PROVIDING FOR  
13 ENFORCEMENT BY RESIDENTS; PROVIDING A MECHANISM TO RECOVER  
14 DAMAGES FOR CONTAMINATION OF A DRINKING WATER SUPPLY;  
15 PROVIDING FOR JUDICIAL REVIEW; PROVIDING PENALTIES FOR  
16 VIOLATIONS; PROVIDING A SURETY BOND; AND PROVIDING AN  
17 IMMEDIATE EFFECTIVE DATE."  
18

19 STATEMENT OF INTENT

20 A statement of intent is required for this bill because  
21 it grants rulemaking authority to the board of health and  
22 environmental sciences and to the department of health and  
23 environmental sciences. It is the intent of the legislature  
24 that these regulations be designed to protect the public  
25 health, safety, and welfare and the environment.



1  
2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

3 NEW SECTION. Section 1. Short title. [Sections 1  
4 through 36] may be cited as the "Montana Megalandfill Siting  
5 Act".

6 NEW SECTION. Section 2. Purpose. (1) It is the  
7 constitutionally declared policy of this state to maintain  
8 and improve a clean and healthful environment for present  
9 and future generations, to protect the environment from  
10 degradation and prevent unreasonable depletion and  
11 degradation of natural resources, and to provide for  
12 administration and enforcement to attain these objectives.

13 (2) The construction of solid waste facilities that  
14 dispose of over 200,000 tons of waste a year (megalandfills)  
15 may be necessary to meet increasing state and national needs  
16 for solid waste disposal capacity. However, due to the  
17 volume of waste processed, megalandfills may adversely  
18 affect the environment, surrounding communities, and the  
19 welfare of the citizens of this state. Therefore, it is  
20 necessary to ensure that the location, construction, and  
21 operation of megalandfills will produce minimal adverse  
22 effects on the environment and upon the citizens of this  
23 state by providing that a megalandfill may not be  
24 constructed or operated within this state without a  
25 certificate of site acceptability pursuant to [section 11]

1 and a license to operate acquired pursuant to [section 26]  
2 and 75-10-221.

3 NEW SECTION. Section 3. Definitions. As used in  
4 [sections 1 through 36], the following definitions apply:

5 (1) "Application" means an application for a  
6 certificate and license submitted in accordance with  
7 [sections 11 through 28] and the rules adopted under  
8 [sections 11 through 28].

9 (2) "Board" means the board of health and environmental  
10 sciences provided for in 2-15-2104.

11 (3) "Certificate" means the certificate of site  
12 acceptability issued by the board under [section 11] that is  
13 required for siting a megalandfill.

14 (4) "Commence to construct" means:

15 (a) any clearing of land, excavation, construction, or  
16 other action that would affect the environment of the site,  
17 except that the term does not mean changes for securing  
18 geological data, including necessary borings to ascertain  
19 subsurface conditions;

20 (b) the modification or upgrading of an existing solid  
21 waste disposal facility into a megalandfill, except that the  
22 term does not pertain to maintenance or repair of an  
23 existing facility.

24 (5) "Department" means the department of health and  
25 environmental sciences provided for in Title 2, chapter 15,

1 part 21.

2 (6) "Dispose" or "disposal" means the discharge,  
3 injection, deposit, dumping, spilling, leaking, or placing  
4 of any solid waste into or onto the land so that the solid  
5 waste or any constituent of it may enter the environment or  
6 be emitted into the air or discharged into any water,  
7 including ground waters.

8 (7) "Megalandfill" means any new or existing solid  
9 waste landfill facility that accepts more than 200,000 tons  
10 a year of solid waste.

11 (8) "Person" means an individual, firm, partnership,  
12 company, association, corporation, city, town, local  
13 governmental entity, or any other governmental or private  
14 entity, whether organized for profit or not.

15 (9) (a) "Solid waste" means all putrescible and  
16 nonputrescible wastes, including but not limited to garbage;  
17 rubbish; refuse; ashes; sludge from sewage treatment plants,  
18 water supply treatment plants, or air pollution control  
19 facilities; construction and demolition wastes; dead  
20 animals, including offal; discarded home and industrial  
21 appliances; wood products or wood byproducts; and inert  
22 materials.

23 (b) "Solid waste" does not mean municipal sewage,  
24 industrial wastewater effluents, mining wastes regulated  
25 under the mining and reclamation laws administered by the

1 department of state lands, slash and forest debris regulated  
2 under laws administered by the department of state lands, or  
3 marketable byproducts.

4 (10) "Solid waste landfill" means any publicly or  
5 privately owned landfill or landfill unit that receives  
6 household waste or other types of waste, including  
7 commercial waste, nonhazardous sludge, and industrial solid  
8 waste. The term does not include land application units,  
9 surface impoundments, injection wells, or waste piles.

10 NEW SECTION. Section 4. Adoption of rules by board.  
11 The board may adopt rules implementing the certification  
12 provisions of [sections 1 through 36], including rules  
13 regarding the filing and contents of the application, proof  
14 of service and notice requirements, environmental factors to  
15 be evaluated, filing fee, hearings process, and other  
16 components of the certificate and certification process that  
17 the board considers necessary.

18 NEW SECTION. Section 5. Adoption of rules by  
19 department. The department may adopt rules implementing the  
20 licensing provisions of [sections 1 through 36], including  
21 rules regarding the contents of the application, monitoring,  
22 and other components of the license and licensing process  
23 that the department considers necessary.

24 NEW SECTION. Section 6. Contracts for information. (1)  
25 The department may contract with a potential applicant under

1 [sections 1 through 36] in advance of the filing of a formal  
2 application for the development of information or the  
3 provision of services by the department required under  
4 [sections 1 through 36].

5 (2) Payments made to the department under a contract  
6 must be credited against the fee payable under [section 16].

7 NEW SECTION. Section 7. Grants, gifts, and funds. The  
8 department may receive grants, gifts, and other funds from  
9 any public or private source to assist in its activities  
10 under [sections 1 through 36].

11 NEW SECTION. Section 8. Money to solid waste  
12 management account. All fees, taxes, fines, and penalties  
13 collected under [sections 1 through 36], except those  
14 collected by a justice's court, must be deposited in the  
15 solid waste management account as provided in 75-10-117 for  
16 use by the department in carrying out its functions and  
17 responsibilities related to solid waste management.

18 NEW SECTION. Section 9. Annual long-range plan  
19 submitted -- contents -- available to public. (1) A person  
20 may not file an application for a certificate of site  
21 acceptability required by [section 11] unless the  
22 megalandfill has been adequately identified in a long-range  
23 plan at least 2 years prior to acceptance of an application  
24 by the department.

25 (2) The annual long-range plan must be submitted by

1 July 1 of each year and must include the following:

2 (a) the general location, size, and type of all  
3 facilities to be owned and operated by the person for which  
4 construction is projected during the ensuing 2 years, as  
5 well as those facilities to be closed during the planning  
6 period;

7 (b) a description of the efforts to involve  
8 environmental protection and land use planning agencies in  
9 the planning process, as well as other efforts to identify  
10 and minimize environmental problems at the earliest possible  
11 stage in the planning process;

12 (c) projections of the demand for the service rendered  
13 by the person and an explanation of the basis for those  
14 projections and a description of the manner and extent to  
15 which the proposed facilities will meet the projected  
16 demand; and

17 (d) additional information that the department by rule  
18 or the department on its own initiative or upon the advice  
19 of interested state agencies requests in order to carry out  
20 the purposes of [sections 1 through 36].

21 (3) The plan must be furnished to the governing body of  
22 each county in which any facility included in the plan under  
23 subsection (2)(a) is proposed to be located and must be made  
24 available to the public by the department. The applicant  
25 shall give public notice throughout the state by publishing

1 at least once a week for 2 consecutive weeks a summary of  
2 the proposed plan in newspapers of general circulation. The  
3 plan must also be filed with the environmental quality  
4 council, the department of highways, the department of state  
5 lands, the department of fish, wildlife, and parks, the  
6 department of commerce, and the department of natural  
7 resources and conservation. Interested persons may obtain a  
8 copy of the plan by written request and payment to the  
9 department of the costs of copying the plan.

10 NEW SECTION. **Section 10.** Study of included facilities.

11 If a person identifies a proposed facility in its long-range  
12 plan, submitted pursuant to [section 9], as one on which  
13 construction is proposed within the 2-year period following  
14 submission of the plan, the department shall begin to  
15 examine and evaluate the proposed site to determine whether  
16 construction of the proposed facility would unduly impair  
17 the environmental values described in [section 15]. The  
18 study may be continued until a person files an application  
19 for a certificate under [section 11]. Information gathered  
20 under this section may be used to support findings and  
21 recommendations required for issuance of a certificate and a  
22 license.

23 NEW SECTION. **Section 11.** Certificate required. (1) A  
24 person may not construct a megalandfill in the state without  
25 first applying for and obtaining a certificate of site

1 acceptability from the board.

2 (2) A certificate may only be issued pursuant to  
3 [sections 11 through 25].

4 NEW SECTION. Section 12. Certificate transferable. A  
5 certificate may be transferred, subject to the approval of  
6 the board, to a person who agrees to comply with the terms,  
7 conditions, and modifications contained in [sections 1  
8 through 36].

9 NEW SECTION. Section 13. Application -- filing and  
10 contents -- proof of service and notice. (1) (a) An  
11 applicant shall file with the department an application for  
12 a certificate under [section 11] in a form the board  
13 requires, containing the following information:

14 (i) a description of the proposed location and of the  
15 facility to be built;

16 (ii) a summary of any studies that have been made of the  
17 environmental impact of the facility;

18 (iii) a description of at least three reasonable  
19 alternate locations for the facility, a general description  
20 of the comparative merits and detriments of each location  
21 submitted, and a statement of the reasons why the proposed  
22 location is best suited for the facility;

23 (iv) baseline data for the primary and reasonable  
24 alternate locations;

25 (v) at the applicant's option, an environmental study

1 plan to satisfy the requirements of [sections 1 through 36];  
2 and

3 (vi) other information that the applicant considers  
4 relevant or that the board by order or rule may require.

5 (b) A copy or copies of the studies referred to in  
6 subsection (1)(a)(ii) must be filed with the department, if  
7 ordered, and must be available for public inspection.

8 (2) An application must be accompanied by proof of  
9 service of a copy of the application on the chief executive  
10 officer of each unit of local government, each county  
11 commissioner, city or county planning board, and solid waste  
12 district, and each federal agency charged with the duty of  
13 protecting the environment or of planning land use located  
14 in the area in which any portion of the proposed facility is  
15 proposed or is alternatively proposed to be located and on  
16 the following state government agencies:

17 (a) environmental quality council;

18 (b) department of fish, wildlife, and parks;

19 (c) department of state lands;

20 (d) department of commerce;

21 (e) department of highways; and

22 (f) department of natural resources and conservation.

23 (3) An application must be accompanied by proof that  
24 public notice was given to persons residing in the area in  
25 which any portion of the proposed facility is proposed or is

1 alternatively proposed to be located by publication of a  
2 summary of the application in newspapers of general  
3 circulation that will substantially inform those persons of  
4 the application.

5 NEW SECTION. Section 14. Supplemental material --  
6 amendments. (1) An application for an amendment of an  
7 application or a certificate must be in a form and contain  
8 information as the board by rule or the department by order  
9 prescribes. Notice of an amendment must be given as provided  
10 in [section 13(3) and (4)].

11 (2) An application may be amended by an applicant any  
12 time prior to the report made by the department under  
13 [section 17]. If the proposed amendment prevents the  
14 department from carrying out its duties and responsibilities  
15 under [sections 1 through 36], the department may require  
16 additional filing fees as the department determines  
17 necessary or may require a new application and filing fee.

18 (3) The applicant shall submit supplemental material in  
19 a timely manner as requested by the department or as offered  
20 by the applicant to explain, support, or provide details  
21 with respect to an item described in the original  
22 application. This supplemental material may be submitted  
23 without filing an application for an amendment. The  
24 department's determination as to whether information is  
25 supplemental or whether an application for amendment is

1 required is conclusive.

2 NEW SECTION. Section 15. Environmental factors  
3 evaluated during certification. In evaluating applications  
4 for a certificate of site acceptability, the department  
5 shall give consideration to the following list of  
6 environmental factors and regulations, where applicable, and  
7 may by rule add to the factors enumerated in this section:

8 (1) siting criteria for municipal solid waste landfills  
9 consistent with federal requirements as described in 40 CFR  
10 part 258;

11 (2) siting criteria described under the Montana Solid  
12 Waste Management Act, Title 75, chapter 10, part 2, and  
13 rules adopted under that part;

14 (3) the Montana solid waste management plan;

15 (4) solid waste disposal needs, including:

16 (a) availability and desirability of alternative  
17 sources of solid waste disposal in lieu of the proposed  
18 facility;

19 (b) promotional activities of the applicant that may  
20 have given rise to the need for the facility;

21 (c) social benefits resulting from the facility,  
22 including protection of public health and environmental  
23 quality; and

24 (d) integrated waste management activities that could  
25 reduce the need for additional solid waste disposal



1 capacity;

2 (5) land use impacts, including:

3 (a) the area of land required and its ultimate use;

4 (b) consistency with state and regional solid waste

5 plans;

6 (c) consistency with existing and projected nearby land

7 use;

8 (d) alternative uses of the site;

9 (e) the impact on the population already in the area

10 and the population attracted by construction or operation of

11 the facility;

12 (f) the impact of availability of solid waste disposal

13 at the facility on growth patterns and population dispersal;

14 (g) construction materials and practices, including

15 quality control and quality assurance plans to be followed

16 during construction of all phases of the proposed facility;

17 (h) scenic impacts;

18 (i) the effects on natural systems, wildlife, and plant

19 life;

20 (j) the impacts on important historic, architectural,

21 archaeological, and cultural areas and features;

22 (k) the impacts on public facilities and

23 accommodations; and

24 (l) opportunities for joint use with solid waste

25 disposal-intensive industries;

1 (6) water resources impacts, including:

2 (a) hydrologic studies of the adequacy of water supply

3 and the impact of the facility on streamflow, lakes, and

4 reservoirs;

5 (b) hydrologic studies of the impact of the facility on

6 ground water, including vadose zone studies describing the

7 potential for leachate to migrate from the facility to

8 ground water;

9 (c) an inventory of effluents, including physical,

10 chemical, and biological characteristics;

11 (d) hydrologic studies of effects of effluents on

12 receiving waters;

13 (e) the effect of the facility on water quality;

14 (f) the facility's projected water uses;

15 (g) the effects on plant and animal life, including

16 algae, macroinvertebrates, and fish population;

17 (h) effects on unique or otherwise significant

18 ecosystems, such as wetlands; and

19 (i) ground water, vadose zone, and methane gas

20 monitoring systems and programs; and

21 (7) characteristics of solid wastes that will be

22 disposed of at the facility, including:

23 (a) the rate of solid waste disposal;

24 (b) the solid waste handling practices proposed to be

25 used; and

1 (c) the present and expected future physical and  
2 chemical characteristics of the solid waste.

3 NEW SECTION. Section 16. Filing fee -- accountability  
4 -- refund -- use. (1) (a) The applicant shall pay to the  
5 department a filing fee as provided in this section based  
6 upon the department's estimated costs of processing the  
7 application for a certificate. The filing fee must be  
8 deposited in the solid waste management account for the use  
9 of the department in administering [sections 1 through 36].  
10 The initial filing fee may not exceed the following scale  
11 based upon the megalandfill's projected annual tonnage of  
12 waste:

13 (i) a base fee of \$40,000; plus

14 (ii) 20 cents per ton for every ton of waste over  
15 200,000 tons.

16 (b) The department may allow a credit against the fee  
17 payable under this section for the applicant's costs of  
18 developing information or providing services required under  
19 [sections 1 through 36] or required for preparation of an  
20 environmental impact statement under the Montana  
21 Environmental Policy Act, Title 75, chapter 1, part 1, or  
22 the National Environmental Policy Act, 42 U.S.C. 4321, et  
23 seq. The applicant may submit the information or a  
24 description of the services performed to the department,  
25 together with an accounting of the expenses incurred in

1 preparing the information or performing the services. The  
2 department shall evaluate the applicability, validity, and  
3 usefulness of the data or services and determine the  
4 expenses that may be credited against the filing fee payable  
5 under this section. Upon 30 days' notice to the applicant,  
6 this credit may at any time be reduced if the department  
7 determines that the amount to be credited is necessary to  
8 carry out its responsibilities under [sections 1 through  
9 36].

10 (2) (a) The department may contract with an applicant  
11 after the filing of a formal application for the development  
12 of information or the provision of services required under  
13 [sections 1 through 36]. The contract may continue an  
14 agreement entered into pursuant to [section 6]. Payments  
15 made to the department under a contract must be credited  
16 against the fee payable under this section. The revenue  
17 derived from the filing fee must be sufficient to enable the  
18 department and the board to carry out their responsibilities  
19 under [sections 1 through 36]. The department may amend a  
20 contract to require additional payments for necessary  
21 expenses up to the limits set forth in subsection (1)(a)  
22 upon 30 days' notice to the applicant. The department and  
23 applicant may enter into a contract that exceeds the scale  
24 provided in subsection (1)(a).

25 (b) If a contract is not entered into, the applicant

1 shall pay the filing fee in installments in accordance with  
2 a schedule of installments developed by the department;  
3 however, an installment may not exceed 20% of the total  
4 filing fee provided for in subsection (1).

5 (3) The applicant is entitled to an accounting of money  
6 spent and to a refund with interest at the rate of 6% a year  
7 of the portion of the filing fee not spent by the department  
8 in carrying out its responsibilities under [sections 1  
9 through 36]. A refund must be made after all administrative  
10 and judicial remedies have been exhausted by all parties to  
11 the certification proceedings.

12 (4) The revenue derived from the filing fees must be  
13 used by the department in compiling the information required  
14 for rendering a decision on a certificate and for carrying  
15 out other responsibilities of the department and the board  
16 under [sections 1 through 36].

17 NEW SECTION. **Section 17.** Study, evaluation, and report  
18 on proposed facility. (1) After receipt of an application,  
19 the department shall within 90 days notify the applicant in  
20 writing that:

21 (a) the application is accepted as complete; or

22 (b) the application is not complete and list the  
23 deficiencies. Upon correction of these deficiencies and  
24 resubmission by the applicant, the department shall within  
25 30 days notify the applicant in writing that the application

1 is in compliance and is accepted as complete.

2 (2) Upon receipt of an application complying with  
3 [sections 9 through 17], the department shall commence an  
4 intensive study and evaluation of the proposed facility and  
5 its effects, considering all applicable criteria listed in  
6 [section 24]. The department shall use, to the extent it  
7 considers applicable, valid and useful existing studies and  
8 reports submitted by the applicant or compiled by a state or  
9 federal agency.

10 (3) Within 1 year following acceptance of a complete  
11 application for a facility, the department shall make a  
12 report to the board that must contain the department's  
13 studies, evaluations, recommendations, other pertinent  
14 documents resulting from its study and evaluation, and an  
15 environmental impact statement or analysis prepared pursuant  
16 to the Montana Environmental Policy Act, Title 75, chapter  
17 1, part 1, if applicable.

18 NEW SECTION. **Section 18.** Voiding of application. An  
19 application may be voided by the department for:

20 (1) any material and knowingly false statement in the  
21 application or in accompanying statements or studies  
22 required of the applicant;

23 (2) failure to file an application in substantially the  
24 form and content required by [section 13] and the rules  
25 adopted under [section 13]; or

1 (3) failure to deposit the filing fee as provided in  
2 [section 16].

3 NEW SECTION. Section 19. Hearing date -- location --  
4 department to act as staff. (1) Upon receipt of the  
5 department's report submitted under [section 17], the board  
6 shall set a date for a hearing to begin not more than 120  
7 days after receipt of the report. A certification hearing  
8 must be conducted by the board in Helena or in the county  
9 seat of the county in which the facility or the greatest  
10 portion of the facility is to be located.

11 (2) Except as provided in [section 21], the department  
12 shall act as the staff for the board throughout the  
13 decisionmaking process and the board may request that the  
14 department present testimony or cross-examine witnesses as  
15 the board considers necessary and appropriate.

16 NEW SECTION. Section 20. Certificate amendments. (1)  
17 Within 30 days after notice of an amendment to a certificate  
18 is given as provided in [section 14], including notice to  
19 all active parties to the original proceeding, the  
20 department shall determine whether the proposed change in  
21 the facility would result in a material increase in any  
22 environmental impact caused by the facility or a substantial  
23 change in the location of all or a portion of the facility  
24 as set forth in the certificate. If the department  
25 determines that the proposed change would result in a

1 material increase in any environmental impact caused by the  
2 facility or a substantial change in the location of all or a  
3 portion of the facility, the board shall hold a hearing in  
4 the same manner as a hearing is held on an application for a  
5 certificate. After the hearing, the board shall grant, deny,  
6 or modify the amendment with conditions it considers  
7 appropriate.

8 (2) In cases where the department determines that the  
9 proposed change in the facility would not result in a  
10 material increase in any environmental impact or would not  
11 be a substantial change in the location of all or a portion  
12 of the facility, the board shall grant the amendment either  
13 as applied for or upon terms or conditions as the board  
14 considers appropriate unless the department's determination  
15 is appealed to the board within 15 days after notice of the  
16 department's determination is given.

17 (3) If the department or the board, under subsection  
18 (4), determines that a hearing is required because the  
19 proposed change would result in a material increase in any  
20 environmental impact of the facility or a substantial change  
21 in the location of all or a portion of the facility, the  
22 applicant has the burden of showing by clear and convincing  
23 evidence that the amendment should be granted.

24 (4) If the department determines that the proposed  
25 change in the facility would not result in a material

1 increase in any environmental impact or would not be a  
 2 substantial change in the location of all or a portion of  
 3 the facility and a hearing is required because the  
 4 department's determination is appealed to the board as  
 5 provided in subsection (2), the appellant has the burden of  
 6 showing by clear and convincing evidence that the proposed  
 7 change in the facility would result in a material increase  
 8 in any environmental impact of the facility or a substantial  
 9 change in the location of all or a portion of the facility  
 10 as set forth in the certificate.

11 NEW SECTION. Section 21. Hearing examiner --  
 12 restrictions -- duties. (1) The board shall appoint a  
 13 hearing examiner to conduct certification proceedings under  
 14 [sections 1 through 36]. The hearing examiner may not be a  
 15 member of the board or an employee of the department or the  
 16 board. A hearing examiner must be appointed within 20 days  
 17 after the department's report has been filed with the board.

18 (2) A prehearing conference must be held, following  
 19 notice, within 60 days after the department's report has  
 20 been filed with the board.

21 (3) The prehearing conference must be organized and  
 22 supervised by the hearing examiner.

23 (4) The prehearing conference must be directed toward a  
 24 determination of the issues presented by the application,  
 25 the department's report, and an identification of the

1 witnesses and documentary exhibits to be presented by the  
 2 active parties who intend to participate in the hearing.

3 (5) The hearing examiner shall require the active  
 4 parties to submit, in writing, and serve upon the other  
 5 active parties all direct testimony that they propose and  
 6 any studies, investigations, reports, or other exhibits that  
 7 any active party wishes the board to consider. These written  
 8 exhibits and any documents that the board itself wishes to  
 9 use or rely on must be submitted and served at least 20 days  
 10 prior to the date set for the hearing. For good cause shown,  
 11 the hearing examiner may allow the introduction of new  
 12 evidence at any time.

13 (6) The hearing examiner shall allow discovery that  
 14 must be completed before the commencement of the hearing  
 15 upon good cause shown and under other conditions as the  
 16 hearing examiner prescribes.

17 (7) Public witnesses and other interested public  
 18 parties may appear and present oral testimony at the hearing  
 19 or submit written testimony to the hearing examiner at the  
 20 time of their appearance. These witnesses are subject to  
 21 cross-examination.

22 (8) The hearing examiner shall issue a prehearing order  
 23 specifying the issues of fact and of law, identifying the  
 24 witnesses of the active parties, naming the public witnesses  
 25 and other interested parties who have submitted written

1 testimony in lieu of appearance, outlining the order in  
 2 which the hearing will proceed, setting forth those criteria  
 3 listed in [section 24] as to which no issue of fact or law  
 4 has been raised and that are conclusively presumed and are  
 5 not subject to further proof except for good cause shown,  
 6 and any other special rules to expedite the hearing that the  
 7 hearing examiner adopts with the approval of the board.

8 (9) At the conclusion of the hearing, the hearing  
 9 examiner shall declare the hearing closed and shall, within  
 10 60 days of that date, prepare and submit to the board  
 11 proposed findings of fact, conclusions of law, and a  
 12 recommended decision.

13 (10) The hearing examiner appointed to conduct a  
 14 certification proceeding under this section shall ensure  
 15 that the time of the proceeding, from the date the  
 16 department's report is filed with the board until the  
 17 recommended report and order of the examiner is filed with  
 18 the board, does not exceed 9 calendar months unless extended  
 19 by the board for good cause.

20 (11) The board or hearing examiner may waive all or a  
 21 portion of the procedures set forth in subsections (2)  
 22 through (8) to expedite the hearing for a facility when the  
 23 department has recommended approval of a facility and no  
 24 objections have been filed.

25 NEW SECTION. **Section 22.** Parties to certification

1 proceeding -- waiver -- statement of intent to participate.

2 (1) The parties to a certification proceeding or to a  
 3 proceeding involving the issuance of a decision, opinion,  
 4 order, certification, or permit by the board under [sections  
 5 1 through 36] may include as active parties:

6 (a) the applicant;

7 (b) each political entity, unit of local government,  
 8 and government agency entitled to receive service of a copy  
 9 of the application under [section 13];

10 (c) a person entitled to receive service of a copy of  
 11 the application under [section 13];

12 (d) a nonprofit organization formed in whole or in part  
 13 to:

14 (i) promote conservation or natural beauty;

15 (ii) protect the environment, personal health, or other  
 16 biological values;

17 (iii) preserve historical sites;

18 (iv) promote consumer interests;

19 (v) represent commercial and industrial groups; or

20 (vi) promote the orderly development of the areas in  
 21 which the facility is to be located; and

22 (e) any other interested person who establishes an  
 23 interest in the proceeding.

24 (2) The department must be an active party in any  
 25 certification proceeding in which the department recommends

1 denial of all or a portion of a facility.

2 (3) The parties to a certification proceeding may also  
3 include, as public parties, any Montana citizen and any  
4 party referred to in subsections (1)(b) through (1)(e).

5 (4) A party waives the right to be a party if the party  
6 does not participate in the hearing before the board.

7 (5) Each unit of local government entitled to receive  
8 service of a copy of the application under [section 13]  
9 shall file with the board a statement showing whether the  
10 unit of local government intends to participate in the  
11 certification proceeding. If the unit of local government  
12 does not intend to participate, it shall list in this  
13 statement its reasons for failing to do so. This statement  
14 of intent must be published before the proceeding begins in  
15 a newspaper of general circulation within the jurisdiction  
16 of the applicable unit of local government.

17 NEW SECTION. Section 23. Record of hearing --  
18 procedure -- rules of evidence -- burden of proof. (1) Any  
19 studies, investigations, reports, or other documentary  
20 evidence, including those prepared by the department, that  
21 any party wishes the board to consider or that the board  
22 itself expects to use or rely upon must be made a part of  
23 the record.

24 (2) A record must be made of the hearing and of all  
25 testimony taken.

1 (3) In a certification proceeding held under [section  
2 19], the applicant has the burden of showing by clear and  
3 convincing evidence that the application should be granted  
4 and that the criteria of [section 24] are met.

5 (4) All proceedings under [sections 19 through 23] are  
6 governed by the procedures set forth in [sections 19 through  
7 23], the procedural rules adopted by the board, and the  
8 Montana Rules of Evidence unless one or more rules of  
9 evidence are waived by the hearing examiner upon a showing  
10 of good cause by one or more of the parties to the hearing.  
11 No other rules of procedure or evidence apply except that  
12 the contested case procedures of the Montana Administrative  
13 Procedure Act apply if not in conflict with the procedures  
14 set forth in [sections 19 through 23] or the procedural  
15 rules adopted by the board.

16 NEW SECTION. Section 24. Decision of board -- findings  
17 necessary for certification. (1) Within 180 days after  
18 submission of the recommended decision by the department,  
19 the board shall make complete findings, issue an opinion,  
20 and render a final decision upon the record, either granting  
21 or denying the application for a certificate as filed or  
22 granting it upon terms, conditions, or modifications of the  
23 siting of the facility as the board considers appropriate.

24 (2) The board may not grant a certificate either as  
25 proposed by the applicant or as modified by the board unless

1 it finds and determines:

2 (a) the nature of the probable environmental impact;

3 (b) that the facility minimizes adverse environmental  
4 impact, considering the state of available technology and  
5 the nature and economics of the various alternatives;

6 (c) that the location of the facility as proposed  
7 conforms to applicable state and local laws and regulations,  
8 except that the board may refuse to apply any local law or  
9 regulation if it finds that, as applied to the proposed  
10 facility, the law or regulation is unreasonably restrictive  
11 in view of the existing technology, of factors of cost or  
12 economics, or of the needs of consumers, whether located  
13 inside or outside of the directly affected government  
14 subdivisions;

15 (d) that the facility will serve the public interest;

16 (e) any impacts of the facility according to each of  
17 the criteria listed in [section 15];

18 (f) that the proposed site is better suited for a  
19 landfill than alternate sites in the state where the waste  
20 originates; and

21 (g) that the applicant has fully mitigated the loss of  
22 wildlife habitat, either through onsite or offsite habitat  
23 improvements.

24 (3) In determining that the facility will serve the  
25 public interest, the board shall consider:

1 (a) the items listed in subsections (2)(a) and (2)(b);

2 (b) the benefits to the applicant and the state  
3 resulting from the proposed facility;

4 (c) the effects of the economic activity resulting from  
5 the proposed facility;

6 (d) the effects of the proposed facility on the public  
7 health, welfare, and safety; and

8 (e) any other factors that it considers relevant.

9 NEW SECTION. Section 25. Conditions imposed. If the  
10 board determines that the location of all or a part of the  
11 proposed megalandfill should be modified, it may condition  
12 its certificate upon the modification, provided that the  
13 persons residing in the area affected by the modification  
14 have been given reasonable notice of the modification.

15 NEW SECTION. Section 26. License required. (1) A  
16 person may not commence to construct a megalandfill in the  
17 state without first applying for and obtaining a license  
18 pursuant to 75-10-221. The licensing process must be  
19 concurrent with the certification process required in  
20 [section 11 through 25].

21 (2) The department shall make the decision to grant or  
22 deny the license within 30 days of the certification  
23 decision, as provided in [section 24].

24 (3) Once a license has been issued, a megalandfill may  
25 not be constructed, operated, or maintained except in



1 conformity with the license and any terms, conditions, and  
2 modifications contained in the license.

3 NEW SECTION. Section 27. License transferable. A  
4 license may be transferred, subject to the approval of the  
5 department, to a person who agrees to comply with the terms,  
6 conditions, and modifications contained in [sections 1  
7 through 36].

8 NEW SECTION. Section 28. Opinion issued with decision  
9 -- contents. (1) In rendering a decision on an application  
10 for a license for a megalandfill, the department shall issue  
11 an opinion stating its reasons for the action taken.

12 (2) In addition to the requirements of 75-10-221, any  
13 license issued by the department shall include the  
14 following:

15 (a) an environmental evaluation statement related to  
16 the megalandfill being certified. The statement must include  
17 but not be limited to analysis of the following information:

- 18 (i) the environmental impact of the proposed facility;  
19 (ii) any adverse environmental effects that cannot be  
20 avoided by issuance of the license;  
21 (iii) problems and objections raised by other federal  
22 and state agencies and interested groups; and  
23 (iv) alternatives to the proposed facility;

24 (b) a plan for monitoring environmental effects of the  
25 proposed facility;

1 (c) a plan for monitoring the certified megalandfill  
2 site between the time of certification and completion of  
3 construction; and

4 (d) a statement signed by the applicant showing  
5 agreement to comply with the requirements of [sections 1  
6 through 36] and the conditions of the certificate.

7 NEW SECTION. Section 29. Monitoring. The department  
8 shall monitor the operations of all certificated facilities  
9 to ensure continuing compliance with [sections 1 through 36]  
10 and with certificates issued under [section 11] and to  
11 discover and prevent noncompliance with [sections 1 through  
12 36] or certificates issued under [section 11].

13 NEW SECTION. Section 30. Revocation or suspension of  
14 license. A license may be revoked or suspended by the  
15 department following notice and an opportunity for a hearing  
16 before the department for:

17 (1) any material false statement in the application or  
18 in accompanying statements or studies required of the  
19 applicant if a true statement would have warranted the  
20 department's refusal to grant a license;

21 (2) failure to comply with the terms or conditions of  
22 the certificate; or

23 (3) violation of any provision of [sections 1 through  
24 36], rules adopted under [sections 1 through 36], or orders  
25 of the department.

**NEW SECTION. Section 31. Enforcement by residents. (1)**

A person with knowledge that a requirement of [sections 1 through 36] or a rule adopted under [sections 1 through 36] is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that states the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the statements subjects the person to the penalties prescribed for a violation of 45-7-202.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the person may bring an action of mandamus in the district court of the first judicial district of Montana. If the court finds that a requirement of [sections 1 through 36] or a rule adopted under [sections 1 through 36] is not being enforced, the court may order the public officer or employee whose duty it is to enforce the requirement or rule to perform those duties. If he fails to do so, the public officer or employee must be held in contempt of court and is subject to the penalties provided by law.

**NEW SECTION. Section 32. Action to recover damages to water supply.** An owner of an interest in real property who

obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from a surface or underground source may sue a person to recover damages for contamination, diminution, or interruption of the water supply proximately resulting from the operation of a facility. The remedy provided in this section does not exclude the use of any other remedy that may be available under the laws of the state.

**NEW SECTION. Section 33. Judicial review of department**

**and board of health decisions.** (1) An applicant aggrieved by the final decision of the board on an application for a certificate or the final decision of the department on an application for a license may obtain judicial review of that decision by filing a petition in district court.

(2) The judicial review procedure is the same as that for contested cases under Title 2, chapter 4, part 7.

(3) This section does not prohibit the department from holding a hearing on all matters that are not the subject of a pending appeal by the applicant under subsection (1).

**NEW SECTION. Section 34. Penalties for violation --**

**civil action by attorney general.** (1) (a) A person who commences to construct or operate a megalandfill without obtaining a certificate required under [section 11] and a license required under [section 26], who constructs, operates, or maintains a facility other than in compliance

1 with the certificate or violates any other provision of  
 2 [sections 1 through 36] or any rule or order adopted under  
 3 [sections 1 through 36], or who knowingly submits false  
 4 information in any report, long-range plan, or application  
 5 required by [sections 1 through 36] is liable for a civil  
 6 penalty as provided in subsection (2).

7 (b) Each day of a continuing violation constitutes a  
 8 separate offense.

9 (c) The penalty is recoverable in a civil suit brought  
 10 by the attorney general on behalf of the state in the  
 11 district court of the first judicial district of Montana.

12 (2) A person who knowingly violates the provisions of  
 13 subsection (1) shall be fined not more than \$25,000 for each  
 14 violation or be imprisoned for not more than 1 year, or  
 15 both. Each day of a continuing violation constitutes a  
 16 separate offense.

17 (3) In addition to any penalty provided in subsection  
 18 (1) or (2), whenever the department determines that a person  
 19 is violating or is about to violate any of the provisions of  
 20 [sections 1 through 36], it may refer the matter to the  
 21 attorney general who may bring a civil action on behalf of  
 22 the state in the district court of the first judicial  
 23 district of Montana for injunctive or other appropriate  
 24 relief against the violation and to enforce [sections 1  
 25 through 36] or a certificate issued under [section 11]. Upon

1 a proper showing, a permanent or preliminary injunction or  
 2 temporary restraining order must be granted without bond.

3 (4) The department shall also enforce [sections 1  
 4 through 36] and may bring legal actions to accomplish the  
 5 enforcement through its own legal counsel.

6 (5) All fines and penalties collected must be deposited  
 7 in the solid waste management account for the use of the  
 8 department in administering [sections 1 through 36].

9 NEW SECTION. **Section 35.** Order not stayed by appeal --  
 10 stay or suspension by court -- limitations. An appeal from a  
 11 department order does not automatically stay or suspend the  
 12 operation of the order. The court may, upon motion by a  
 13 party, stay or suspend, in whole or in part, the operation  
 14 of the department's order on terms the court considers just.  
 15 The court's action must be in accordance with the practice  
 16 of courts exercising equity jurisdiction, subject to the  
 17 following limitations:

18 (1) A stay may not be granted without notice to the  
 19 parties and an opportunity to be heard by the court.

20 (2) A department order may not be stayed or suspended  
 21 without finding that irreparable damage would otherwise  
 22 result to the party seeking the stay or suspension, and a  
 23 stay or suspension must specify the nature of the damage.

24 NEW SECTION. **Section 36.** Surety bond. If an order of  
 25 the department is stayed or suspended, the court may require

1 a bond with good and sufficient surety conditioned that the  
2 party petitioning for review answer for all damages caused  
3 by the delay in enforcing the order of the department. The  
4 cost of the bond is not chargeable to the applicant as part  
5 of the fee. If the party petitioning for review prevails  
6 upon final resolution of an appeal, the party does not  
7 forfeit bond and is not responsible for damages caused by  
8 delay.

9 NEW SECTION. **Section 37.** Codification instruction.  
10 [Sections 1 through 36] are intended to be codified as an  
11 integral part of Title 75, chapter 10, and the provisions of  
12 Title 75, chapter 10, apply to [sections 1 through 36].

13 NEW SECTION. **Section 38.** Effective date. [This act] is  
14 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0377, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill to establish a certification and licensing process for "mega-landfills".

ASSUMPTIONS:

1. Rules for long-range plan submittals and procedures for contracts for information will be developed by DHES in FY92. DHES will develop written application and licensing rules, procedures for orders and a fee system for supplemental material.
2. The Montana State Solid Waste Management Plan will be developed during the biennium (as required under separate legislation, HB0160). A solid waste fee system (proposed under separate legislation) would be in place to generate revenues for this legislation.
3. One long-range plan will be submitted to DHES within the biennium.
4. 50 requests for copies of the long-range plan will be processed by DHES in FY92.
5. No applications for a certificate of site acceptability will be received during the biennium.
6. The following personnel in addition to current level would be required: 0.25 FTE Database Technician (Grade 12, Step 2), and 0.50 FTE Administrative Assistant (Grade 10, Step 2).

FISCAL IMPACT:

Expenditures:


	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
FTE	0.00	0.75	0.75	0.00	0.75	0.75
Personal Services	0	16,621	16,621	0	16,585	16,585
Operating Expenses	0	30,000	30,000	0	44,000	44,000
Total	0	46,621	46,621	0	60,585	60,585


Funding:

Solid Waste Fees (02)	0	46,621	46,621	0	60,585	60,585
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EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

HB0377 would not, in itself, affect county or municipal revenues or expenditures.

  
 ROD SUNDSTED, BUDGET DIRECTOR  
 Office of Budget and Program Planning  
 DATE 1-29-91

  
 BOB RONEY, PRIMARY SPONSOR  
 DATE 1/30/91  
 Fiscal Note for HB0377, as introduced.  
**HB 377**

APPROVED BY COMM. ON  
NATURAL RESOURCES

HOUSE BILL NO. 377

INTRODUCED BY RANEY, WEEDING, HARP, T. BECK, YELLOWTAIL,  
DRISCOLL, GILBERT  
BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A  
CERTIFICATION AND LICENSING PROCESS FOR MEGALANDFILLS;  
PROVIDING FOR CONTRACTS FOR INFORMATION; REQUIRING THE  
SUBMISSION OF LONG-RANGE PLANS; REQUIRING A CERTIFICATE OF  
SITE ACCEPTABILITY; SPECIFYING ENVIRONMENTAL FACTORS TO BE  
EVALUATED; REQUIRING A FILING FEE; PROVIDING A CONTESTED  
CASE HEARINGS PROCESS; SPECIFYING DECISIONMAKING CRITERIA;  
REQUIRING A LICENSE; REQUIRING MONITORING; PROVIDING FOR  
ENFORCEMENT BY RESIDENTS; PROVIDING A MECHANISM TO RECOVER  
DAMAGES FOR CONTAMINATION OF A DRINKING WATER SUPPLY;  
PROVIDING FOR JUDICIAL REVIEW; PROVIDING PENALTIES FOR  
VIOLATIONS; PROVIDING A SURETY BOND; AND PROVIDING AN  
IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because  
it grants rulemaking authority to the board of health and  
environmental sciences and to the department of health and  
environmental sciences. It is the intent of the legislature  
that these regulations be designed to protect the public

health, safety, and welfare and the environment.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Short title. [Sections 1  
through 36] may be cited as the "Montana Megalandfill Siting  
Act".

NEW SECTION. **Section 2. Purpose.** (1) It is the  
constitutionally declared policy of this state to maintain  
and improve a clean and healthful environment for present  
and future generations, to protect the environment from  
degradation and prevent unreasonable depletion and  
degradation of natural resources, and to provide for  
administration and enforcement to attain these objectives.

(2) The construction of solid waste facilities that  
dispose of over 200,000 tons of waste a year (megalandfills)  
may be necessary to meet increasing state and national needs  
for solid waste disposal capacity. However, due to the  
volume of waste processed, megalandfills may adversely  
affect the environment, surrounding communities, and the  
welfare of the citizens of this state. Therefore, it is  
necessary to ensure that the location, construction, and  
operation of megalandfills will produce minimal adverse  
effects on the environment and upon the citizens of this  
state by providing that a megalandfill may not be  
constructed or operated within this state without a

**SECOND READING**



1 certificate of site acceptability pursuant to [section 11]  
2 and a license to operate acquired pursuant to [section 26]  
3 and 75-10-221.

4 NEW SECTION. **Section 3. Definitions.** As used in  
5 [sections 1 through 36], the following definitions apply:

6 (1) "Application" means an application for a  
7 certificate and license submitted in accordance with  
8 [sections 11 through 28] and the rules adopted under  
9 [sections 11 through 28].

10 (2) "Board" means the board of health and environmental  
11 sciences provided for in 2-15-2104.

12 (3) "Certificate" means the certificate of site  
13 acceptability issued by the board under [section 11] that is  
14 required for siting a megalandfill.

15 (4) "Commence to construct" means:

16 (a) any clearing of land, excavation, construction, or  
17 other action that would affect the environment of the site,  
18 except that the term does not mean changes for securing  
19 geological data, including necessary borings to ascertain  
20 subsurface conditions;

21 (b) the modification or upgrading of an existing solid  
22 waste disposal facility into a megalandfill, except that the  
23 term does not pertain to maintenance or repair of an  
24 existing facility.

25 (5) "Department" means the department of health and

1 environmental sciences provided for in Title 2, chapter 15,  
2 part 21.

3 (6) "Dispose" or "disposal" means the discharge,  
4 injection, deposit, dumping, spilling, leaking, or placing  
5 of any solid waste into or onto the land so that the solid  
6 waste or any constituent of it may enter the environment or  
7 be emitted into the air or discharged into any water,  
8 including ground waters.

9 (7) "Megalandfill" OR "FACILITY" means any new or  
10 existing solid waste landfill facility that accepts more  
11 than 200,000 tons a year of solid waste OR ANY ASH MONOFILL  
12 THAT ACCEPTS 35,000 TONS OR MORE A YEAR OF SOLID WASTE  
13 INCINERATOR ASH, EITHER FLY ASH OR BOTTOM ASH.

14 (8) "Person" means an individual, firm, partnership,  
15 company, association, corporation, city, town, local  
16 governmental entity, or any other governmental or private  
17 entity, whether organized for profit or not.

18 (9) (a) "Solid waste" means all putrescible and  
19 nonputrescible wastes, including but not limited to garbage;  
20 rubbish; refuse; ashes; sludge from sewage treatment plants,  
21 water supply treatment plants, or air pollution control  
22 facilities; construction and demolition wastes; dead  
23 animals, including offal; discarded home and industrial  
24 appliances; wood products or wood byproducts; and inert  
25 materials.

1 (b) "Solid waste" does not mean municipal sewage,  
 2 industrial wastewater effluents, mining wastes regulated  
 3 under the mining and reclamation laws administered by the  
 4 department of state lands, slash and forest debris regulated  
 5 under laws administered by the department of state lands, or  
 6 marketable byproducts.

7 (10) "Solid waste landfill" means any publicly or  
 8 privately owned landfill or landfill unit that receives  
 9 household waste or other types of waste, including  
 10 commercial waste, nonhazardous sludge, and industrial solid  
 11 waste. The term does not include land application units,  
 12 surface impoundments, injection wells, or waste piles.

13 NEW SECTION. Section 4. Adoption of rules by board.  
 14 The board may adopt rules implementing the certification  
 15 provisions of [sections 1 through 36], including rules  
 16 regarding the filing and contents of the application, proof  
 17 of service and notice requirements, environmental factors to  
 18 be evaluated, filing fee, hearings process, and other  
 19 components of the certificate and certification process that  
 20 the board considers necessary.

21 NEW SECTION. Section 5. Adoption of rules by  
 22 department. The department may adopt rules implementing the  
 23 licensing provisions of [sections 1 through 36], including  
 24 rules regarding the contents of the application, monitoring,  
 25 and other components of the license and licensing process

1 that the department considers necessary.

2 NEW SECTION. Section 6. Contracts for information. (1)  
 3 The department may contract with a potential applicant under  
 4 [sections 1 through 36] in advance of the filing of a formal  
 5 application for the development of information or the  
 6 provision of services by the department required under  
 7 [sections 1 through 36].

8 (2) Payments made to the department under a contract  
 9 must be credited against the fee payable under [section 16].

10 NEW SECTION. Section 7. Grants, gifts, and funds. The  
 11 department may receive grants, gifts, and other funds from  
 12 any public or private source to assist in its activities  
 13 under [sections 1 through 36].

14 NEW SECTION. Section 8. Money to solid waste  
 15 management account. All fees, taxes, fines, and penalties  
 16 collected under [sections 1 through 36], except those  
 17 collected by a justice's court, must be deposited in the  
 18 solid waste management account as provided in 75-10-117 for  
 19 use by the department in carrying out its functions and  
 20 responsibilities related to solid waste management.

21 NEW SECTION. Section 9. Annual long-range plan  
 22 submitted -- contents -- available to public. (1) A person  
 23 may not file an application for a certificate of site  
 24 acceptability required by [section 11] unless the  
 25 megalandfill has been adequately identified in a long-range



1 plan at least 2 years prior to acceptance of an application  
2 by the department.

3 (2) The annual long-range plan must be submitted by  
4 July 1 of each year and must include the following:

5 (a) the general location, size, and type of all  
6 facilities to be owned and operated by the person for which  
7 construction is projected during the ensuing 2 years, as  
8 well as those facilities to be closed during the planning  
9 period;

10 (b) a description of the efforts to involve  
11 environmental protection and land use planning agencies in  
12 the planning process, as well as other efforts to identify  
13 and minimize environmental problems at the earliest possible  
14 stage in the planning process;

15 (c) projections of the demand for the service rendered  
16 by the person and an explanation of the basis for those  
17 projections and a description of the manner and extent to  
18 which the proposed facilities will meet the projected  
19 demand; and

20 (d) additional information that the department by rule  
21 or the department on its own initiative or upon the advice  
22 of interested state agencies requests in order to carry out  
23 the purposes of [sections 1 through 36].

24 (3) The plan must be furnished to the governing body of  
25 each county in which any facility included in the plan under

1 subsection (2)(a) is proposed to be located and must be made  
2 available to the public by the department. The applicant  
3 shall give public notice throughout the state by publishing  
4 at least once a week for 2 consecutive weeks a summary of  
5 the proposed plan in newspapers of general circulation. The  
6 plan must also be filed with the environmental quality  
7 council, the department of highways, the department of state  
8 lands, the department of fish, wildlife, and parks, the  
9 department of commerce, and the department of natural  
10 resources and conservation. Interested persons may obtain a  
11 copy of the plan by written request and payment to the  
12 department of the costs of copying the plan.

13 NEW SECTION. **Section 10. Study of included facilities.**  
14 If a person identifies a proposed facility in its long-range  
15 plan, submitted pursuant to [section 9], as one on which  
16 construction is proposed within the 2-year period following  
17 submission of the plan, the department shall begin to  
18 examine and evaluate the proposed site to determine whether  
19 construction of the proposed facility would unduly impair  
20 the environmental, SOCIAL, AND ECONOMIC values described in  
21 [section 15]. The study may be continued until a person  
22 files an application for a certificate under [section 11].  
23 Information gathered under this section may be used to  
24 support findings and recommendations required for issuance  
25 of a certificate and a license.

1        **NEW SECTION. Section 11. Certificate required.** (1) A  
 2 person may not construct a megalandfill in the state without  
 3 first applying for and obtaining a certificate of site  
 4 acceptability from the board.

5        (2) A certificate may only be issued pursuant to  
 6 [sections 11 through 25].

7        **NEW SECTION. Section 12. Certificate transferable.** A  
 8 certificate may be transferred, subject to the approval of  
 9 the board, to a person who agrees to comply with the terms,  
 10 conditions, and modifications contained in [sections 1  
 11 through 36].

12        **NEW SECTION. Section 13. Application -- filing and**  
 13 **contents -- proof of service and notice.** (1) (a) An  
 14 applicant shall file with the department an application for  
 15 a certificate under [section 11] in a form the board  
 16 requires, containing the following information:

17        (i) a description of the proposed location and of the  
 18 facility to be built;

19        (ii) a summary of any studies that have been made of the  
 20 environmental impact, SOCIAL, AND ECONOMIC IMPACTS of the  
 21 facility;

22        (iii) a description of at least three reasonable  
 23 alternate locations for the facility, a general description  
 24 of the comparative merits and detriments of each location  
 25 submitted, and a statement of the reasons why the proposed

1 location is best suited for the facility;

2        (iv) baseline data for the primary and reasonable  
 3 alternate locations;

4        (v) at the applicant's option, an environmental study  
 5 plan to satisfy the requirements of [sections 1 through 36];  
 6 and

7        (vi) other information that the applicant considers  
 8 relevant or that the board by order or rule may require.

9        (b) A copy or copies of the studies referred to in  
 10 subsection (1)(a)(ii) must be filed with the department, if  
 11 ordered, and must be available for public inspection.

12        (2) An application must be accompanied by proof of  
 13 service of a copy of the application on the chief executive  
 14 officer of each unit of local government, each county  
 15 commissioner, city or county planning board, and solid waste  
 16 district, and each federal agency charged with the duty of  
 17 protecting the environment or of planning land use located  
 18 in the area in which any portion of the proposed facility is  
 19 proposed or is alternatively proposed to be located and on  
 20 the following state government agencies:

21        (a) environmental quality council;

22        (b) department of fish, wildlife, and parks;

23        (c) department of state lands;

24        (d) department of commerce;

25        (e) department of highways; and

1 (f) department of natural resources and conservation.

2 (3) An application must be accompanied by proof that  
3 public notice was given to persons residing in the area in  
4 which any portion of the proposed facility is proposed or is  
5 alternatively proposed to be located by publication of a  
6 summary of the application in newspapers of general  
7 circulation that will substantially inform those persons of  
8 the application.

9 NEW SECTION. Section 14. Supplemental material --  
10 amendments. (1) An application for an amendment of an  
11 application or a certificate must be in a form and contain  
12 information as the board by rule or the department by order  
13 prescribes. Notice of an amendment must be given as provided  
14 in [section 13(3) and (4)].

15 (2) An application may be amended by an applicant any  
16 time prior to the report made by the department under  
17 [section 17]. If the proposed amendment prevents the  
18 department from carrying out its duties and responsibilities  
19 under [sections 1 through 36], the department may require  
20 additional filing fees as the department determines  
21 necessary or may require a new application and filing fee.

22 (3) The applicant shall submit supplemental material in  
23 a timely manner as requested by the department or as offered  
24 by the applicant to explain, support, or provide details  
25 with respect to an item described in the original

1 application. This supplemental material may be submitted  
2 without filing an application for an amendment. The  
3 department's determination as to whether information is  
4 supplemental or whether an application for amendment is  
5 required is conclusive.

6 NEW SECTION. Section 15. Environmental, SOCIAL, AND  
7 ECONOMIC factors evaluated during certification. In  
8 evaluating applications for a certificate of site  
9 acceptability, the department shall give consideration to  
10 the following list of ~~environmental~~ factors and regulations,  
11 where applicable, and may by rule add to the factors  
12 enumerated in this section:

13 (1) siting criteria for municipal solid waste landfills  
14 consistent with federal requirements as described in 40 CFR  
15 part 258;

16 (2) siting criteria described under the Montana Solid  
17 Waste Management Act, Title 75, chapter 10, part 2, and  
18 rules adopted under that part;

19 (3) the Montana solid waste management plan;

20 (4) solid waste disposal needs, including:

21 (a) availability and desirability of alternative  
22 sources of solid waste disposal in lieu of the proposed  
23 facility;

24 (b) promotional activities of the applicant that may  
25 have given rise to the need for the facility;

1 (c) social benefits CHANGES resulting from the  
 2 facility, including protection of public health and  
 3 environmental quality; and  
 4 (d) integrated waste management activities that could  
 5 reduce the need for additional solid waste disposal  
 6 capacity;  
 7 (5) land use impacts, including:  
 8 (a) the area of land required and its ultimate use;  
 9 (b) consistency with state and regional solid waste  
 10 plans;  
 11 (c) consistency with existing and projected nearby land  
 12 use;  
 13 (d) alternative uses of the site;  
 14 (e) the impact on the population already in the area  
 15 and the population attracted by construction or operation of  
 16 the facility;  
 17 (f) the impact of availability of solid waste disposal  
 18 at the facility on growth patterns and population dispersal;  
 19 (g) construction materials and practices, including  
 20 quality control and quality assurance plans to be followed  
 21 during construction of all phases of the proposed facility;  
 22 (h) scenic impacts;  
 23 (i) the effects on natural systems, wildlife, and plant  
 24 life;  
 25 (j) the impacts on important historic, architectural,

1 archaeological, and cultural areas and features;  
 2 (k) the impacts on public facilities and  
 3 accommodations; and  
 4 (l) opportunities for joint use with solid waste  
 5 disposal-intensive industries; AND  
 6 (M) THE ECONOMIC IMPACT ON THE LOCAL AREA, LOCAL  
 7 GOVERNMENT INFRASTRUCTURE, AND EXISTING INDUSTRY;  
 8 (6) water resources impacts, including:  
 9 (a) hydrologic studies of the adequacy of water supply  
 10 and the impact of the facility on streamflow, lakes, and  
 11 reservoirs;  
 12 (b) hydrologic studies of the impact of the facility on  
 13 ground water, including vadose zone studies describing the  
 14 potential for leachate to migrate from the facility to  
 15 ground water;  
 16 (c) an inventory of effluents, including physical,  
 17 chemical, and biological characteristics;  
 18 (d) hydrologic studies of effects of effluents on  
 19 receiving waters;  
 20 (e) the effect of the facility on water quality;  
 21 (f) the facility's projected water uses;  
 22 (g) the effects on plant and animal life, including  
 23 algae, macroinvertebrates, and fish population;  
 24 (h) effects on unique or otherwise significant  
 25 ecosystems, such as wetlands; and

1 (i) ground water, vadose zone, and methane gas  
 2 monitoring systems and programs; and  
 3 (7) characteristics of solid wastes that will be  
 4 disposed of at the facility, including:  
 5 (a) the rate of solid waste disposal;  
 6 (b) the solid waste handling practices proposed to be  
 7 used; and  
 8 (c) the present and expected future physical and  
 9 chemical characteristics of the solid waste; AND  
 10 (D) INSPECTION PRACTICES FOR PREVENTING THE ILLEGAL  
 11 DUMPING OF HAZARDOUS WASTE INTO THE FACILITY;  
 12 (8) TRANSPORTATION PRACTICES, INCLUDING:  
 13 (A) ROUTE AND MODE OF TRANSPORTING WASTE;  
 14 (B) ENVIRONMENTAL, SOCIAL, AND ECONOMIC IMPACTS OF  
 15 TRANSPORTATION FACILITIES; AND  
 16 (C) TRANSFER FACILITIES.  
 17 NEW SECTION. Section 16. Filing fee -- accountability  
 18 -- refund -- use. (1) (a) The applicant shall pay to the  
 19 department a filing fee as provided in this section based  
 20 upon the department's estimated costs of processing the  
 21 application for a certificate. The filing fee must be  
 22 deposited in the solid waste management account for the use  
 23 of the department in administering [sections 1 through 36].  
 24 The initial filing fee may not exceed the following scale  
 25 based upon the megalandfill's projected annual tonnage of

1 waste:  
 2 (i) a base fee of \$40,000; plus  
 3 (ii) 20 cents per ton for every ton of waste over  
 4 200,000 tons.  
 5 (b) The department may allow a credit against the fee  
 6 payable under this section for the applicant's costs of  
 7 developing information or providing services required under  
 8 [sections 1 through 36] or required for preparation of an  
 9 environmental impact statement under the Montana  
 10 Environmental Policy Act, Title 75, chapter 1, part 1, or  
 11 the National Environmental Policy Act, 42 U.S.C. 4321, et  
 12 seq. The applicant may submit the information or a  
 13 description of the services performed to the department,  
 14 together with an accounting of the expenses incurred in  
 15 preparing the information or performing the services. The  
 16 department shall evaluate the applicability, validity, and  
 17 usefulness of the data or services and determine the  
 18 expenses that may be credited against the filing fee payable  
 19 under this section. Upon 30 days' notice to the applicant,  
 20 this credit may at any time be reduced if the department  
 21 determines that the amount to be credited is necessary to  
 22 carry out its responsibilities under [sections 1 through  
 23 36].  
 24 (2) (a) The department may contract with an applicant  
 25 after the filing of a formal application for the development

1 of information or the provision of services required under  
 2 [sections 1 through 36]. The contract may continue an  
 3 agreement entered into pursuant to [section 6]. Payments  
 4 made to the department under a contract must be credited  
 5 against the fee payable under this section. The revenue  
 6 derived from the filing fee must be sufficient to enable the  
 7 department and the board to carry out their responsibilities  
 8 under [sections 1 through 36]. The department may amend a  
 9 contract to require additional payments for necessary  
 10 expenses up to the limits set forth in subsection (1)(a)  
 11 upon 30 days' notice to the applicant. The department and  
 12 applicant may enter into a contract that exceeds the scale  
 13 provided in subsection (1)(a).

14 (b) If a contract is not entered into, the applicant  
 15 shall pay the filing fee in installments in accordance with  
 16 a schedule of installments developed by the department;  
 17 however, an installment may not exceed 20% of the total  
 18 filing fee provided for in subsection (1).

19 (3) The applicant is entitled to an accounting of money  
 20 spent and to a refund with interest at the rate of 6% a year  
 21 of the portion of the filing fee not spent by the department  
 22 in carrying out its responsibilities under [sections 1  
 23 through 36]. A refund must be made after all administrative  
 24 and judicial remedies have been exhausted by all parties to  
 25 the certification proceedings.

1 (4) The revenue derived from the filing fees must be  
 2 used by the department in compiling the information required  
 3 for rendering a decision on a certificate and for carrying  
 4 out other responsibilities of the department and the board  
 5 under [sections 1 through 36].

6 NEW SECTION. **Section 17. Study, evaluation, and report**  
 7 **on proposed facility.** (1) After receipt of an application,  
 8 the department shall within 90 days notify the applicant in  
 9 writing that:

10 (a) the application is accepted as complete; or  
 11 (b) the application is not complete and list the  
 12 deficiencies. Upon correction of these deficiencies and  
 13 resubmission by the applicant, the department shall within  
 14 30 days notify the applicant in writing that the application  
 15 is in compliance and is accepted as complete.

16 (2) Upon receipt of an application complying with  
 17 [sections 9 through 17], the department shall commence an  
 18 intensive study and evaluation of the proposed facility and  
 19 its effects, considering all applicable criteria listed in  
 20 [section 24]. The department shall use, to the extent it  
 21 considers applicable, valid and useful existing studies and  
 22 reports submitted by the applicant or compiled by a state or  
 23 federal agency.

24 (3) Within 1 year following acceptance of a complete  
 25 application for a facility, the department shall make a

1 report to the board that must contain the department's  
2 studies, evaluations, recommendations, other pertinent  
3 documents resulting from its study and evaluation, and an  
4 environmental impact statement or analysis prepared pursuant  
5 to the Montana Environmental Policy Act, Title 75, chapter  
6 1, ~~part-17~~, if applicable.

7 NEW SECTION. Section 18. Voiding of application. An  
8 application may be voided by the department for:

9 (1) any material and knowingly false statement in the  
10 application or in accompanying statements or studies  
11 required of the applicant;

12 (2) failure to file an application in substantially the  
13 form and content required by [section 13] and the rules  
14 adopted under [section 13]; or

15 (3) failure to deposit the filing fee as provided in  
16 [section 16].

17 NEW SECTION. Section 19. Hearing date -- location --  
18 department to act as staff. (1) Upon receipt of the  
19 department's report submitted under [section 17], the board  
20 shall set a date for a hearing to begin not more than 120  
21 days after receipt of the report. A certification hearing  
22 must be conducted by the board in Helena or in the county  
23 seat of the county in which the facility or the greatest  
24 portion of the facility is to be located.

25 (2) Except as provided in [section 21], the department

1 shall act as the staff for the board throughout the  
2 decisionmaking process and the board may request that the  
3 department present testimony or cross-examine witnesses as  
4 the board considers necessary and appropriate.

5 NEW SECTION. Section 20. Certificate amendments. (1)  
6 Within 30 days after notice of an amendment to a certificate  
7 is given as provided in [section 14], including notice to  
8 all active parties to the original proceeding, the  
9 department shall determine whether the proposed change in  
10 the facility would result in a material increase in any  
11 environmental impact, SOCIAL, AND ECONOMIC IMPACTS caused by  
12 the facility or a substantial change in the location of all  
13 or a portion of the facility as set forth in the  
14 certificate. If the department determines that the proposed  
15 change would result in a material increase in any  
16 environmental impact caused by the facility or a substantial  
17 change in the location of all or a portion of the facility,  
18 the board shall hold a hearing in the same manner as a  
19 hearing is held on an application for a certificate. After  
20 the hearing, the board shall grant, deny, or modify the  
21 amendment with conditions it considers appropriate.

22 (2) In cases where the department determines that the  
23 proposed change in the facility would not result in a  
24 material increase in any environmental impact or would not  
25 be a substantial change in the location of all or a portion

1 of the facility, the board shall grant the amendment either  
 2 as applied for or upon terms or conditions as the board  
 3 considers appropriate unless the department's determination  
 4 is appealed to the board within 15 days after notice of the  
 5 department's determination is given.

6 (3) If the department or the board, under subsection  
 7 (4), determines that a hearing is required because the  
 8 proposed change would result in a material increase in any  
 9 environmental impact of the facility or a substantial change  
 10 in the location of all or a portion of the facility, the  
 11 applicant has the burden of showing by clear and convincing  
 12 evidence that the amendment should be granted.

13 (4) If the department determines that the proposed  
 14 change in the facility would not result in a material  
 15 increase in any environmental impact or would not be a  
 16 substantial change in the location of all or a portion of  
 17 the facility and a hearing is required because the  
 18 department's determination is appealed to the board as  
 19 provided in subsection (2), the appellant has the burden of  
 20 showing by clear and convincing evidence that the proposed  
 21 change in the facility would result in a material increase  
 22 in any environmental impact of the facility or a substantial  
 23 change in the location of all or a portion of the facility  
 24 as set forth in the certificate.

25 NEW SECTION. Section 21. Hearing examiner --

1 restrictions -- duties. (1) The board shall appoint a  
 2 hearing examiner to conduct certification proceedings under  
 3 [sections 1 through 36]. The hearing examiner may not be a  
 4 member of the board or an employee of the department or the  
 5 board. A hearing examiner must be appointed within 20 days  
 6 after the department's report has been filed with the board.

7 (2) A prehearing conference must be held, following  
 8 notice, within 60 days after the department's report has  
 9 been filed with the board.

10 (3) The prehearing conference must be organized and  
 11 supervised by the hearing examiner.

12 (4) The prehearing conference must be directed toward a  
 13 determination of the issues presented by the application,  
 14 the department's report, and an identification of the  
 15 witnesses and documentary exhibits to be presented by the  
 16 active parties who intend to participate in the hearing.

17 (5) The hearing examiner shall require the active  
 18 parties to submit, in writing, and serve upon the other  
 19 active parties all direct testimony that they propose and  
 20 any studies, investigations, reports, or other exhibits that  
 21 any active party wishes the board to consider. These written  
 22 exhibits and any documents that the board itself wishes to  
 23 use or rely on must be submitted and served at least 20 days  
 24 prior to the date set for the hearing. For good cause shown,  
 25 the hearing examiner may allow the introduction of new



1 evidence at any time.

2 (6) The hearing examiner shall allow discovery that  
3 must be completed before the commencement of the hearing  
4 upon good cause shown and under other conditions as the  
5 hearing examiner prescribes.

6 (7) Public witnesses and other interested public  
7 parties may appear and present oral testimony at the hearing  
8 or submit written testimony to the hearing examiner at the  
9 time of their appearance. These witnesses are subject to  
10 cross-examination.

11 (8) The hearing examiner shall issue a prehearing order  
12 specifying the issues of fact and of law, identifying the  
13 witnesses of the active parties, naming the public witnesses  
14 and other interested parties who have submitted written  
15 testimony in lieu of appearance, outlining the order in  
16 which the hearing will proceed, setting forth those criteria  
17 listed in [section 24] as to which no issue of fact or law  
18 has been raised and that are conclusively presumed and are  
19 not subject to further proof except for good cause shown,  
20 and any other special rules to expedite the hearing that the  
21 hearing examiner adopts with the approval of the board.

22 (9) At the conclusion of the hearing, the hearing  
23 examiner shall declare the hearing closed and shall, within  
24 60 days of that date, prepare and submit to the board  
25 proposed findings of fact, conclusions of law, and a

1 recommended decision.

2 (10) The hearing examiner appointed to conduct a  
3 certification proceeding under this section shall ensure  
4 that the time of the proceeding, from the date the  
5 department's report is filed with the board until the  
6 recommended report and order of the examiner is filed with  
7 the board, does not exceed 9 calendar months unless extended  
8 by the board for good cause.

9 (11) The board or hearing examiner may waive all or a  
10 portion of the procedures set forth in subsections (2)  
11 through (8) to expedite the hearing for a facility when the  
12 department has recommended approval of a facility and no  
13 objections have been filed.

14 NEW SECTION. **Section 22. Parties to certification**  
15 **proceeding -- waiver -- statement of intent to participate.**

16 (1) The parties to a certification proceeding or to a  
17 proceeding involving the issuance of a decision, opinion,  
18 order, certification, or permit by the board under [sections  
19 1 through 36] may include as active parties:

- 20 (a) the applicant;
- 21 (b) each political entity, unit of local government,  
22 and government agency entitled to receive service of a copy  
23 of the application under [section 13];
- 24 (c) a person entitled to receive service of a copy of  
25 the application under [section 13];

1 (d) a nonprofit organization formed in whole or in part  
2 to:

- 3 (i) promote conservation or natural beauty;
- 4 (ii) protect the environment, personal health, or other  
5 biological values;
- 6 (iii) preserve historical sites;
- 7 (iv) promote consumer interests;
- 8 (v) represent commercial and industrial groups; or
- 9 (vi) promote the orderly development of the areas in  
10 which the facility is to be located; and
- 11 (e) any other interested person who establishes an  
12 interest in the proceeding.

13 (2) The department must be an active party in any  
14 certification proceeding in which the department recommends  
15 denial of all or a portion of a facility.

16 (3) The parties to a certification proceeding may also  
17 include, as public parties, any Montana citizen and any  
18 party referred to in subsections (1)(b) through (1)(e).

19 (4) A party waives the right to be a party if the party  
20 does not participate in the hearing before the board.

21 (5) Each unit of local government entitled to receive  
22 service of a copy of the application under [section 13]  
23 shall file with the board a statement showing whether the  
24 unit of local government intends to participate in the  
25 certification proceeding. If the unit of local government

1 does not intend to participate, it shall list in this  
2 statement its reasons for failing to do so. This statement  
3 of intent must be published before the proceeding begins in  
4 a newspaper of general circulation within the jurisdiction  
5 of the applicable unit of local government.

6 NEW SECTION. Section 23. Record of hearing --  
7 procedure -- rules of evidence -- burden of proof. (1) Any  
8 studies, investigations, reports, or other documentary  
9 evidence, including those prepared by the department, that  
10 any party wishes the board to consider or that the board  
11 itself expects to use or rely upon must be made a part of  
12 the record.

13 (2) A record must be made of the hearing and of all  
14 testimony taken.

15 (3) In a certification proceeding held under [section  
16 19], the applicant has the burden of showing by clear and  
17 convincing evidence that the application should be granted  
18 and that the criteria of [section 24] are met.

19 (4) All proceedings under [sections 19 through 23] are  
20 governed by the procedures set forth in [sections 19 through  
21 23], the procedural rules adopted by the board, and the  
22 Montana Rules of Evidence unless one or more rules of  
23 evidence are waived by the hearing examiner upon a showing  
24 of good cause by one or more of the parties to the hearing.  
25 No other rules of procedure or evidence apply except that

1 the contested case procedures of the Montana Administrative  
 2 Procedure Act apply if not in conflict with the procedures  
 3 set forth in [sections 19 through 23] or the procedural  
 4 rules adopted by the board.

5 NEW SECTION. **Section 24.** Decision of board -- findings  
 6 necessary for certification. (1) Within 180 days after  
 7 submission of the recommended decision by the department,  
 8 the board shall make complete findings, issue an opinion,  
 9 and render a final decision upon the record, either granting  
 10 or denying the application for a certificate as filed or  
 11 granting it upon terms, conditions, or modifications of the  
 12 siting of the facility as the board considers appropriate.

13 (2) The board may not grant a certificate either as  
 14 proposed by the applicant or as modified by the board unless  
 15 it finds and determines:

- 16 (a) the nature of the probable environmental impact;
- 17 (b) that the facility minimizes adverse environmental  
 18 impact, considering the state of available technology and  
 19 the nature and economics of the various alternatives;
- 20 (c) that the location of the facility as proposed  
 21 conforms to applicable state and local laws and regulations,  
 22 except that the board may refuse to apply any local law or  
 23 regulation if it finds that, as applied to the proposed  
 24 facility, the law or regulation is unreasonably restrictive  
 25 in view of the existing technology, of factors of cost or

1 economics, or of the needs of consumers, whether located  
 2 inside or outside of the directly affected government  
 3 subdivisions;

4 (d) that the facility will serve the public interest;  
 5 (e) any impacts of the facility according to each of  
 6 the criteria listed in [section 15];

7 (f) that the proposed site is better suited for a  
 8 landfill than alternate sites in the state where the waste  
 9 originates; and

10 (g) that the applicant has fully mitigated the loss of  
 11 wildlife habitat, either through onsite or offsite habitat  
 12 improvements.

13 (3) In determining that the facility will serve the  
 14 public interest, the board shall consider:

- 15 (a) the items listed in subsections (2)(a) and (2)(b);
- 16 (b) the benefits to the applicant and the state  
 17 resulting from the proposed facility;
- 18 (c) the effects of the economic activity resulting from  
 19 the proposed facility;
- 20 (d) the effects of the proposed facility on the public  
 21 health, welfare, and safety; and
- 22 (e) any other factors that it considers relevant.

23 NEW SECTION. **Section 25.** Conditions imposed. If the  
 24 board determines that the location of all or a part of the  
 25 proposed megalandfill should be modified, it may condition

1 its certificate upon the modification, provided that the  
 2 persons residing in the area affected by the modification  
 3 have been given reasonable notice of the modification.

4 NEW SECTION. Section 26. License required. (1) A  
 5 person may not commence to construct a megalandfill in the  
 6 state without first applying for and obtaining a license  
 7 pursuant to 75-10-221. The licensing process must be  
 8 concurrent with the certification process required in  
 9 [section 11 through 25].

10 (2) The department shall make the decision to grant or  
 11 deny the license within 30 days of the certification  
 12 decision, as provided in [section 24].

13 (3) Once a license has been issued, a megalandfill may  
 14 not be constructed, operated, or maintained except in  
 15 conformity with the license and any terms, conditions, and  
 16 modifications contained in the license.

17 NEW SECTION. Section 27. License transferable. A  
 18 license may be transferred, subject to the approval of the  
 19 department, to a person who agrees to comply with the terms,  
 20 conditions, and modifications contained in [sections 1  
 21 through 36].

22 NEW SECTION. Section 28. Opinion issued with decision  
 23 -- contents. (1) In rendering a decision on an application  
 24 for a license for a megalandfill, the department shall issue  
 25 an opinion stating its reasons for the action taken.

1 (2) In addition to the requirements of 75-10-221, any  
 2 license issued by the department shall include the  
 3 following:

4 (a) an environmental evaluation statement related to  
 5 the megalandfill being certified. The statement must include  
 6 but not be limited to analysis of the following information:

7 (i) the environmental impact of the proposed facility;

8 (ii) any adverse environmental effects that cannot be  
 9 avoided by issuance of the license;

10 (iii) problems and objections raised by other federal  
 11 and state agencies and interested groups; and

12 (iv) alternatives to the proposed facility;

13 (b) a plan for monitoring environmental effects of the  
 14 proposed facility;

15 (c) a plan for monitoring the certified megalandfill  
 16 site between the time of certification and completion of  
 17 construction; and

18 (d) a statement signed by the applicant showing  
 19 agreement to comply with the requirements of [sections 1  
 20 through 36] and the conditions of the certificate.

21 NEW SECTION. Section 29. Monitoring. The department  
 22 shall monitor the operations of all certificated facilities  
 23 to ensure continuing compliance with [sections 1 through 36]  
 24 and with certificates issued under [section 11] and to  
 25 discover and prevent noncompliance with [sections 1 through

1 36] or certificates issued under [section 11].

2 NEW SECTION. Section 30. Revocation or suspension of  
3 license. A license may be revoked or suspended by the  
4 department following notice and an opportunity for a hearing  
5 before the department for:

6 (1) any material false statement in the application or  
7 in accompanying statements or studies required of the  
8 applicant if a true statement would have warranted the  
9 department's refusal to grant a license;

10 (2) failure to comply with the terms or conditions of  
11 the certificate; or

12 (3) violation of any provision of [sections 1 through  
13 36], rules adopted under [sections 1 through 36], or orders  
14 of the department.

15 NEW SECTION. Section 31. Enforcement by residents. (1)  
16 A person with knowledge that a requirement of [sections 1  
17 through 36] or a rule adopted under [sections 1 through 36]  
18 is not being enforced by a public officer or employee whose  
19 duty it is to enforce the requirement or rule may bring the  
20 failure to enforce to the attention of the public officer or  
21 employee by a written statement under oath that states the  
22 specific facts of the failure to enforce the requirement or  
23 rule. Knowingly making false statements or charges in the  
24 statements subjects the person to the penalties prescribed  
25 for a violation of 45-7-202.

1 (2) If the public officer or employee neglects or  
2 refuses for an unreasonable time after receipt of the  
3 statement to enforce the requirement or rule, the person may  
4 bring an action of mandamus in the district court of the  
5 first judicial district of Montana. If the court finds that  
6 a requirement of [sections 1 through 36] or a rule adopted  
7 under [sections 1 through 36] is not being enforced, the  
8 court may order the public officer or employee whose duty it  
9 is to enforce the requirement or rule to perform those  
10 duties. If he fails to do so, the public officer or employee  
11 must be held in contempt of court and is subject to the  
12 penalties provided by law.

13 NEW SECTION. Section 32. Action to recover damages to  
14 water supply. An owner of an interest in real property who  
15 obtains all or part of his supply of water for domestic,  
16 agricultural, industrial, or other legitimate use from a  
17 surface or underground source may sue a person to recover  
18 damages for contamination, diminution, or interruption of  
19 the water supply proximately resulting from the operation of  
20 a facility. The remedy provided in this section does not  
21 exclude the use of any other remedy that may be available  
22 under the laws of the state.

23 NEW SECTION. Section 33. Judicial review of department  
24 and board of health decisions. (1) An applicant aggrieved by  
25 the final decision of the board on an application for a

1 certificate or the final decision of the department on an  
2 application for a license may obtain judicial review of that  
3 decision by filing a petition in district court.

4 (2) The judicial review procedure is the same as that  
5 for contested cases under Title 2, chapter 4, part 7.

6 (3) This section does not prohibit the department from  
7 holding a hearing on all matters that are not the subject of  
8 a pending appeal by the applicant under subsection (1).

9 NEW SECTION. Section 34. Penalties for violation --  
10 civil action by attorney general. (1) (a) A person who  
11 commences to construct or operate a megalandfill without  
12 obtaining a certificate required under [section 11] and a  
13 license required under [section 26], who constructs,  
14 operates, or maintains a facility other than in compliance  
15 with the certificate or violates any other provision of  
16 [sections 1 through 36] or any rule or order adopted under  
17 [sections 1 through 36], or who knowingly submits false  
18 information in any report, long-range plan, or application  
19 required by [sections 1 through 36] is liable for a civil  
20 penalty as provided in subsection (2).

21 (b) Each day of a continuing violation constitutes a  
22 separate offense.

23 (c) The penalty is recoverable in a civil suit brought  
24 by the attorney general on behalf of the state in the  
25 district court of the first judicial district of Montana.

1 (2) A person who knowingly violates the provisions of  
2 subsection (1) shall be fined not more than \$25,000 for each  
3 violation or be imprisoned for not more than 1 year, or  
4 both. Each day of a continuing violation constitutes a  
5 separate offense.

6 (3) In addition to any penalty provided in subsection  
7 (1) or (2), whenever the department determines that a person  
8 is violating or is about to violate any of the provisions of  
9 [sections 1 through 36], it may refer the matter to the  
10 attorney general who may bring a civil action on behalf of  
11 the state in the district court of the first judicial  
12 district of Montana for injunctive or other appropriate  
13 relief against the violation and to enforce [sections 1  
14 through 36] or a certificate issued under [section 11]. Upon  
15 a proper showing, a permanent or preliminary injunction or  
16 temporary restraining order must be granted without bond.

17 (4) The department shall also enforce [sections 1  
18 through 36] and may bring legal actions to accomplish the  
19 enforcement through its own legal counsel.

20 (5) All fines and penalties collected must be deposited  
21 in the solid waste management account for the use of the  
22 department in administering [sections 1 through 36].

23 NEW SECTION. Section 35. Order not stayed by appeal --  
24 stay or suspension by court -- limitations. An appeal from a  
25 department order does not automatically stay or suspend the

1 operation of the order. The court may, upon motion by a  
 2 party, stay or suspend, in whole or in part, the operation  
 3 of the department's order on terms the court considers just.  
 4 The court's action must be in accordance with the practice  
 5 of courts exercising equity jurisdiction, subject to the  
 6 following limitations:

7 (1) A stay may not be granted without notice to the  
 8 parties and an opportunity to be heard by the court.

9 (2) A department order may not be stayed or suspended  
 10 without finding that irreparable damage would otherwise  
 11 result to the party seeking the stay or suspension, and a  
 12 stay or suspension must specify the nature of the damage.

13 NEW SECTION. Section 36. Surety bond. If an order of  
 14 the department is stayed or suspended, the court may require  
 15 a bond with good and sufficient surety conditioned that the  
 16 party petitioning for review answer for all damages caused  
 17 by the delay in enforcing the order of the department. The  
 18 cost of the bond is not chargeable to the applicant as part  
 19 of the fee. If the party petitioning for review prevails  
 20 upon final resolution of an appeal, the party does not  
 21 forfeit bond and is not responsible for damages caused by  
 22 delay.

23 NEW SECTION. Section 37. Codification instruction.  
 24 [Sections 1 through 36] are intended to be codified as an  
 25 integral part of Title 75, chapter 10, and the provisions of

1 Title 75, chapter 10, apply to [sections 1 through 36].

2 NEW SECTION. Section 38. Effective date. [This act] is  
 3 effective on passage and approval.

-End-

1 HOUSE BILL NO. 377  
 2 INTRODUCED BY RANEY, WEEDING, HARP, T. BECK, YELLOWTAIL,  
 3 DRISCOLL, GILBERT  
 4 BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL  
 5  
 6 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A  
 7 CERTIFICATION AND LICENSING PROCESS FOR MEGALANDFILLS;  
 8 PROVIDING FOR CONTRACTS FOR INFORMATION; REQUIRING THE  
 9 SUBMISSION OF LONG-RANGE PLANS; REQUIRING A CERTIFICATE OF  
 10 SITE ACCEPTABILITY; SPECIFYING ENVIRONMENTAL FACTORS TO BE  
 11 EVALUATED; REQUIRING A FILING FEE; PROVIDING A CONTESTED  
 12 CASE HEARINGS PROCESS; SPECIFYING DECISIONMAKING CRITERIA;  
 13 REQUIRING A LICENSE; REQUIRING MONITORING; PROVIDING FOR  
 14 ENFORCEMENT BY RESIDENTS; PROVIDING A MECHANISM TO RECOVER  
 15 DAMAGES FOR CONTAMINATION OF A DRINKING WATER SUPPLY;  
 16 PROVIDING FOR JUDICIAL REVIEW; PROVIDING PENALTIES FOR  
 17 VIOLATIONS; PROVIDING A SURETY BOND; AND PROVIDING AN  
 18 IMMEDIATE EFFECTIVE DATE."

19  
20 STATEMENT OF INTENT

21 A statement of intent is required for this bill because  
 22 it grants rulemaking authority to the board of health and  
 23 environmental sciences and to the department of health and  
 24 environmental sciences. It is the intent of the legislature  
 25 that these regulations be designed to protect the public



1 health, safety, and welfare and the environment.  
 2  
 3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 4 NEW SECTION. Section 1. Short title. [Sections 1  
 5 through 36] may be cited as the "Montana Megalandfill Siting  
 6 Act".  
 7 NEW SECTION. Section 2. Purpose. (1) It is the  
 8 constitutionally declared policy of this state to maintain  
 9 and improve a clean and healthful environment for present  
 10 and future generations, to protect the environment from  
 11 degradation and prevent unreasonable depletion and  
 12 degradation of natural resources, and to provide for  
 13 administration and enforcement to attain these objectives.  
 14 (2) The construction of solid waste facilities that  
 15 dispose of over 200,000 tons of waste a year (megalandfills)  
 16 may be necessary to meet increasing state and national needs  
 17 for solid waste disposal capacity. However, due to the  
 18 volume of waste processed, megalandfills may adversely  
 19 affect the environment, surrounding communities, and the  
 20 welfare of the citizens of this state. Therefore, it is  
 21 necessary to ensure that the location, construction, and  
 22 operation of megalandfills will produce minimal adverse  
 23 effects on the environment and upon the citizens of this  
 24 state by providing that a megalandfill may not be  
 25 constructed or operated within this state without a

**THIRD READING**  
 HB 377



1 certificate of site acceptability pursuant to [section 11]  
 2 and a license to operate acquired pursuant to [section 26]  
 3 and 75-10-221.

4 NEW SECTION. Section 3. Definitions. As used in  
 5 [sections 1 through 36], the following definitions apply:

6 (1) "Application" means an application for a  
 7 certificate and license submitted in accordance with  
 8 [sections 11 through 28] and the rules adopted under  
 9 [sections 11 through 28].

10 (2) "Board" means the board of health and environmental  
 11 sciences provided for in 2-15-2104.

12 (3) "Certificate" means the certificate of site  
 13 acceptability issued by the board under [section 11] that is  
 14 required for siting a megalandfill.

15 (4) "Commence to construct" means:

16 (a) any clearing of land, excavation, construction, or  
 17 other action that would affect the environment of the site,  
 18 except that the term does not mean changes for securing  
 19 geological data, including necessary borings to ascertain  
 20 subsurface conditions;

21 (b) the modification or upgrading of an existing solid  
 22 waste disposal facility into a megalandfill, except that the  
 23 term does not pertain to maintenance or repair of an  
 24 existing facility.

25 (5) "Department" means the department of health and

1 environmental sciences provided for in Title 2, chapter 15,  
 2 part 21.

3 (6) "Dispose" or "disposal" means the discharge,  
 4 injection, deposit, dumping, spilling, leaking, or placing  
 5 of any solid waste into or onto the land so that the solid  
 6 waste or any constituent of it may enter the environment or  
 7 be emitted into the air or discharged into any water,  
 8 including ground waters.

9 (7) "Megalandfill" OR "FACILITY" means any new or  
 10 existing solid waste landfill facility that accepts more  
 11 than 200,000 tons a year of solid waste OR ANY ASH MONOFILL  
 12 THAT ACCEPTS 35,000 TONS OR MORE A YEAR OF SOLID WASTE  
 13 INCINERATOR ASH, EITHER FLY ASH OR BOTTOM ASH.

14 (8) "Person" means an individual, firm, partnership,  
 15 company, association, corporation, city, town, local  
 16 governmental entity, or any other governmental or private  
 17 entity, whether organized for profit or not.

18 (9) (a) "Solid waste" means all putrescible and  
 19 nonputrescible wastes, including but not limited to garbage;  
 20 rubbish; refuse; ashes; sludge from sewage treatment plants,  
 21 water supply treatment plants, or air pollution control  
 22 facilities; construction and demolition wastes; dead  
 23 animals, including offal; discarded home and industrial  
 24 appliances; wood products or wood byproducts; and inert  
 25 materials.

1 (b) "Solid waste" does not mean municipal sewage,  
 2 industrial wastewater effluents, mining wastes regulated  
 3 under the mining and reclamation laws administered by the  
 4 department of state lands, slash and forest debris regulated  
 5 under laws administered by the department of state lands, or  
 6 marketable byproducts.

7 (10) "Solid waste landfill" means any publicly or  
 8 privately owned landfill or landfill unit that receives  
 9 household waste or other types of waste, including  
 10 commercial waste, nonhazardous sludge, and industrial solid  
 11 waste. The term does not include land application units,  
 12 surface impoundments, injection wells, or waste piles.

13 NEW SECTION. Section 4. Adoption of rules by board.  
 14 The board may adopt rules implementing the certification  
 15 provisions of [sections 1 through 36], including rules  
 16 regarding the filing and contents of the application, proof  
 17 of service and notice requirements, environmental factors to  
 18 be evaluated, filing fee, hearings process, and other  
 19 components of the certificate and certification process that  
 20 the board considers necessary.

21 NEW SECTION. Section 5. Adoption of rules by  
 22 department. The department may adopt rules implementing the  
 23 licensing provisions of [sections 1 through 36], including  
 24 rules regarding the contents of the application, monitoring,  
 25 and other components of the license and licensing process

1 that the department considers necessary.

2 NEW SECTION. Section 6. Contracts for information. (1)  
 3 The department may contract with a potential applicant under  
 4 [sections 1 through 36] in advance of the filing of a formal  
 5 application for the development of information or the  
 6 provision of services by the department required under  
 7 [sections 1 through 36].

8 (2) Payments made to the department under a contract  
 9 must be credited against the fee payable under [section 16].

10 NEW SECTION. Section 7. Grants, gifts, and funds. The  
 11 department may receive grants, gifts, and other funds from  
 12 any public or private source to assist in its activities  
 13 under [sections 1 through 36].

14 NEW SECTION. Section 8. Money to solid waste  
 15 management account. All fees, taxes, fines, and penalties  
 16 collected under [sections 1 through 36], except those  
 17 collected by a justice's court, must be deposited in the  
 18 solid waste management account as provided in 75-10-117 for  
 19 use by the department in carrying out its functions and  
 20 responsibilities related to solid waste management.

21 NEW SECTION. Section 9. Annual long-range plan  
 22 submitted -- contents -- available to public. (1) A person  
 23 may not file an application for a certificate of site  
 24 acceptability required by [section 11] unless the  
 25 megalandfill has been adequately identified in a long-range

1 plan at least 2 years prior to acceptance of an application  
2 by the department.

3 (2) The annual long-range plan must be submitted by  
4 July 1 of each year and must include the following:

5 (a) the general location, size, and type of all  
6 facilities to be owned and operated by the person for which  
7 construction is projected during the ensuing 2 years, as  
8 well as those facilities to be closed during the planning  
9 period;

10 (b) a description of the efforts to involve  
11 environmental protection and land use planning agencies in  
12 the planning process, as well as other efforts to identify  
13 and minimize environmental problems at the earliest possible  
14 stage in the planning process;

15 (c) projections of the demand for the service rendered  
16 by the person and an explanation of the basis for those  
17 projections and a description of the manner and extent to  
18 which the proposed facilities will meet the projected  
19 demand; and

20 (d) additional information that the department by rule  
21 or the department on its own initiative or upon the advice  
22 of interested state agencies requests in order to carry out  
23 the purposes of [sections 1 through 36].

24 (3) The plan must be furnished to the governing body of  
25 each county in which any facility included in the plan under

1 subsection (2)(a) is proposed to be located and must be made  
2 available to the public by the department. The applicant  
3 shall give public notice throughout the state by publishing  
4 at least once a week for 2 consecutive weeks a summary of  
5 the proposed plan in newspapers of general circulation. The  
6 plan must also be filed with the environmental quality  
7 council, the department of highways, the department of state  
8 lands, the department of fish, wildlife, and parks, the  
9 department of commerce, and the department of natural  
10 resources and conservation. Interested persons may obtain a  
11 copy of the plan by written request and payment to the  
12 department of the costs of copying the plan.

13 NEW SECTION. **Section 10.** Study of included facilities.  
14 If a person identifies a proposed facility in its long-range  
15 plan, submitted pursuant to [section 9], as one on which  
16 construction is proposed within the 2-year period following  
17 submission of the plan, the department shall begin to  
18 examine and evaluate the proposed site to determine whether  
19 construction of the proposed facility would unduly impair  
20 the environmental, SOCIAL, AND ECONOMIC values described in  
21 [section 15]. The study may be continued until a person  
22 files an application for a certificate under [section 11].  
23 Information gathered under this section may be used to  
24 support findings and recommendations required for issuance  
25 of a certificate and a license.

1        NEW SECTION. Section 11. Certificate required. (1) A  
 2 person may not construct a megalandfill in the state without  
 3 first applying for and obtaining a certificate of site  
 4 acceptability from the board.

5        (2) A certificate may only be issued pursuant to  
 6 [sections 11 through 25].

7        NEW SECTION. Section 12. Certificate transferable. A  
 8 certificate may be transferred, subject to the approval of  
 9 the board, to a person who agrees to comply with the terms,  
 10 conditions, and modifications contained in [sections 1  
 11 through 36].

12        NEW SECTION. Section 13. Application -- filing and  
 13 contents -- proof of service and notice. (1) (a) An  
 14 applicant shall file with the department an application for  
 15 a certificate under [section 11] in a form the board  
 16 requires, containing the following information:

17        (i) a description of the proposed location and of the  
 18 facility to be built;

19        (ii) a summary of any studies that have been made of the  
 20 environmental ~~impact~~, SOCIAL, AND ECONOMIC IMPACTS of the  
 21 facility;

22        (iii) a description of at least three reasonable  
 23 alternate locations for the facility, a general description  
 24 of the comparative merits and detriments of each location  
 25 submitted, and a statement of the reasons why the proposed

1 location is best suited for the facility;

2        (iv) baseline data for the primary and reasonable  
 3 alternate locations;

4        (v) at the applicant's option, an environmental study  
 5 plan to satisfy the requirements of [sections 1 through 36];  
 6 and

7        (vi) other information that the applicant considers  
 8 relevant or that the board by order or rule may require OR  
 9 THAT THE DEPARTMENT BY ORDER OR RULE MAY REQUIRE.

10        (b) A copy or copies of the studies referred to in  
 11 subsection (1)(a)(ii) must be filed with the department, if  
 12 ordered, and must be available for public inspection.

13        (2) An application must be accompanied by proof of  
 14 service of a copy of the application on the chief executive  
 15 officer of each unit of local government, each county  
 16 commissioner, city or county planning board, and solid waste  
 17 district, and each federal agency charged with the duty of  
 18 protecting the environment or of planning land use located  
 19 in the area in which any portion of the proposed facility is  
 20 proposed or is alternatively proposed to be located and on  
 21 the following state government agencies:

- 22        (a) environmental quality council;
- 23        (b) department of fish, wildlife, and parks;
- 24        (c) department of state lands;
- 25        (d) department of commerce;

1 (e) department of highways; and  
 2 (f) department of natural resources and conservation.  
 3 (3) An application must be accompanied by proof that  
 4 public notice was given to persons residing in the area in  
 5 which any portion of the proposed facility is proposed or is  
 6 alternatively proposed to be located by publication of a  
 7 summary of the application in newspapers of general  
 8 circulation that will substantially inform those persons of  
 9 the application.  
 10 NEW SECTION. Section 14. Supplemental material --  
 11 amendments. (1) An application for an amendment of an  
 12 application or a certificate must be in a form and contain  
 13 information as the board by rule or the department by order  
 14 prescribes. Notice of an amendment must be given as provided  
 15 in [section 13(3) and (4)].  
 16 (2) An application may be amended by an applicant any  
 17 time prior to the report made by the department under  
 18 [section 17]. If the proposed amendment prevents the  
 19 department from carrying out its duties and responsibilities  
 20 under [sections 1 through 36], the department may require  
 21 additional filing fees as the department determines  
 22 necessary or may require a new application and filing fee.  
 23 (3) The applicant shall submit supplemental material in  
 24 a timely manner as requested by the department or as offered  
 25 by the applicant to explain, support, or provide details

1 with respect to an item described in the original  
 2 application. This supplemental material may be submitted  
 3 without filing an application for an amendment. The  
 4 department's determination as to whether information is  
 5 supplemental or whether an application for amendment is  
 6 required is conclusive.  
 7 NEW SECTION. Section 15. Environmental, SOCIAL, AND  
 8 ECONOMIC factors evaluated during certification. In  
 9 evaluating applications for a certificate of site  
 10 acceptability, the department shall give consideration to  
 11 the following list of environmental factors and regulations,  
 12 where applicable, and may by rule add to the factors  
 13 enumerated in this section:  
 14 (1) siting criteria for municipal solid waste landfills  
 15 consistent with federal requirements as described in 40 CFR  
 16 part 258;  
 17 (2) siting criteria described under the Montana Solid  
 18 Waste Management Act, Title 75, chapter 10, part 2, and  
 19 rules adopted under that part;  
 20 (3) the Montana solid waste management plan;  
 21 (4) solid waste disposal needs, including:  
 22 (a) availability and desirability of alternative  
 23 sources METHODS of solid waste disposal in lieu of the  
 24 proposed facility;  
 25 (b) promotional activities of the applicant that may

1 have given rise to the need for the facility;

2 (c) social benefits CHANGES resulting from the

3 facility, including protection of public health and

4 environmental quality; and

5 (d) integrated waste management activities that could

6 reduce the need for additional solid waste disposal

7 capacity;

8 (5) land use impacts, including:

9 (a) the area of land required and its ultimate use;

10 (b) consistency with state and regional solid waste

11 plans;

12 (c) consistency with existing and projected nearby land

13 use;

14 (d) alternative uses of the site;

15 (e) the impact on the population already in the area

16 and the population attracted by construction or operation of

17 the facility;

18 (f) the impact of availability of solid waste disposal

19 at the facility on growth patterns and population dispersal;

20 (g) construction materials and practices, including

21 quality control and quality assurance plans to be followed

22 during construction of all phases of the proposed facility;

23 (h) scenic impacts;

24 (i) the effects on natural systems, wildlife, and plant

25 life;

1 (j) the impacts on important historic, architectural,

2 archaeological, and cultural areas and features;

3 (k) the impacts on public facilities and

4 accommodations; and

5 (l) opportunities for joint use with solid waste

6 disposal-intensive industries; AND

7 (M) THE ECONOMIC IMPACT ON THE LOCAL AREA, LOCAL

8 GOVERNMENT INFRASTRUCTURE, AND EXISTING INDUSTRY;

9 (6) water resources impacts, including:

10 (a) hydrologic studies of the adequacy of water supply

11 and the impact of the facility on streamflow, lakes, and

12 reservoirs;

13 (b) hydrologic studies of the impact of the facility on

14 ground water, including vadose zone studies describing the

15 potential for leachate to migrate from the facility to

16 ground water;

17 (c) an inventory of effluents, including physical,

18 chemical, and biological characteristics;

19 (d) hydrologic studies of effects of effluents on

20 receiving waters;

21 (e) the effect of the facility on water quality;

22 (f) the facility's projected water uses;

23 (g) the effects on plant and animal life, including

24 algae, macroinvertebrates, and fish population;

25 (h) effects on unique or otherwise significant

1 ecosystems, such as wetlands; and  
 2 (i) ground water, vadose zone, and methane gas  
 3 monitoring systems and programs; and  
 4 (7) characteristics of solid wastes that will be  
 5 disposed of at the facility, including:  
 6 (a) the rate of solid waste disposal;  
 7 (b) the solid waste handling practices proposed to be  
 8 used; and  
 9 (c) the present and expected future physical and  
 10 chemical characteristics of the solid waste; AND  
 11 (D) INSPECTION PRACTICES FOR PREVENTING THE ILLEGAL  
 12 DUMPING OF HAZARDOUS WASTE INTO THE FACILITY;  
 13 (B) TRANSPORTATION PRACTICES, INCLUDING:  
 14 (A) ROUTE AND MODE OF TRANSPORTING WASTE;  
 15 (B) ENVIRONMENTAL, SOCIAL, AND ECONOMIC IMPACTS OF  
 16 TRANSPORTATION FACILITIES; AND  
 17 (C) TRANSFER FACILITIES.  
 18 NEW SECTION. Section 16. Filing fee -- accountability  
 19 -- refund -- use. (1) (a) The applicant shall pay to the  
 20 department a filing fee as provided in this section based  
 21 upon the department's estimated costs of processing the  
 22 application for a certificate. The filing fee must be  
 23 deposited in the solid waste management account for the use  
 24 of the department in administering [sections 1 through 36].  
 25 The initial filing fee may not exceed the following scale

1 based upon the megalandfill's projected annual tonnage of  
 2 waste;  
 3 (i) a base fee of \$40,000; plus  
 4 (ii) 20 cents per ton for every ton of waste over  
 5 200,000 tons.  
 6 (b) The department may allow a credit against the fee  
 7 payable under this section for the applicant's costs of  
 8 developing information or providing services required under  
 9 [sections 1 through 36] or required for preparation of an  
 10 environmental impact statement under the Montana  
 11 Environmental Policy Act, Title 75, chapter 1, part 1, or  
 12 the National Environmental Policy Act, 42 U.S.C. 4321, et  
 13 seq. The applicant may submit the information or a  
 14 description of the services performed to the department,  
 15 together with an accounting of the expenses incurred in  
 16 preparing the information or performing the services. The  
 17 department shall evaluate the applicability, validity, and  
 18 usefulness of the data or services and determine the  
 19 expenses that may be credited against the filing fee payable  
 20 under this section. Upon 30 days' notice to the applicant,  
 21 this credit may at any time be reduced if the department  
 22 determines that the amount to be credited is necessary to  
 23 carry out its responsibilities under [sections 1 through  
 24 36].  
 25 (2) (a) The department may contract with an applicant

1 after the filing of a formal application for the development  
 2 of information or the provision of services required under  
 3 [sections 1 through 36]. The contract may continue an  
 4 agreement entered into pursuant to [section 6]. Payments  
 5 made to the department under a contract must be credited  
 6 against the fee payable under this section. The revenue  
 7 derived from the filing fee must be sufficient to enable the  
 8 department and the board to carry out their responsibilities  
 9 under [sections 1 through 36]. The department may amend a  
 10 contract to require additional payments for necessary  
 11 expenses up to the limits set forth in subsection (1)(a)  
 12 upon 30 days' notice to the applicant. The department and  
 13 applicant may enter into a contract that exceeds the scale  
 14 provided in subsection (1)(a).

15 (b) If a contract is not entered into, the applicant  
 16 shall pay the filing fee in installments in accordance with  
 17 a schedule of installments developed by the department;  
 18 however, an installment may not exceed 20% of the total  
 19 filing fee provided for in subsection (1).

20 (3) The applicant is entitled to an accounting of money  
 21 spent and to a refund with interest at the rate of 6% a year  
 22 of the portion of the filing fee not spent by the department  
 23 in carrying out its responsibilities under [sections 1  
 24 through 36]. A refund must be made after all administrative  
 25 and judicial remedies have been exhausted by all parties to

1 the certification proceedings.

2 (4) The revenue derived from the filing fees must be  
 3 used by the department in compiling the information required  
 4 for rendering a decision on a certificate and for carrying  
 5 out other responsibilities of the department and the board  
 6 under [sections 1 through 36].

7 **NEW SECTION. Section 17. Study, evaluation, and report**  
 8 **on proposed facility.** (1) After receipt of an application,  
 9 the department shall within 90 days notify the applicant in  
 10 writing that:

11 (a) the application is accepted as complete; or

12 (b) the application is not complete and list the  
 13 deficiencies. Upon correction of these deficiencies and  
 14 resubmission by the applicant, the department shall within  
 15 30 days notify the applicant in writing that the application  
 16 is in compliance and is accepted as complete.

17 (2) Upon receipt of an application complying with  
 18 [sections 9 through 17], the department shall commence an  
 19 intensive study and evaluation of the proposed facility and  
 20 its effects, considering all applicable criteria listed in  
 21 [section 24]. The department shall use, to the extent it  
 22 considers applicable, valid and useful existing studies and  
 23 reports submitted by the applicant or compiled by a state or  
 24 federal agency.

25 (3) Within 1 year following acceptance of a complete



1 application for a facility, the department shall make a  
 2 report to the board that must contain the department's  
 3 studies, evaluations, recommendations, other pertinent  
 4 documents resulting from its study and evaluation, and an  
 5 environmental impact statement or analysis prepared pursuant  
 6 to the Montana Environmental Policy Act, Title 75, chapter  
 7 1, ~~part-17~~ if applicable.

8 NEW SECTION. **Section 18.** Voiding of application. An  
 9 application may be voided by the department for:

10 (1) any material and knowingly false statement in the  
 11 application or in accompanying statements or studies  
 12 required of the applicant;

13 (2) failure to file an application in substantially the  
 14 form and content required by [section 13] and the rules  
 15 adopted under [section 13]; or

16 (3) failure to deposit the filing fee as provided in  
 17 [section 16].

18 NEW SECTION. **Section 19.** Hearing date -- location --  
 19 department to act as staff. (1) Upon receipt of the  
 20 department's report submitted under [section 17], the board  
 21 shall set a date for a hearing to begin not more than 120  
 22 days after receipt of the report. A certification hearing  
 23 must be conducted by the board in Helena or in the county  
 24 seat of the county in which the facility or the greatest  
 25 portion of the facility is to be located.

1 (2) Except as provided in [section 21], the department  
 2 shall act as the staff for the board throughout the  
 3 decisionmaking process and the board may request that the  
 4 department present testimony or cross-examine witnesses as  
 5 the board considers necessary and appropriate.

6 NEW SECTION. **Section 20.** Certificate amendments. (1)  
 7 Within 30 days after notice of an amendment to a certificate  
 8 is given as provided in [section 14], including notice to  
 9 all active parties to the original proceeding, the  
 10 department shall determine whether the proposed change in  
 11 the facility would result in a material increase in any  
 12 environmental impact, SOCIAL, AND ECONOMIC IMPACTS caused by  
 13 the facility or a substantial change in the location of all  
 14 or a portion of the facility as set forth in the  
 15 certificate. If the department determines that the proposed  
 16 change would result in a material increase in any  
 17 environmental impact caused by the facility or a substantial  
 18 change in the location of all or a portion of the facility,  
 19 the board shall hold a hearing in the same manner as a  
 20 hearing is held on an application for a certificate. After  
 21 the hearing, the board shall grant, deny, or modify the  
 22 amendment with conditions it considers appropriate.

23 (2) In cases where the department determines that the  
 24 proposed change in the facility would not result in a  
 25 material increase in any environmental impact or would not

1 be a substantial change in the location of all or a portion  
 2 of the facility, the board shall grant the amendment either  
 3 as applied for or upon terms or conditions as the board  
 4 considers appropriate unless the department's determination  
 5 is appealed to the board within 15 days after notice of the  
 6 department's determination is given.

7 (3) If the department or the board, under subsection  
 8 (4), determines that a hearing is required because the  
 9 proposed change would result in a material increase in any  
 10 environmental impact of the facility or a substantial change  
 11 in the location of all or a portion of the facility, the  
 12 applicant has the burden of showing by clear and convincing  
 13 evidence that the amendment should be granted.

14 (4) If the department determines that the proposed  
 15 change in the facility would not result in a material  
 16 increase in any environmental impact or would not be a  
 17 substantial change in the location of all or a portion of  
 18 the facility and a hearing is required because the  
 19 department's determination is appealed to the board as  
 20 provided in subsection (2), the appellant has the burden of  
 21 showing by clear and convincing evidence that the proposed  
 22 change in the facility would result in a material increase  
 23 in any environmental impact of the facility or a substantial  
 24 change in the location of all or a portion of the facility  
 25 as set forth in the certificate.

1 NEW SECTION. **Section 21. Hearing examiner** --  
 2 restrictions -- duties. (1) The board shall appoint a  
 3 hearing examiner to conduct certification proceedings under  
 4 [sections 1 through 36]. The hearing examiner may not be a  
 5 member of the board or an employee of the department or the  
 6 board. A hearing examiner must be appointed within 20 days  
 7 after the department's report has been filed with the board.

8 (2) A prehearing conference must be held, following  
 9 notice, within 60 days after the department's report has  
 10 been filed with the board.

11 (3) The prehearing conference must be organized and  
 12 supervised by the hearing examiner.

13 (4) The prehearing conference must be directed toward a  
 14 determination of the issues presented by the application,  
 15 the department's report, and an identification of the  
 16 witnesses and documentary exhibits to be presented by the  
 17 active parties who intend to participate in the hearing.

18 (5) The hearing examiner shall require the active  
 19 parties to submit, in writing, and serve upon the other  
 20 active parties all direct testimony that they propose and  
 21 any studies, investigations, reports, or other exhibits that  
 22 any active party wishes the board to consider. These written  
 23 exhibits and any documents that the board itself wishes to  
 24 use or rely on must be submitted and served at least 20 days  
 25 prior to the date set for the hearing. For good cause shown,

1 the hearing examiner may allow the introduction of new  
2 evidence at any time.

3 (6) The hearing examiner shall allow discovery that  
4 must be completed before the commencement of the hearing  
5 upon good cause shown and under other conditions as the  
6 hearing examiner prescribes.

7 (7) Public witnesses and other interested public  
8 parties may appear and present oral testimony at the hearing  
9 or submit written testimony to the hearing examiner at the  
10 time of their appearance. These witnesses are subject to  
11 cross-examination.

12 (8) The hearing examiner shall issue a prehearing order  
13 specifying the issues of fact and of law, identifying the  
14 witnesses of the active parties, naming the public witnesses  
15 and other interested parties who have submitted written  
16 testimony in lieu of appearance, outlining the order in  
17 which the hearing will proceed, setting forth those criteria  
18 listed in [section 24] as to which no issue of fact or law  
19 has been raised and that are conclusively presumed and are  
20 not subject to further proof except for good cause shown,  
21 and any other special rules to expedite the hearing that the  
22 hearing examiner adopts with the approval of the board.

23 (9) At the conclusion of the hearing, the hearing  
24 examiner shall declare the hearing closed and shall, within  
25 60 days of that date, prepare and submit to the board

1 proposed findings of fact, conclusions of law, and a  
2 recommended decision.

3 (10) The hearing examiner appointed to conduct a  
4 certification proceeding under this section shall ensure  
5 that the time of the proceeding, from the date the  
6 department's report is filed with the board until the  
7 recommended report and order of the examiner is filed with  
8 the board, does not exceed 9 calendar months unless extended  
9 by the board for good cause.

10 (11) The board or hearing examiner may waive all or a  
11 portion of the procedures set forth in subsections (2)  
12 through (8) to expedite the hearing for a facility when the  
13 department has recommended approval of a facility and no  
14 objections have been filed.

15 NEW SECTION. **Section 22.** Parties to certification  
16 proceeding -- waiver -- statement of intent to participate.

17 (1) The parties to a certification proceeding or to a  
18 proceeding involving the issuance of a decision, opinion,  
19 order, certification, or permit by the board under [sections  
20 1 through 36] may include as active parties:

- 21 (a) the applicant;
- 22 (b) each political entity, unit of local government,  
23 and government agency entitled to receive service of a copy  
24 of the application under [section 13];
- 25 (c) a person entitled to receive service of a copy of

1 the application under [section 13];  
 2 (d) a nonprofit organization formed in whole or in part  
 3 to:  
 4 (i) promote conservation or natural beauty;  
 5 (ii) protect the environment, personal health, or other  
 6 biological values;  
 7 (iii) preserve historical sites;  
 8 (iv) promote consumer interests;  
 9 (v) represent commercial and industrial groups; or  
 10 (vi) promote the orderly development of the areas in  
 11 which the facility is to be located; and  
 12 (e) any other interested person who establishes an  
 13 interest in the proceeding.  
 14 (2) The department must be an active party in any  
 15 certification proceeding in which the department recommends  
 16 denial of all or a portion of a facility.  
 17 (3) The parties to a certification proceeding may also  
 18 include, as public parties, any Montana citizen and any  
 19 party referred to in subsections (1)(b) through (1)(e).  
 20 (4) A party waives the right to be a party if the party  
 21 does not participate in the hearing before the board.  
 22 (5) Each unit of local government entitled to receive  
 23 service of a copy of the application under [section 13]  
 24 shall file with the board a statement showing whether the  
 25 unit of local government intends to participate in the

1 certification proceeding. If the unit of local government  
 2 does not intend to participate, it shall list in this  
 3 statement its reasons for failing to do so. This statement  
 4 of intent must be published before the proceeding begins in  
 5 a newspaper of general circulation within the jurisdiction  
 6 of the applicable unit of local government.

7 NEW SECTION. **Section 23.** Record of hearing --  
 8 procedure -- rules of evidence -- burden of proof. (1) Any  
 9 studies, investigations, reports, or other documentary  
 10 evidence, including those prepared by the department, that  
 11 any party wishes the board to consider or that the board  
 12 itself expects to use or rely upon must be made a part of  
 13 the record.

14 (2) A record must be made of the hearing and of all  
 15 testimony taken.

16 (3) In a certification proceeding held under [section  
 17 19], the applicant has the burden of showing by clear and  
 18 convincing evidence that the application should be granted  
 19 and that the criteria of [section 24] are met.

20 (4) All proceedings under [sections 19 through 23] are  
 21 governed by the procedures set forth in [sections 19 through  
 22 23], the procedural rules adopted by the board, and the  
 23 Montana Rules of Evidence unless one or more rules of  
 24 evidence are waived by the hearing examiner upon a showing  
 25 of good cause by one or more of the parties to the hearing.

1 No other rules of procedure or evidence apply except that  
 2 the contested case procedures of the Montana Administrative  
 3 Procedure Act apply if not in conflict with the procedures  
 4 set forth in [sections 19 through 23] or the procedural  
 5 rules adopted by the board.

6 NEW SECTION. **Section 24.** Decision of board -- findings  
 7 necessary for certification. (1) Within ~~±60~~ 90 days after  
 8 submission of the recommended decision by the department,  
 9 the board shall make complete findings, issue an opinion,  
 10 and render a final decision upon the record, either granting  
 11 or denying the application for a certificate as filed or  
 12 granting it upon terms, conditions, or modifications of the  
 13 siting of the facility as the board considers appropriate.

14 (2) The board may not grant a certificate either as  
 15 proposed by the applicant or as modified by the board unless  
 16 it finds and determines:

- 17 (a) the nature of the probable environmental impact;
- 18 (b) that the facility minimizes adverse environmental  
 19 impact, considering the state of available technology and  
 20 the nature and economics of the various alternatives;
- 21 (c) that the location of the facility as proposed  
 22 conforms to applicable state and local laws and regulations,  
 23 except that the board may refuse to apply any local law or  
 24 regulation if it finds that, as applied to the proposed  
 25 facility, the law or regulation is unreasonably restrictive

1 in view of the existing technology, of factors of cost or  
 2 economics, or of the needs of consumers, whether located  
 3 inside or outside of the directly affected government  
 4 subdivisions;

5 (d) that the facility will serve the public interest;  
 6 (e) any impacts of the facility according to each of  
 7 the criteria listed in [section 15];

8 ~~(f) that the proposed site is better suited for a~~  
 9 ~~landfill than alternate sites in the state where the waste~~  
 10 ~~originates~~ THE SOLID WASTE DISPOSAL NEEDS LISTED IN [SECTION  
 11 15(4)]; and

12 (g) that the applicant has fully mitigated the loss of  
 13 wildlife habitat, either through onsite or offsite habitat  
 14 improvements.

15 (3) In determining that the facility will serve the  
 16 public interest, the board shall consider:

- 17 (a) the items listed in subsections (2)(a) and (2)(b);
- 18 (b) the benefits to the applicant and the state  
 19 resulting from the proposed facility;
- 20 (c) the effects of the economic activity resulting from  
 21 the proposed facility;
- 22 (d) the effects of the proposed facility on the public  
 23 health, welfare, and safety; and
- 24 (e) any other factors that it considers relevant.

25 NEW SECTION. **Section 25.** Conditions imposed. If the

1 board determines that the location of all or a part of the  
2 proposed megalandfill should be modified, it may condition  
3 its certificate upon the modification, provided that the  
4 persons residing in the area affected by the modification  
5 have been given reasonable notice of the modification.

6 **NEW SECTION. Section 26. License required.** (1) A  
7 person may not commence to construct a megalandfill in the  
8 state without first applying for and obtaining a license  
9 pursuant to 75-10-221. The licensing process must be  
10 concurrent with the certification process required in  
11 [section 11 through 25].

12 (2) The department shall make the decision to grant or  
13 deny the license within 30 days of the certification  
14 decision, as provided in [section 24].

15 (3) Once a license has been issued, a megalandfill may  
16 not be constructed, operated, or maintained except in  
17 conformity with the license and any terms, conditions, and  
18 modifications contained in the license.

19 **NEW SECTION. Section 27. License transferable.** A  
20 license may be transferred, subject to the approval of the  
21 department, to a person who agrees to comply with the terms,  
22 conditions, and modifications contained in [sections 1  
23 through 36].

24 **NEW SECTION. Section 28. Opinion issued with decision**  
25 -- contents. (1) In rendering a decision on an application

1 for a license for a megalandfill, the department shall issue  
2 an opinion stating its reasons for the action taken.

3 (2) In addition to the requirements of 75-10-221, any  
4 license issued by the department shall include the  
5 following:

6 (a) an environmental evaluation statement related to  
7 the megalandfill being certified. The statement must include  
8 but not be limited to analysis of the following information:

9 (i) the environmental impact of the proposed facility;  
10 (ii) any adverse environmental effects that cannot be  
11 avoided by issuance of the license;

12 (iii) problems and objections raised by other federal  
13 and state agencies and interested groups; and

14 (iv) alternatives to the proposed facility;

15 (b) a plan for monitoring environmental effects of the  
16 proposed facility;

17 (c) a plan for monitoring the certified megalandfill  
18 site between the time of certification and completion of  
19 construction; and

20 (d) a statement signed by the applicant showing  
21 agreement to comply with the requirements of [sections 1  
22 through 36] and the conditions of the certificate.

23 **NEW SECTION. Section 29. Monitoring.** The department  
24 shall monitor the operations of all certificated facilities  
25 to ensure continuing compliance with [sections 1 through 36]

1 and with certificates issued under [section 11] and to  
2 discover and prevent noncompliance with [sections 1 through  
3 36] or certificates issued under [section 11].

4 NEW SECTION. Section 30. Revocation or suspension of  
5 license. A license may be revoked or suspended by the  
6 department following notice and an opportunity for a hearing  
7 before the department for:

8 (1) any material false statement in the application or  
9 in accompanying statements or studies required of the  
10 applicant if a true statement would have warranted the  
11 department's refusal to grant a license;

12 (2) failure to comply with the terms or conditions of  
13 the certificate; or

14 (3) violation of any provision of [sections 1 through  
15 36], rules adopted under [sections 1 through 36], or orders  
16 of the department.

17 NEW SECTION. Section 31. Enforcement by residents. (1)  
18 A person with knowledge that a requirement of [sections 1  
19 through 36] or a rule adopted under [sections 1 through 36]  
20 is not being enforced by a public officer or employee whose  
21 duty it is to enforce the requirement or rule may bring the  
22 failure to enforce to the attention of the public officer or  
23 employee by a written statement under oath that states the  
24 specific facts of the failure to enforce the requirement or  
25 rule. Knowingly making false statements or charges in the

1 statements subjects the person to the penalties prescribed  
2 for a violation of 45-7-202.

3 (2) If the public officer or employee neglects or  
4 refuses for an unreasonable time after receipt of the  
5 statement to enforce the requirement or rule, the person may  
6 bring an action of mandamus in the district court of the  
7 first judicial district of Montana. If the court finds that  
8 a requirement of [sections 1 through 36] or a rule adopted  
9 under [sections 1 through 36] is not being enforced, the  
10 court may order the public officer or employee whose duty it  
11 is to enforce the requirement or rule to perform those  
12 duties. If he fails to do so, the public officer or employee  
13 must be held in contempt of court and is subject to the  
14 penalties provided by law.

15 NEW SECTION. Section 32. Action to recover damages to  
16 water supply. An owner of an interest in real property who  
17 obtains all or part of his supply of water for domestic,  
18 agricultural, industrial, or other legitimate use from a  
19 surface or underground source may sue a person to recover  
20 damages for contamination, diminution, or interruption of  
21 the water supply proximately resulting from the operation of  
22 a facility. The remedy provided in this section does not  
23 exclude the use of any other remedy that may be available  
24 under the laws of the state.

25 NEW SECTION. Section 33. Judicial review of department

1 and board of health decisions. (1) An applicant aggrieved by  
 2 the final decision of the board on an application for a  
 3 certificate or the final decision of the department on an  
 4 application for a license may obtain judicial review of that  
 5 decision by filing a petition in district court.

6 (2) The judicial review procedure is the same as that  
 7 for contested cases under Title 2, chapter 4, part 7.

8 (3) This section does not prohibit the department from  
 9 holding a hearing on all matters that are not the subject of  
 10 a pending appeal by the applicant under subsection (1).

11 **NEW SECTION. Section 34. Penalties for violation --**  
 12 **civil action by attorney general.** (1) (a) A person who  
 13 commences to construct or operate a megalandfill without  
 14 obtaining a certificate required under [section 11] and a  
 15 license required under [section 26], who constructs,  
 16 operates, or maintains a facility other than in compliance  
 17 with the certificate or violates any other provision of  
 18 [sections 1 through 36] or any rule or order adopted under  
 19 [sections 1 through 36], or who knowingly submits false  
 20 information in any report, long-range plan, or application  
 21 required by [sections 1 through 36] is liable for a civil  
 22 penalty as provided in subsection (2).

23 (b) Each day of a continuing violation constitutes a  
 24 separate offense.

25 (c) The penalty is recoverable in a civil suit brought

1 by the attorney general on behalf of the state in the  
 2 district court of the first judicial district of Montana.

3 (2) A person who knowingly violates the provisions of  
 4 subsection (1) shall be fined not more than \$25,000 for each  
 5 violation or be imprisoned for not more than 1 year, or  
 6 both. Each day of a continuing violation constitutes a  
 7 separate offense.

8 (3) In addition to any penalty provided in subsection  
 9 (1) or (2), whenever the department determines that a person  
 10 is violating or is about to violate any of the provisions of  
 11 [sections 1 through 36], it may refer the matter to the  
 12 attorney general who may bring a civil action on behalf of  
 13 the state in the district court of the first judicial  
 14 district of Montana for injunctive or other appropriate  
 15 relief against the violation and to enforce [sections 1  
 16 through 36] or a certificate issued under [section 11]. Upon  
 17 a proper showing, a permanent or preliminary injunction or  
 18 temporary restraining order must be granted without bond.

19 (4) The department shall also enforce [sections 1  
 20 through 36] and may bring legal actions to accomplish the  
 21 enforcement through its own legal counsel.

22 (5) All fines and penalties collected must be deposited  
 23 in the solid waste management account for the use of the  
 24 department in administering [sections 1 through 36].

25 **NEW SECTION. Section 35. Order not stayed by appeal --**



1 stay or suspension by court -- limitations. An appeal from a  
 2 department order does not automatically stay or suspend the  
 3 operation of the order. The court may, upon motion by a  
 4 party, stay or suspend, in whole or in part, the operation  
 5 of the department's order on terms the court considers just.  
 6 The court's action must be in accordance with the practice  
 7 of courts exercising equity jurisdiction, subject to the  
 8 following limitations:

9 (1) A stay may not be granted without notice to the  
 10 parties and an opportunity to be heard by the court.

11 (2) A department order may not be stayed or suspended  
 12 without finding that irreparable damage would otherwise  
 13 result to the party seeking the stay or suspension, and a  
 14 stay or suspension must specify the nature of the damage.

15 NEW SECTION. **Section 36.** Surety bond. If an order of  
 16 the department is stayed or suspended, the court may require  
 17 a bond with good and sufficient surety conditioned that the  
 18 party petitioning for review answer for all damages caused  
 19 by the delay in enforcing the order of the department. The  
 20 cost of the bond is not chargeable to the applicant as part  
 21 of the fee. If the party petitioning for review prevails  
 22 upon final resolution of an appeal, the party does not  
 23 forfeit bond and is not responsible for damages caused by  
 24 delay.

25 NEW SECTION. **Section 37.** Codification instruction.

1 [Sections 1 through 36] are intended to be codified as an  
 2 integral part of Title 75, chapter 10, and the provisions of  
 3 Title 75, chapter 10, apply to [sections 1 through 36].

4 NEW SECTION. **Section 38.** Effective date. [This act] is  
 5 effective on passage and approval.

-End-

HOUSE BILL NO. 377

INTRODUCED BY RANEY, WEEDING, HARP, T. BECK, YELLOWTAIL,  
DRISCOLL, GILBERT  
BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A  
CERTIFICATION AND LICENSING PROCESS FOR MEGALANDFILLS;  
PROVIDING FOR CONTRACTS FOR INFORMATION; REQUIRING THE  
SUBMISSION OF LONG-RANGE PLANS; REQUIRING A CERTIFICATE OF  
SITE ACCEPTABILITY; SPECIFYING ENVIRONMENTAL FACTORS TO BE  
EVALUATED; REQUIRING A FILING FEE; PROVIDING A CONTESTED  
CASE HEARINGS PROCESS; SPECIFYING DECISIONMAKING CRITERIA;  
REQUIRING A LICENSE; REQUIRING MONITORING; PROVIDING FOR  
ENFORCEMENT BY RESIDENTS; PROVIDING A MECHANISM TO RECOVER  
DAMAGES FOR CONTAMINATION OF A DRINKING WATER SUPPLY;  
PROVIDING FOR JUDICIAL REVIEW; PROVIDING PENALTIES FOR  
VIOLATIONS; PROVIDING A SURETY BOND; AND PROVIDING AN  
IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because  
it grants rulemaking authority to the board of health and  
environmental sciences and to the department of health and  
environmental sciences. It is the intent of the legislature  
that these regulations be designed to protect the public

health, safety, and welfare and the environment.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1  
through 36] may be cited as the "Montana Megalandfill Siting  
Act".

NEW SECTION. **Section 2. Purpose.** (1) It is the  
constitutionally declared policy of this state to maintain  
and improve a clean and healthful environment for present  
and future generations, to protect the environment from  
degradation and prevent unreasonable depletion and  
degradation of natural resources, and to provide for  
administration and enforcement to attain these objectives.

(2) The construction of solid waste facilities that  
dispose of over 200,000 tons of waste a year (megalandfills)  
may be necessary to meet increasing state and national needs  
for solid waste disposal capacity. However, due to the  
volume of waste processed, megalandfills may adversely  
affect the environment, surrounding communities, and the  
welfare of the citizens of this state. Therefore, it is  
necessary to ensure that the location, construction, and  
operation of megalandfills will produce minimal adverse  
effects on the environment and upon the citizens of this  
state by providing that a megalandfill may not be  
constructed or operated within this state without a

REFERENCE BILL



1 certificate of site acceptability pursuant to [section 11]  
2 and a license to operate acquired pursuant to [section 26]  
3 and 75-10-221.

4 NEW SECTION. Section 3. Definitions. As used in  
5 [sections 1 through 36], the following definitions apply:

6 (1) "Application" means an application for a  
7 certificate and license submitted in accordance with  
8 [sections 11 through 28] and the rules adopted under  
9 [sections 11 through 28].

10 (2) "Board" means the board of health and environmental  
11 sciences provided for in 2-15-2104.

12 (3) "Certificate" means the certificate of site  
13 acceptability issued by the board under [section 11] that is  
14 required for siting a megalandfill.

15 (4) "Commence to construct" means:

16 (a) any clearing of land, excavation, construction, or  
17 other action that would affect the environment of the site,  
18 except that the term does not mean changes for securing  
19 geological data, including necessary borings to ascertain  
20 subsurface conditions;

21 (b) the modification or upgrading of an existing solid  
22 waste disposal facility into a megalandfill, except that the  
23 term does not pertain to maintenance or repair of an  
24 existing facility.

25 (5) "Department" means the department of health and

1 environmental sciences provided for in Title 2, chapter 15,  
2 part 21.

3 (6) "Dispose" or "disposal" means the discharge,  
4 injection, deposit, dumping, spilling, leaking, or placing  
5 of any solid waste into or onto the land so that the solid  
6 waste or any constituent of it may enter the environment or  
7 be emitted into the air or discharged into any water,  
8 including ground waters.

9 (7) "Megalandfill" OR "FACILITY" means any new or  
10 existing solid waste landfill facility that accepts more  
11 than 200,000 tons a year of solid waste OR ANY ASH MONOFILL  
12 THAT ACCEPTS 35,000 TONS OR MORE A YEAR OF SOLID WASTE  
13 INCINERATOR ASH, EITHER FLY ASH OR BOTTOM ASH.

14 (8) "Person" means an individual, firm, partnership,  
15 company, association, corporation, city, town, local  
16 governmental entity, or any other governmental or private  
17 entity, whether organized for profit or not.

18 (9) (a) "Solid waste" means all putrescible and  
19 nonputrescible wastes, including but not limited to garbage;  
20 rubbish; refuse; ashes; sludge from sewage treatment plants,  
21 water supply treatment plants, or air pollution control  
22 facilities; construction and demolition wastes; dead  
23 animals, including offal; discarded home and industrial  
24 appliances; wood products or wood byproducts; and inert  
25 materials.

1 (b) "Solid waste" does not mean municipal sewage,  
2 industrial wastewater effluents, mining wastes regulated  
3 under the mining and reclamation laws administered by the  
4 department of state lands, slash and forest debris regulated  
5 under laws administered by the department of state lands, or  
6 marketable byproducts.

7 (10) "Solid waste landfill" means any publicly or  
8 privately owned landfill or landfill unit that receives  
9 household waste or other types of waste, including  
10 commercial waste, nonhazardous sludge, and industrial solid  
11 waste. The term does not include land application units,  
12 surface impoundments, injection wells, or waste piles.

13 NEW SECTION. Section 4. Adoption of rules by board.

14 The board may adopt rules implementing the certification  
15 provisions of [sections 1 through 36], including rules  
16 regarding the filing and contents of the application, proof  
17 of service and notice requirements, environmental factors to  
18 be evaluated, filing fee, hearings process, and other  
19 components of the certificate and certification process that  
20 the board considers necessary.

21 NEW SECTION. Section 5. Adoption of rules by  
22 department. The department may adopt rules implementing the  
23 licensing provisions of [sections 1 through 36], including  
24 rules regarding the contents of the application, monitoring,  
25 and other components of the license and licensing process

1 that the department considers necessary.

2 NEW SECTION. Section 6. Contracts for information. (1)

3 The department may contract with a potential applicant under  
4 [sections 1 through 36] in advance of the filing of a formal  
5 application for the development of information or the  
6 provision of services by the department required under  
7 [sections 1 through 36].

8 (2) Payments made to the department under a contract  
9 must be credited against the fee payable under [section 16].

10 NEW SECTION. Section 7. Grants, gifts, and funds. The

11 department may receive grants, gifts, and other funds from  
12 any public or private source to assist in its activities  
13 under [sections 1 through 36].

14 NEW SECTION. Section 8. Money to solid waste

15 management account. All fees, taxes, fines, and penalties  
16 collected under [sections 1 through 36], except those  
17 collected by a justice's court, must be deposited in the  
18 solid waste management account as provided in 75-10-117 for  
19 use by the department in carrying out its functions and  
20 responsibilities related to solid waste management.

21 NEW SECTION. Section 9. Annual long-range plan

22 submitted -- contents -- available to public. (1) A person  
23 may not file an application for a certificate of site  
24 acceptability required by [section 11] unless the  
25 megalandfill has been adequately identified in a long-range

1 plan at least 2 years prior to acceptance of an application  
2 by the department.

3 (2) The annual long-range plan must be submitted by  
4 July 1 of each year and must include the following:

5 (a) the general location, size, and type of all  
6 facilities to be owned and operated by the person for which  
7 construction is projected during the ensuing 2 years, as  
8 well as those facilities to be closed during the planning  
9 period;

10 (b) a description of the efforts to involve  
11 environmental protection and land use planning agencies in  
12 the planning process, as well as other efforts to identify  
13 and minimize environmental problems at the earliest possible  
14 stage in the planning process;

15 (c) projections of the demand for the service rendered  
16 by the person and an explanation of the basis for those  
17 projections and a description of the manner and extent to  
18 which the proposed facilities will meet the projected  
19 demand; and

20 (d) additional information that the department by rule  
21 or the department on its own initiative or upon the advice  
22 of interested state agencies requests in order to carry out  
23 the purposes of [sections 1 through 36].

24 (3) The plan must be furnished to the governing body of  
25 each county in which any facility included in the plan under

1 subsection (2)(a) is proposed to be located and must be made  
2 available to the public by the department. The applicant  
3 shall give public notice throughout the state by publishing  
4 at least once a week for 2 consecutive weeks a summary of  
5 the proposed plan in newspapers of general circulation. The  
6 plan must also be filed with the environmental quality  
7 council, the department of highways, the department of state  
8 lands, the department of fish, wildlife, and parks, the  
9 department of commerce, and the department of natural  
10 resources and conservation. Interested persons may obtain a  
11 copy of the plan by written request and payment to the  
12 department of the costs of copying the plan.

13 NEW SECTION. **Section 10.** Study of included facilities.  
14 If a person identifies a proposed facility in its long-range  
15 plan, submitted pursuant to [section 9], as one on which  
16 construction is proposed within the 2-year period following  
17 submission of the plan, the department shall begin to  
18 examine and evaluate the proposed site to determine whether  
19 construction of the proposed facility would unduly impair  
20 the environmental, SOCIAL, AND ECONOMIC values described in  
21 [section 15]. The study may be continued until a person  
22 files an application for a certificate under [section 11].  
23 Information gathered under this section may be used to  
24 support findings and recommendations required for issuance  
25 of a certificate and a license.

1        NEW SECTION. Section 11. Certificate required. (1) A  
 2 person may not construct a megalandfill in the state without  
 3 first applying for and obtaining a certificate of site  
 4 acceptability from the board.

5        (2) A certificate may only be issued pursuant to  
 6 [sections 11 through 25].

7        NEW SECTION. Section 12. Certificate transferable. A  
 8 certificate may be transferred, subject to the approval of  
 9 the board, to a person who agrees to comply with the terms,  
 10 conditions, and modifications contained in [sections 1  
 11 through 36].

12        NEW SECTION. Section 13. Application -- filing and  
 13 contents -- proof of service and notice. (1) (a) An  
 14 applicant shall file with the department an application for  
 15 a certificate under [section 11] in a form the board  
 16 requires, containing the following information:

17        (i) a description of the proposed location and of the  
 18 facility to be built;

19        (ii) a summary of any studies that have been made of the  
 20 environmental impact, SOCIAL, AND ECONOMIC IMPACTS of the  
 21 facility;

22        (iii) a description of at least three reasonable  
 23 alternate locations for the facility, a general description  
 24 of the comparative merits and detriments of each location  
 25 submitted, and a statement of the reasons why the proposed

1 location is best suited for the facility;

2        (iv) baseline data for the primary and reasonable  
 3 alternate locations;

4        (v) at the applicant's option, an environmental study  
 5 plan to satisfy the requirements of [sections 1 through 36];  
 6 and

7        (vi) other information that the applicant considers  
 8 relevant or that the board by order or rule may require OR  
 9 THAT THE DEPARTMENT BY ORDER OR RULE MAY REQUIRE.

10        (b) A copy or copies of the studies referred to in  
 11 subsection (1)(a)(ii) must be filed with the department, if  
 12 ordered, and must be available for public inspection.

13        (2) An application must be accompanied by proof of  
 14 service of a copy of the application on the chief executive  
 15 officer of each unit of local government, each county  
 16 commissioner, city or county planning board, and solid waste  
 17 district, and each federal agency charged with the duty of  
 18 protecting the environment or of planning land use located  
 19 in the area in which any portion of the proposed facility is  
 20 proposed or is alternatively proposed to be located and on  
 21 the following state government agencies:

- 22        (a) environmental quality council;  
 23        (b) department of fish, wildlife, and parks;  
 24        (c) department of state lands;  
 25        (d) department of commerce;

1 (e) department of highways; and  
 2 (f) department of natural resources and conservation.  
 3 (3) An application must be accompanied by proof that  
 4 public notice was given to persons residing in the area in  
 5 which any portion of the proposed facility is proposed or is  
 6 alternatively proposed to be located by publication of a  
 7 summary of the application in newspapers of general  
 8 circulation that will substantially inform those persons of  
 9 the application.

10 NEW SECTION. Section 14. Supplemental material --  
 11 amendments. (1) An application for an amendment of an  
 12 application or a certificate must be in a form and contain  
 13 information as the board by rule or the department by order  
 14 prescribes. Notice of an amendment must be given as provided  
 15 in [section 13(3) and (4)].

16 (2) An application may be amended by an applicant any  
 17 time prior to the report made by the department under  
 18 [section 17]. If the proposed amendment prevents the  
 19 department from carrying out its duties and responsibilities  
 20 under [sections 1 through 36], the department may require  
 21 additional filing fees as the department determines  
 22 necessary or may require a new application and filing fee.

23 (3) The applicant shall submit supplemental material in  
 24 a timely manner as requested by the department or as offered  
 25 by the applicant to explain, support, or provide details

1 with respect to an item described in the original  
 2 application. This supplemental material may be submitted  
 3 without filing an application for an amendment. The  
 4 department's determination as to whether information is  
 5 supplemental or whether an application for amendment is  
 6 required is conclusive.

7 NEW SECTION. Section 15. Environmental, SOCIAL, AND  
 8 ECONOMIC factors evaluated during certification. In  
 9 evaluating applications for a certificate of site  
 10 acceptability, the department shall give consideration to  
 11 the following list of ~~environmental~~ factors and regulations,  
 12 where applicable, and may by rule add to the factors  
 13 enumerated in this section:

14 (1) siting criteria for municipal solid waste landfills  
 15 consistent with federal requirements as described in 40 CFR  
 16 part 258;

17 (2) siting criteria described under the Montana Solid  
 18 Waste Management Act, Title 75, chapter 10, part 2, and  
 19 rules adopted under that part;

20 (3) the Montana solid waste management plan;

21 (4) solid waste disposal needs, including:

22 (a) availability and desirability of alternative  
 23 SOURCES METHODS of solid waste disposal in lieu of the  
 24 proposed facility;

25 (b) promotional activities of the applicant that may

- 1 have given rise to the need for the facility;
- 2 (c) social benefits CHANGES resulting from the
- 3 facility, including protection of public health and
- 4 environmental quality; and
- 5 (d) integrated waste management activities that could
- 6 reduce the need for additional solid waste disposal
- 7 capacity;
- 8 (5) land use impacts, including:
- 9 (a) the area of land required and its ultimate use;
- 10 (b) consistency with state and regional solid waste
- 11 plans;
- 12 (c) consistency with existing and projected nearby land
- 13 use;
- 14 (d) alternative uses of the site;
- 15 (e) the impact on the population already in the area
- 16 and the population attracted by construction or operation of
- 17 the facility;
- 18 (f) the impact of availability of solid waste disposal
- 19 at the facility on growth patterns and population dispersal;
- 20 (g) construction materials and practices, including
- 21 quality control and quality assurance plans to be followed
- 22 during construction of all phases of the proposed facility;
- 23 (h) scenic impacts;
- 24 (i) the effects on natural systems, wildlife, and plant
- 25 life;

- 1 (j) the impacts on important historic, architectural,
- 2 archaeological, and cultural areas and features;
- 3 (k) the impacts on public facilities and
- 4 accommodations; and
- 5 (l) opportunities for joint use with solid waste
- 6 disposal-intensive industries; AND
- 7 (M) THE ECONOMIC IMPACT ON THE LOCAL AREA, LOCAL
- 8 GOVERNMENT INFRASTRUCTURE, AND EXISTING INDUSTRY;
- 9 (6) water resources impacts, including:
- 10 (a) hydrologic studies of the adequacy of water supply
- 11 and the impact of the facility on streamflow, lakes, and
- 12 reservoirs;
- 13 (b) hydrologic studies of the impact of the facility on
- 14 ground water, including vadose zone studies describing the
- 15 potential for leachate to migrate from the facility to
- 16 ground water;
- 17 (c) an inventory of effluents, including physical,
- 18 chemical, and biological characteristics;
- 19 (d) hydrologic studies of effects of effluents on
- 20 receiving waters;
- 21 (e) the effect of the facility on water quality;
- 22 (f) the facility's projected water uses;
- 23 (g) the effects on plant and animal life, including
- 24 algae, macroinvertebrates, and fish population;
- 25 (h) effects on unique or otherwise significant



1 ecosystems, such as wetlands; and  
 2 (i) ground water, vadose zone, and methane gas  
 3 monitoring systems and programs; and  
 4 (7) characteristics of solid wastes that will be  
 5 disposed of at the facility, including:  
 6 (a) the rate of solid waste disposal;  
 7 (b) the solid waste handling practices proposed to be  
 8 used; and  
 9 (c) the present and expected future physical and  
 10 chemical characteristics of the solid waste; AND  
 11 (D) INSPECTION PRACTICES FOR PREVENTING THE ILLEGAL  
 12 DUMPING OF HAZARDOUS WASTE INTO THE FACILITY;  
 13 (8) TRANSPORTATION PRACTICES, INCLUDING:  
 14 (A) ROUTE AND MODE OF TRANSPORTING WASTE;  
 15 (B) ENVIRONMENTAL, SOCIAL, AND ECONOMIC IMPACTS OF  
 16 TRANSPORTATION FACILITIES; AND  
 17 (C) TRANSFER FACILITIES.  
 18 **NEW SECTION. Section 16.** Filing fee -- accountability  
 19 -- refund -- use. (1) (a) The applicant shall pay to the  
 20 department a filing fee as provided in this section based  
 21 upon the department's estimated costs of processing the  
 22 application for a certificate. The filing fee must be  
 23 deposited in the solid waste management account for the use  
 24 of the department in administering [sections 1 through 36].  
 25 The initial filing fee may not exceed the following scale

1 based upon the megalandfill's projected annual tonnage of  
 2 waste:  
 3 (i) a base fee of \$40,000; plus  
 4 (ii) 20 cents per ton for every ton of waste over  
 5 200,000 tons.  
 6 (b) The department may allow a credit against the fee  
 7 payable under this section for the applicant's costs of  
 8 developing information or providing services required under  
 9 [sections 1 through 36] or required for preparation of an  
 10 environmental impact statement under the Montana  
 11 Environmental Policy Act, Title 75, chapter 1, part 1, or  
 12 the National Environmental Policy Act, 42 U.S.C. 4321, et  
 13 seq. The applicant may submit the information or a  
 14 description of the services performed to the department,  
 15 together with an accounting of the expenses incurred in  
 16 preparing the information or performing the services. The  
 17 department shall evaluate the applicability, validity, and  
 18 usefulness of the data or services and determine the  
 19 expenses that may be credited against the filing fee payable  
 20 under this section. Upon 30 days' notice to the applicant,  
 21 this credit may at any time be reduced if the department  
 22 determines that the amount to be credited is necessary to  
 23 carry out its responsibilities under [sections 1 through  
 24 36].  
 25 (2) (a) The department may contract with an applicant

1 after the filing of a formal application for the development  
 2 of information or the provision of services required under  
 3 [sections 1 through 36]. The contract may continue an  
 4 agreement entered into pursuant to [section 6]. Payments  
 5 made to the department under a contract must be credited  
 6 against the fee payable under this section. The revenue  
 7 derived from the filing fee must be sufficient to enable the  
 8 department and the board to carry out their responsibilities  
 9 under [sections 1 through 36]. The department may amend a  
 10 contract to require additional payments for necessary  
 11 expenses up to the limits set forth in subsection (1)(a)  
 12 upon 30 days' notice to the applicant. The department and  
 13 applicant may enter into a contract that exceeds the scale  
 14 provided in subsection (1)(a).

15 (b) If a contract is not entered into, the applicant  
 16 shall pay the filing fee in installments in accordance with  
 17 a schedule of installments developed by the department;  
 18 however, an installment may not exceed 20% of the total  
 19 filing fee provided for in subsection (1).

20 (3) The applicant is entitled to an accounting of money  
 21 spent and to a refund with interest at the rate of 6% a year  
 22 of the portion of the filing fee not spent by the department  
 23 in carrying out its responsibilities under [sections 1  
 24 through 36]. A refund must be made after all administrative  
 25 and judicial remedies have been exhausted by all parties to

1 the certification proceedings.

2 (4) The revenue derived from the filing fees must be  
 3 used by the department in compiling the information required  
 4 for rendering a decision on a certificate and for carrying  
 5 out other responsibilities of the department and the board  
 6 under [sections 1 through 36].

7 NEW SECTION. **Section 17. Study, evaluation, and report**  
 8 **on proposed facility.** (1) After receipt of an application,  
 9 the department shall within 90 days notify the applicant in  
 10 writing that:

11 (a) the application is accepted as complete; or  
 12 (b) the application is not complete and list the  
 13 deficiencies. Upon correction of these deficiencies and  
 14 resubmission by the applicant, the department shall within  
 15 30 days notify the applicant in writing that the application  
 16 is in compliance and is accepted as complete.

17 (2) Upon receipt of an application complying with  
 18 [sections 9 through 17], the department shall commence an  
 19 intensive study and evaluation of the proposed facility and  
 20 its effects, considering all applicable criteria listed in  
 21 [section 24]. The department shall use, to the extent it  
 22 considers applicable, valid and useful existing studies and  
 23 reports submitted by the applicant or compiled by a state or  
 24 federal agency.

25 (3) Within 1 year following acceptance of a complete

1 application for a facility, the department shall make a  
 2 report to the board that must contain the department's  
 3 studies, evaluations, recommendations, other pertinent  
 4 documents resulting from its study and evaluation, and an  
 5 environmental impact statement or analysis prepared pursuant  
 6 to the Montana Environmental Policy Act, Title 75, chapter  
 7 1, ~~part-17~~ if applicable.

8 NEW SECTION. Section 18. Voiding of application. An  
 9 application may be voided by the department for:

10 (1) any material and knowingly false statement in the  
 11 application or in accompanying statements or studies  
 12 required of the applicant;

13 (2) failure to file an application in substantially the  
 14 form and content required by [section 13] and the rules  
 15 adopted under [section 13]; or

16 (3) failure to deposit the filing fee as provided in  
 17 [section 16].

18 NEW SECTION. Section 19. Hearing date -- location --  
 19 department to act as staff. (1) Upon receipt of the  
 20 department's report submitted under [section 17], the board  
 21 shall set a date for a hearing to begin not more than 120  
 22 days after receipt of the report. A certification hearing  
 23 must be conducted by the board in Helena or in the county  
 24 seat of the county in which the facility or the greatest  
 25 portion of the facility is to be located.

1 (2) Except as provided in [section 21], the department  
 2 shall act as the staff for the board throughout the  
 3 decisionmaking process and the board may request that the  
 4 department present testimony or cross-examine witnesses as  
 5 the board considers necessary and appropriate.

6 NEW SECTION. Section 20. Certificate amendments. (1)  
 7 Within 30 days after notice of an amendment to a certificate  
 8 is given as provided in [section 14], including notice to  
 9 all active parties to the original proceeding, the  
 10 department shall determine whether the proposed change in  
 11 the facility would result in a material increase in any  
 12 environmental ~~impact~~, SOCIAL, AND ECONOMIC IMPACTS caused by  
 13 the facility or a substantial change in the location of all  
 14 or a portion of the facility as set forth in the  
 15 certificate. If the department determines that the proposed  
 16 change would result in a material increase in any  
 17 environmental impact caused by the facility or a substantial  
 18 change in the location of all or a portion of the facility,  
 19 the board shall hold a hearing in the same manner as a  
 20 hearing is held on an application for a certificate. After  
 21 the hearing, the board shall grant, deny, or modify the  
 22 amendment with conditions it considers appropriate.

23 (2) In cases where the department determines that the  
 24 proposed change in the facility would not result in a  
 25 material increase in any environmental impact or would not

1 be a substantial change in the location of all or a portion  
 2 of the facility, the board shall grant the amendment either  
 3 as applied for or upon terms or conditions as the board  
 4 considers appropriate unless the department's determination  
 5 is appealed to the board within 15 days after notice of the  
 6 department's determination is given.

7 (3) If the department or the board, under subsection  
 8 (4), determines that a hearing is required because the  
 9 proposed change would result in a material increase in any  
 10 environmental impact of the facility or a substantial change  
 11 in the location of all or a portion of the facility, the  
 12 applicant has the burden of showing by clear and convincing  
 13 evidence that the amendment should be granted.

14 (4) If the department determines that the proposed  
 15 change in the facility would not result in a material  
 16 increase in any environmental impact or would not be a  
 17 substantial change in the location of all or a portion of  
 18 the facility and a hearing is required because the  
 19 department's determination is appealed to the board as  
 20 provided in subsection (2), the appellant has the burden of  
 21 showing by clear and convincing evidence that the proposed  
 22 change in the facility would result in a material increase  
 23 in any environmental impact of the facility or a substantial  
 24 change in the location of all or a portion of the facility  
 25 as set forth in the certificate.

1 NEW SECTION. **Section 21. Hearing examiner** --  
 2 **restrictions -- duties.** (1) The board shall appoint a  
 3 hearing examiner to conduct certification proceedings under  
 4 [sections 1 through 36]. The hearing examiner may not be a  
 5 member of the board or an employee of the department or the  
 6 board. A hearing examiner must be appointed within 20 days  
 7 after the department's report has been filed with the board.

8 (2) A prehearing conference must be held, following  
 9 notice, within 60 days after the department's report has  
 10 been filed with the board.

11 (3) The prehearing conference must be organized and  
 12 supervised by the hearing examiner.

13 (4) The prehearing conference must be directed toward a  
 14 determination of the issues presented by the application,  
 15 the department's report, and an identification of the  
 16 witnesses and documentary exhibits to be presented by the  
 17 active parties who intend to participate in the hearing.

18 (5) The hearing examiner shall require the active  
 19 parties to submit, in writing, and serve upon the other  
 20 active parties all direct testimony that they propose and  
 21 any studies, investigations, reports, or other exhibits that  
 22 any active party wishes the board to consider. These written  
 23 exhibits and any documents that the board itself wishes to  
 24 use or rely on must be submitted and served at least 20 days  
 25 prior to the date set for the hearing. For good cause shown,

1 the hearing examiner may allow the introduction of new  
2 evidence at any time.

3 (6) The hearing examiner shall allow discovery that  
4 must be completed before the commencement of the hearing  
5 upon good cause shown and under other conditions as the  
6 hearing examiner prescribes.

7 (7) Public witnesses and other interested public  
8 parties may appear and present oral testimony at the hearing  
9 or submit written testimony to the hearing examiner at the  
10 time of their appearance. These witnesses are subject to  
11 cross-examination.

12 (8) The hearing examiner shall issue a prehearing order  
13 specifying the issues of fact and of law, identifying the  
14 witnesses of the active parties, naming the public witnesses  
15 and other interested parties who have submitted written  
16 testimony in lieu of appearance, outlining the order in  
17 which the hearing will proceed, setting forth those criteria  
18 listed in [section 24] as to which no issue of fact or law  
19 has been raised and that are conclusively presumed and are  
20 not subject to further proof except for good cause shown,  
21 and any other special rules to expedite the hearing that the  
22 hearing examiner adopts with the approval of the board.

23 (9) At the conclusion of the hearing, the hearing  
24 examiner shall declare the hearing closed and shall, within  
25 60 days of that date, prepare and submit to the board

1 proposed findings of fact, conclusions of law, and a  
2 recommended decision.

3 (10) The hearing examiner appointed to conduct a  
4 certification proceeding under this section shall ensure  
5 that the time of the proceeding, from the date the  
6 department's report is filed with the board until the  
7 recommended report and order of the examiner is filed with  
8 the board, does not exceed 9 calendar months unless extended  
9 by the board for good cause.

10 (11) The board or hearing examiner may waive all or a  
11 portion of the procedures set forth in subsections (2)  
12 through (8) to expedite the hearing for a facility when the  
13 department has recommended approval of a facility and no  
14 objections have been filed.

15 NEW SECTION. **Section 22. Parties to certification**  
16 **proceeding -- waiver -- statement of intent to participate.**

17 (1) The parties to a certification proceeding or to a  
18 proceeding involving the issuance of a decision, opinion,  
19 order, certification, or permit by the board under [sections  
20 1 through 36] may include as active parties:

- 21 (a) the applicant;
- 22 (b) each political entity, unit of local government,  
23 and government agency entitled to receive service of a copy  
24 of the application under [section 13];
- 25 (c) a person entitled to receive service of a copy of

1 the application under [section 13];  
 2 (d) a nonprofit organization formed in whole or in part  
 3 to:  
 4 (i) promote conservation or natural beauty;  
 5 (ii) protect the environment, personal health, or other  
 6 biological values;  
 7 (iii) preserve historical sites;  
 8 (iv) promote consumer interests;  
 9 (v) represent commercial and industrial groups; or  
 10 (vi) promote the orderly development of the areas in  
 11 which the facility is to be located; and  
 12 (e) any other interested person who establishes an  
 13 interest in the proceeding.  
 14 (2) The department must be an active party in any  
 15 certification proceeding in which the department recommends  
 16 denial of all or a portion of a facility.  
 17 (3) The parties to a certification proceeding may also  
 18 include, as public parties, any Montana citizen and any  
 19 party referred to in subsections (1)(b) through (1)(e).  
 20 (4) A party waives the right to be a party if the party  
 21 does not participate in the hearing before the board.  
 22 (5) Each unit of local government entitled to receive  
 23 service of a copy of the application under [section 13]  
 24 shall file with the board a statement showing whether the  
 25 unit of local government intends to participate in the

1 certification proceeding. If the unit of local government  
 2 does not intend to participate, it shall list in this  
 3 statement its reasons for failing to do so. This statement  
 4 of intent must be published before the proceeding begins in  
 5 a newspaper of general circulation within the jurisdiction  
 6 of the applicable unit of local government.

7 NEW SECTION. **Section 23. Record of hearing --**  
 8 **procedure -- rules of evidence -- burden of proof.** (1) Any  
 9 studies, investigations, reports, or other documentary  
 10 evidence, including those prepared by the department, that  
 11 any party wishes the board to consider or that the board  
 12 itself expects to use or rely upon must be made a part of  
 13 the record.

14 (2) A record must be made of the hearing and of all  
 15 testimony taken.

16 (3) In a certification proceeding held under [section  
 17 19], the applicant has the burden of showing by clear and  
 18 convincing evidence that the application should be granted  
 19 and that the criteria of [section 24] are met.

20 (4) All proceedings under [sections 19 through 23] are  
 21 governed by the procedures set forth in [sections 19 through  
 22 23], the procedural rules adopted by the board, and the  
 23 Montana Rules of Evidence unless one or more rules of  
 24 evidence are waived by the hearing examiner upon a showing  
 25 of good cause by one or more of the parties to the hearing.

1 No other rules of procedure or evidence apply except that  
 2 the contested case procedures of the Montana Administrative  
 3 Procedure Act apply if not in conflict with the procedures  
 4 set forth in [sections 19 through 23] or the procedural  
 5 rules adopted by the board.

6 NEW SECTION. **Section 24.** Decision of board -- findings  
 7 necessary for certification. (1) Within ~~100~~ 90 days after  
 8 submission of the recommended decision by the department,  
 9 the board shall make complete findings, issue an opinion,  
 10 and render a final decision upon the record, either granting  
 11 or denying the application for a certificate as filed or  
 12 granting it upon terms, conditions, or modifications of the  
 13 siting of the facility as the board considers appropriate.

14 (2) The board may not grant a certificate either as  
 15 proposed by the applicant or as modified by the board unless  
 16 it finds and determines:

17 (a) the nature of the probable environmental impact;  
 18 (b) that the facility minimizes adverse environmental  
 19 impact, considering the state of available technology and  
 20 the nature and economics of the various alternatives;

21 (c) that the location of the facility as proposed  
 22 conforms to applicable state and local laws and regulations,  
 23 except that the board may refuse to apply any local law or  
 24 regulation if it finds that, as applied to the proposed  
 25 facility, the law or regulation is unreasonably restrictive

1 in view of the existing technology, of factors of cost or  
 2 economics, or of the needs of consumers, whether located  
 3 inside or outside of the directly affected government  
 4 subdivisions;

5 (d) that the facility will serve the public interest;

6 (e) any impacts of the facility according to each of  
 7 the criteria listed in [section 15];

8 ~~(f) that the proposed site is better suited for a~~  
 9 ~~landfill than alternate sites in the state where the waste~~  
 10 ~~originates~~ THE SOLID WASTE DISPOSAL NEEDS LISTED IN [SECTION  
 11 15(4)]; and

12 (g) that the applicant has fully mitigated the loss of  
 13 wildlife habitat, either through onsite or offsite habitat  
 14 improvements.

15 (3) In determining that the facility will serve the  
 16 public interest, the board shall consider:

17 (a) the items listed in subsections (2)(a) and (2)(b);

18 (b) the benefits to the applicant and the state  
 19 resulting from the proposed facility;

20 (c) the effects of the economic activity resulting from  
 21 the proposed facility;

22 (d) the effects of the proposed facility on the public  
 23 health, welfare, and safety; and

24 (e) any other factors that it considers relevant.

25 NEW SECTION. **Section 25.** Conditions imposed. If the

1 board determines that the location of all or a part of the  
 2 proposed megalandfill should be modified, it may condition  
 3 its certificate upon the modification, provided that the  
 4 persons residing in the area affected by the modification  
 5 have been given reasonable notice of the modification.

6 NEW SECTION. Section 26. License required. (1) A  
 7 person may not commence to construct a megalandfill in the  
 8 state without first applying for and obtaining a license  
 9 pursuant to 75-10-221. The licensing process must be  
 10 concurrent with the certification process required in  
 11 [section 11 through 25].

12 (2) The department shall make the decision to grant or  
 13 deny the license within 30 days of the certification  
 14 decision, as provided in [section 24].

15 (3) Once a license has been issued, a megalandfill may  
 16 not be constructed, operated, or maintained except in  
 17 conformity with the license and any terms, conditions, and  
 18 modifications contained in the license.

19 NEW SECTION. Section 27. License transferable. A  
 20 license may be transferred, subject to the approval of the  
 21 department, to a person who agrees to comply with the terms,  
 22 conditions, and modifications contained in [sections 1  
 23 through 36].

24 NEW SECTION. Section 28. Opinion issued with decision  
 25 -- contents. (1) In rendering a decision on an application

1 for a license for a megalandfill, the department shall issue  
 2 an opinion stating its reasons for the action taken.

3 (2) In addition to the requirements of 75-10-221, any  
 4 license issued by the department shall include the  
 5 following:

6 (a) an environmental evaluation statement related to  
 7 the megalandfill being certified. The statement must include  
 8 but not be limited to analysis of the following information:

- 9 (i) the environmental impact of the proposed facility;
- 10 (ii) any adverse environmental effects that cannot be
- 11 avoided by issuance of the license;
- 12 (iii) problems and objections raised by other federal
- 13 and state agencies and interested groups; and
- 14 (iv) alternatives to the proposed facility;

15 (b) a plan for monitoring environmental effects of the  
 16 proposed facility;

17 (c) a plan for monitoring the certified megalandfill  
 18 site between the time of certification and completion of  
 19 construction; and

20 (d) a statement signed by the applicant showing  
 21 agreement to comply with the requirements of [sections 1  
 22 through 36] and the conditions of the certificate.

23 NEW SECTION. Section 29. Monitoring. The department  
 24 shall monitor the operations of all certificated facilities  
 25 to ensure continuing compliance with [sections 1 through 36]



1 and with certificates issued under [section 11] and to  
2 discover and prevent noncompliance with [sections 1 through  
3 36] or certificates issued under [section 11].

4 NEW SECTION. Section 30. Revocation or suspension of  
5 license. A license may be revoked or suspended by the  
6 department following notice and an opportunity for a hearing  
7 before the department for:

8 (1) any material false statement in the application or  
9 in accompanying statements or studies required of the  
10 applicant if a true statement would have warranted the  
11 department's refusal to grant a license;

12 (2) failure to comply with the terms or conditions of  
13 the certificate; or

14 (3) violation of any provision of [sections 1 through  
15 36], rules adopted under [sections 1 through 36], or orders  
16 of the department.

17 NEW SECTION. Section 31. Enforcement by residents. (1)  
18 A person with knowledge that a requirement of [sections 1  
19 through 36] or a rule adopted under [sections 1 through 36]  
20 is not being enforced by a public officer or employee whose  
21 duty it is to enforce the requirement or rule may bring the  
22 failure to enforce to the attention of the public officer or  
23 employee by a written statement under oath that states the  
24 specific facts of the failure to enforce the requirement or  
25 rule. Knowingly making false statements or charges in the

1 statements subjects the person to the penalties prescribed  
2 for a violation of 45-7-202.

3 (2) If the public officer or employee neglects or  
4 refuses for an unreasonable time after receipt of the  
5 statement to enforce the requirement or rule, the person may  
6 bring an action of mandamus in the district court of the  
7 first judicial district of Montana. If the court finds that  
8 a requirement of [sections 1 through 36] or a rule adopted  
9 under [sections 1 through 36] is not being enforced, the  
10 court may order the public officer or employee whose duty it  
11 is to enforce the requirement or rule to perform those  
12 duties. If he fails to do so, the public officer or employee  
13 must be held in contempt of court and is subject to the  
14 penalties provided by law.

15 NEW SECTION. Section 32. Action to recover damages to  
16 water supply. An owner of an interest in real property who  
17 obtains all or part of his supply of water for domestic,  
18 agricultural, industrial, or other legitimate use from a  
19 surface or underground source may sue a person to recover  
20 damages for contamination, diminution, or interruption of  
21 the water supply proximately resulting from the operation of  
22 a facility. The remedy provided in this section does not  
23 exclude the use of any other remedy that may be available  
24 under the laws of the state.

25 NEW SECTION. Section 33. Judicial review of department

1 and board of health decisions. (1) An applicant aggrieved by  
2 the final decision of the board on an application for a  
3 certificate or the final decision of the department on an  
4 application for a license may obtain judicial review of that  
5 decision by filing a petition in district court.

6 (2) The judicial review procedure is the same as that  
7 for contested cases under Title 2, chapter 4, part 7.

8 (3) This section does not prohibit the department from  
9 holding a hearing on all matters that are not the subject of  
10 a pending appeal by the applicant under subsection (1).

11 **NEW SECTION. Section 34. Penalties for violation --**  
12 **civil action by attorney general.** (1) (a) A person who  
13 commences to construct or operate a megalandfill without  
14 obtaining a certificate required under [section 11] and a  
15 license required under [section 26], who constructs,  
16 operates, or maintains a facility other than in compliance  
17 with the certificate or violates any other provision of  
18 [sections 1 through 36] or any rule or order adopted under  
19 [sections 1 through 36], or who knowingly submits false  
20 information in any report, long-range plan, or application  
21 required by [sections 1 through 36] is liable for a civil  
22 penalty as provided in subsection (2).

23 (b) Each day of a continuing violation constitutes a  
24 separate offense.

25 (c) The penalty is recoverable in a civil suit brought

1 by the attorney general on behalf of the state in the  
2 district court of the first judicial district of Montana.

3 (2) A person who knowingly violates the provisions of  
4 subsection (1) shall be fined not more than \$25,000 for each  
5 violation or be imprisoned for not more than 1 year, or  
6 both. Each day of a continuing violation constitutes a  
7 separate offense.

8 (3) In addition to any penalty provided in subsection  
9 (1) or (2), whenever the department determines that a person  
10 is violating or is about to violate any of the provisions of  
11 [sections 1 through 36], it may refer the matter to the  
12 attorney general who may bring a civil action on behalf of  
13 the state in the district court of the first judicial  
14 district of Montana for injunctive or other appropriate  
15 relief against the violation and to enforce [sections 1  
16 through 36] or a certificate issued under [section 11]. Upon  
17 a proper showing, a permanent or preliminary injunction or  
18 temporary restraining order must be granted without bond.

19 (4) The department shall also enforce [sections 1  
20 through 36] and may bring legal actions to accomplish the  
21 enforcement through its own legal counsel.

22 (5) All fines and penalties collected must be deposited  
23 in the solid waste management account for the use of the  
24 department in administering [sections 1 through 36].

25 **NEW SECTION. Section 35. Order not stayed by appeal --**

1 stay or suspension by court -- limitations. An appeal from a  
 2 department order does not automatically stay or suspend the  
 3 operation of the order. The court may, upon motion by a  
 4 party, stay or suspend, in whole or in part, the operation  
 5 of the department's order on terms the court considers just.  
 6 The court's action must be in accordance with the practice  
 7 of courts exercising equity jurisdiction, subject to the  
 8 following limitations:

9 (1) A stay may not be granted without notice to the  
 10 parties and an opportunity to be heard by the court.

11 (2) A department order may not be stayed or suspended  
 12 without finding that irreparable damage would otherwise  
 13 result to the party seeking the stay or suspension, and a  
 14 stay or suspension must specify the nature of the damage.

15 NEW SECTION. Section 36. Surety bond. If an order of  
 16 the department is stayed or suspended, the court may require  
 17 a bond with good and sufficient surety conditioned that the  
 18 party petitioning for review answer for all damages caused  
 19 by the delay in enforcing the order of the department. The  
 20 cost of the bond is not chargeable to the applicant as part  
 21 of the fee. If the party petitioning for review prevails  
 22 upon final resolution of an appeal, the party does not  
 23 forfeit bond and is not responsible for damages caused by  
 24 delay.

25 NEW SECTION. Section 37. Codification instruction.

1 [Sections 1 through 36] are intended to be codified as an  
 2 integral part of Title 75, chapter 10, and the provisions of  
 3 Title 75, chapter 10, apply to [sections 1 through 36].

4 NEW SECTION. Section 38. Effective date. [This act] is  
 5 effective on passage and approval.

-End-