



IN THE HOUSE

APRIL 18, 1991

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

APRIL 19, 1991

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

HOUSE BILL NO. 781

INTRODUCED BY *Rimberley D. Powell* *Barbara*  
*Scotty* *W. Smith* BY REQUEST OF THE DEPARTMENT *W. Smith*  
*Bradley* OF HEALTH AND ENVIRONMENTAL SCIENCES *W. Smith*  
*Whalen* *Bradley* *MERCER*  
A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT  
RULES FOR THE COLLECTION OF FEES FOR THE ISSUANCE AND  
RENEWAL OF AIR QUALITY CONSTRUCTION AND OPERATING PERMITS;  
PROVIDING FOR THE EXPIRATION OF THE PERMITS; CLARIFYING THE  
AUTHORITY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL  
SCIENCES TO ISSUE AN OPERATING PERMIT; AMENDING SECTIONS  
75-2-111 AND 75-2-211, MCA; AND PROVIDING AN IMMEDIATE  
EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES."

STATEMENT OF INTENT

A statement of intent is required for this bill because  
[section 1] requires the board of health and environmental  
sciences to adopt by rule fees for air quality permit  
applications. The purpose of this bill is to allow the  
collection of an ongoing annual fee to cover the costs  
associated with the administration, including implementation  
and enforcement, of all air quality permits. While there is  
a need for a fee system to cover these costs, it is not the  
legislature's intent that these fees be used to recover

other costs not delineated in this bill. The legislature  
recognizes that the identification of actual costs  
associated with specific permits may be difficult and  
envisions that a fee schedule may be established with  
generic applicability to classes of sources. For example, it  
may be determined that the costs associated with permit  
implementation and enforcement vary directly with the amount  
or type of regulated pollutants emitted. In such a case, a  
fee based upon the tons of a regulated pollutant emitted may  
be appropriate.

This bill also clarifies the authority of the department  
of health and environmental sciences to issue an operating  
permit for air contaminant sources. It is the legislature's  
intent that all air contaminant sources operating within the  
state and not otherwise exempted obtain an operating permit.

This bill also provides for the insertion of expiration  
dates into all air quality permits, specifically including  
those issued prior to October 1, 1991. For permits issued  
prior to that date, the department is authorized to adopt  
rules providing for expiration dates, according to the year  
of issuance, in order to provide for staggered renewal.

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

Section 1. Section 75-2-111, MCA, is amended to read:  
"75-2-111. Powers of board. The board shall:



1 (1) adopt, amend, and repeal rules for the  
2 administration, implementation, and enforcement of this  
3 chapter, for issuing orders under and in accordance with 42  
4 U.S.C. 7419, and for fulfilling the requirements of 42  
5 U.S.C. 7420 and regulations adopted pursuant thereto;

6 (2) hold hearings relating to any aspect of or matter  
7 in the administration of this chapter at a place designated  
8 by the board. The board may compel the attendance of  
9 witnesses and the production of evidence at hearings. The  
10 board shall designate an attorney to assist in conducting  
11 hearings and shall appoint a reporter who shall be present  
12 at all hearings and take full stenographic notes of all  
13 proceedings thereat, transcripts of which will be available  
14 to the public at cost.

15 (3) issue orders necessary to effectuate the purposes  
16 of this chapter;

17 (4) by rule require access to records relating to  
18 emissions;

19 (5) by rule adopt a schedule of fees required for  
20 permits and permit applications, consistent with under this  
21 chapter;

22 (6) have the power to issue orders under and in  
23 accordance with 42 U.S.C. 7419."

24 **Section 2.** Section 75-2-211, MCA, is amended to read:

25 "75-2-211. Permits for construction, installation,

1 alteration, or use. (1) The department shall provide for the  
2 issuance, suspension, revocation, and renewal of a permit  
3 issued under this section part.

4 (2) A permit issued by the department pursuant to this  
5 part is not effective for more than 5 years, after which  
6 time renewal is required. The department may provide for the  
7 expiration of permits issued by the department under this  
8 part prior to October 1, 1991.

9 ~~(2)~~(3) Not later than 180 days before construction  
10 begins, not later than 120 days before installation or  
11 alteration begins, or as a condition of use of any machine,  
12 equipment, device, or facility which the board finds may  
13 directly or indirectly cause or contribute to air pollution  
14 or which is intended primarily to prevent or control the  
15 emission of air pollutants and--not--later--than--120--days  
16 before--installation, alteration, or use begins, the owner or  
17 operator shall file with the department the appropriate  
18 permit application on forms available from the department,  
19 and pay to the department a fee sufficient to cover:

20 (a) the reasonable costs of reviewing and acting upon  
21 the application for such permit; and

22 (b) the reasonable costs of implementing and enforcing  
23 the terms and conditions of such permit if the permit is  
24 granted (not including any court costs or other costs  
25 associated with any enforcement action); The fee shall be

1 ~~deposited in the state special revenue fund to be used by~~  
2 ~~the department for administration of this section;~~

3 (4) Not later than 90 days prior to the expiration date  
4 of a permit issued pursuant to this part, the owner or  
5 operator of the air contaminant source shall file with the  
6 department the appropriate application for permit renewal on  
7 forms available from the department.

8 (5) Concurrent with the submittal of a permit  
9 application required by subsection (3) and annually for the  
10 duration of the permit, the applicant shall submit to the  
11 department a fee sufficient to cover:

12 (a) the reasonable costs of reviewing and acting upon  
13 the application; and

14 (b) the reasonable costs of implementing and enforcing  
15 the terms and conditions of the permit if the permit is  
16 issued. However, this amount does not include any court  
17 costs or other costs associated with any enforcement action.  
18 If the permit is not issued, the department shall return  
19 this portion of the fee to the applicant.

20 (6) As a condition of the continuing validity of  
21 permits issued by the department under this part prior to  
22 October 1, 1991, the department may require the permitholder  
23 to pay an annual fee sufficient to cover the costs  
24 identified in subsection (5)(b).

25 (7) The fees collected by the department pursuant to

1 this section must be deposited in the state special revenue  
2 fund to be appropriated by the legislature to the department  
3 for administration of 75-2-215 and this section.

4 ~~(3)~~(8) Nothing in this section shall restrict the  
5 board's authority to adopt regulations providing for a  
6 single air quality permit system.

7 ~~(4)~~(9) The department may, for good cause shown, waive  
8 or shorten the time required for filing the appropriate  
9 applications.

10 ~~(5)~~(10) The department shall require that applications  
11 for permits be accompanied by any plans, specifications, and  
12 other information it considers necessary.

13 ~~(6)~~(11) An application is not considered filed until the  
14 applicant has submitted all fees and information and  
15 completed all application forms required by subsections ~~(2)~~  
16 ~~(3)~~ and ~~(5)~~ through (6) and (10). However, if the  
17 department fails to notify the applicant in writing within  
18 30 days after the purported filing of an application that  
19 the application is incomplete and fails to list the reasons  
20 why the application is considered incomplete, the  
21 application is considered filed as of the date of the  
22 purported filing.

23 ~~(7)~~(12) (a) Where an application for a permit requires  
24 the compilation of an environmental impact statement under  
25 the Montana Environmental Policy Act, the department shall

1 notify the applicant in writing of the approval or denial of  
2 the application within:

3 (i) 180 days of the receipt of a filed application, as  
4 defined in subsection ~~(6)~~ (11), if the department prepares  
5 the environmental impact statement; or

6 (ii) within 30 days after issuance of the final  
7 environmental impact statement by the lead agency if a state  
8 agency other than the department has been designated by the  
9 governor as lead agency for preparation of the environmental  
10 impact statement.

11 (b) However, where an application does not require the  
12 compilation of an environmental impact statement, the  
13 department shall notify the applicant in writing within 60  
14 days of the receipt of a filed application, as defined in  
15 subsection ~~(6)~~ (11), of the approval or denial of the  
16 application. Notification of approval or denial may be  
17 served personally or by registered or certified mail on the  
18 applicant or his agent.

19 ~~(8)~~ (13) When the department approves or denies the  
20 application for a permit under this section, a person who is  
21 jointly or severally adversely affected by the department's  
22 decision may request, within 15 days after the department  
23 renders its decision, upon affidavit setting forth the  
24 grounds therefor, a hearing before the board. A hearing  
25 shall be held under the provisions of the Montana

1 Administrative Procedure Act.

2 ~~(9)~~ (14) The department's decision on the application is  
3 not final unless 15 days have elapsed and there is no  
4 request for a hearing under this section. The filing of a  
5 request for a hearing postpones the effective date of the  
6 department's decision until the conclusion of the hearing  
7 and issuance of a final decision by the board."

8 NEW SECTION. Section 3. Retroactive applicability. (1)  
9 [Subsections (2) and (6) of section 2] apply retroactively,  
10 within the meaning of 1-2-109, to all permits issued by the  
11 department of health and environmental sciences pursuant to  
12 Title 75, chapter 2, and prior to [the effective date of  
13 this act].

14 (2) [Subsection 3 of section 2] applies retroactively,  
15 within the meaning of 1-2-109, to all uses identified in  
16 that section that are not currently subject to a permit  
17 issued by the department of health and environmental  
18 sciences pursuant to Title 75, chapter 2.

19 NEW SECTION. Section 4. Effective date. [This act] is  
20 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 HB0781, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill authorizing the Department of Health and Environmental Sciences to adopt rules for the collection of fees for the issuance and renewal of air quality construction and operating permits; providing for the expiration of the permits; and clarifying the authority of the Department of Health and Environmental Sciences to issue an operating permit.

ASSUMPTIONS:

1. Permit fees would be authorized only to the extent required to cover the costs associated with permitting activities of the department. HB0781 would not directly cause increased expenditures. For purposes of this fiscal note, it is assumed that the air quality program is expanded by \$413,977 and \$413,269 in FY92 and FY93, respectively, for which no federal funding is available. The assumed expansion is consistent with subcommittee appropriations action as of the date of the fiscal note.
2. The actual fee structure would be established by the Board of Health and Environmental Sciences. For purposes of this fiscal note, the fee structure is assumed to be two-tiered, depending on the type of regulated emission, with a minimum fee of \$250 per year.
3. Tier 1 emissions include suspended particulates, sulfur dioxide, and lead. Tier 1 emission assessments are assumed at approximately \$2.52 per ton. Approximately 125,000 tons of tier 1 emissions would be assessed.
4. Tier 2 emissions include nitrogen dioxide and volatile organic compounds. Tier 2 emission assessments are assumed at approximately \$0.63 per ton. Approximately 81,000 tons of tier 2 emissions would be assessed. (Note: revenue amounts estimated for this fiscal note are greater than the estimated tonnage multiplied by the per ton fee due to the minimum fee).

FISCAL IMPACT:

Department of Health and Environmental Sciences:

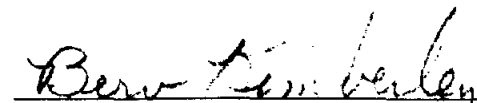
Revenues:

	FY92			FY93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Permit Fees (02)	0	413,977	413,977	0	413,269	413,269

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

HB0781 would authorize the Board of Health and Environmental Sciences delegated local air pollution control programs to set up an operating permit system with associated fees. An industrial source regulated by the local program would pay the fee to the local agency rather than to the state. The establishment of a local fee schedule would be handled through the local agency procedures.

  
 ROD SUNDSTED, BUDGET DIRECTOR  
 Office of Budget and Program Planning  
 DATE 2-18-91

  
 BERVYL C. KIMBERLEY, PRIMARY SPONSOR  
 DATE 2-20-91  
 Fiscal Note for HB0781, as introduced. **HB 781**

APPROVED BY COMMITTEE  
ON TAXATION

AS AMENDED

HOUSE BILL NO. 781

INTRODUCED BY KIMBERLEY, DRISCOLL, BECKER, TOOLE,  
SOUTHWORTH, R. JOHNSON, MENAHAN, O'KEEFE, DOWELL, MAZUREK,  
KADAS, HARPER, LYNCH, WHALEN, DARKO, BRADLEY, COHEN,  
MERCER, CRIPPEN, KEATING  
BY REQUEST OF THE DEPARTMENT  
OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE  
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT  
RULES FOR THE COLLECTION OF FEES FOR THE ISSUANCE AND  
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PROVIDING FOR THE EXPIRATION OF THE PERMITS; CLARIFYING THE  
AUTHORITY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL  
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STATEMENT OF INTENT

A statement of intent is required for this bill because  
[section 1] requires the board of health and environmental  
sciences to adopt by rule fees for air quality permit  
applications. The purpose of this bill is to allow the  
collection of an ongoing annual fee to cover the costs  
associated with the DEVELOPMENT AND administration,

including implementation and enforcement, of ~~an~~ AN air  
quality permits PERMITTING PROGRAM. While there is a need  
for a fee system to cover these costs, it is not the  
legislature's intent that these fees be used to recover  
other costs not delineated in this bill. The legislature  
recognizes that the identification of actual costs  
associated with specific permits AND PERMITTING ACTIVITIES  
may be difficult and envisions that a fee schedule may be  
established with generic applicability to THIS MAY RESULT  
IN FEES FOR classes of sources ACCORDING TO THE TYPE OR  
AMOUNT OF EMISSIONS OR THE TYPE OF SOURCE. For example, it  
may be determined that the costs associated with permit  
implementation---and---enforcement THE DEVELOPMENT AND  
ADMINISTRATION OF A PERMITTING PROGRAM vary directly with  
the amount or type of regulated pollutants emitted. In such  
a case, a fee based upon the tons of a regulated pollutant  
emitted may be appropriate. THE BOARD'S RULES DEFINING THE  
FEE STRUCTURE TO BE USED BY THE DEPARTMENT SHALL ENSURE THAT  
THE FEES CHARGED WILL NOT COLLECT, IN THE AGGREGATE, MORE  
THAN IS AUTHORIZED AND APPROPRIATED BY THE LEGISLATURE TO  
THE DEPARTMENT FOR THE DEVELOPMENT AND ADMINISTRATION OF THE  
PERMITTING PROGRAM.

This bill also clarifies the authority of the department  
of health and environmental sciences to issue an operating  
permit for air contaminant sources. It is the legislature's



1 intent that all air contaminant sources operating within the  
 2 state ~~and not otherwise exempted~~ obtain an operating permit,  
 3 INCLUDING THOSE SOURCES THAT ARE "GRANDFATHERED" UNDER  
 4 CURRENT AIR QUALITY REGULATIONS. REASONABLE EXEMPTIONS FROM  
 5 THIS REQUIREMENT MAY BE APPROVED BY THE BOARD AND  
 6 IMPLEMENTED BASED UPON THE SIZE OR NATURE OF THE SOURCE OR  
 7 ITS EMISSIONS.

8 ~~This bill also provides for the insertion of expiration~~  
 9 ~~dates into all air quality permits, specifically including~~  
 10 ~~those issued prior to October 17, 1991. For permits issued~~  
 11 ~~prior to that date, the department is authorized to adopt~~  
 12 ~~rules providing for expiration dates, according to the year~~  
 13 ~~of issuance, in order to provide for staggered renewal. FOR~~  
 14 SOURCES OF AIR CONTAMINANTS THAT ARE SUBJECT TO TITLE V OF  
 15 THE FEDERAL CLEAN AIR ACT, 42 U.S.C. 7401, ET SEQ., AS  
 16 AMENDED, THE BOARD MAY PROVIDE FOR THE EXPIRATION AND  
 17 RENEWAL OF PERMITS ISSUED TO THOSE SOURCES, AS NECESSARY TO  
 18 MEET THE REQUIREMENTS OF TITLE V. TO PROVIDE FOR THE ORDERLY  
 19 TRANSITION TO TITLE V PERMITS FOR BOTH CURRENT PERMITHOLDERS  
 20 AND GRANDFATHERED SOURCES, THE BOARD SHALL ESTABLISH A  
 21 TRANSITION SCHEDULE. THE TRANSITION SCHEDULE MAY NOT SPECIFY  
 22 DATES FOR OBTAINING TITLE V PERMITS THAT ARE EARLIER THAN  
 23 THE TIMES CONTAINED IN THE ACT.

24  
 25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1 **Section 1.** Section 75-2-111, MCA, is amended to read:

2 "75-2-111. Powers of board. The board shall:

3 (1) adopt, amend, and repeal rules for the  
 4 administration, implementation, and enforcement of this  
 5 chapter, for issuing orders under and in accordance with 42  
 6 U.S.C. 7419, and for fulfilling the requirements of 42  
 7 U.S.C. 7420 and regulations adopted pursuant thereto;

8 (2) hold hearings relating to any aspect of or matter  
 9 in the administration of this chapter at a place designated  
 10 by the board. The board may compel the attendance of  
 11 witnesses and the production of evidence at hearings. The  
 12 board shall designate an attorney to assist in conducting  
 13 hearings and shall appoint a reporter who shall be present  
 14 at all hearings and take full stenographic notes of all  
 15 proceedings thereat, transcripts of which will be available  
 16 to the public at cost.

17 (3) issue orders necessary to effectuate the purposes  
 18 of this chapter;

19 (4) by rule require access to records relating to  
 20 emissions;

21 (5) by rule adopt a schedule of fees required for  
 22 permits and permit applications, consistent with under this  
 23 chapter;

24 (6) have the power to issue orders under and in  
 25 accordance with 42 U.S.C. 7419."

**Section 2.** Section 75-2-211, MCA, is amended to read:

"75-2-211. Permits for construction, installation, alteration, or use. (1) The department shall provide for the issuance, suspension, revocation, and renewal of a permit issued under this section part.

~~(2) A permit issued by the department pursuant to this part is not effective for more than 5 years, after which time renewal is required. The department may provide for the expiration of permits issued by the department under this part prior to October 17, 1991.~~ FOR ALL SOURCES OF AIR CONTAMINANTS THAT ARE SUBJECT TO THE PROVISIONS OF TITLE V OF THE FEDERAL CLEAN AIR ACT, 42 U.S.C. 7401, ET SEQ., AS AMENDED, THE PROVISIONS OF THIS SECTION APPLY IN ADDITION TO THE OTHER APPLICABLE PROVISIONS OF THIS CHAPTER.

(A) THE BOARD SHALL BY RULE REQUIRE THAT PERMITS ISSUED TO SOURCES DESCRIBED IN SUBSECTION (2) BE OF LIMITED DURATION, BUT IT MAY NOT LIMIT THE DURATION OF THE PERMITS BEYOND THAT REQUIRED BY THE FEDERAL CLEAN AIR ACT, 42 U.S.C. 7401, ET SEQ., AS AMENDED.

(B) THE BOARD SHALL BY RULE PROVIDE FOR THE RENEWAL OF PERMITS ISSUED TO THE SOURCES.

(C) THE BOARD SHALL BY RULE ESTABLISH A TRANSITION SCHEDULE FOR AIR QUALITY PERMITS HELD BY SOURCES OF AIR CONTAMINANTS SUBJECT TO THE PROVISIONS OF SUBSECTION (2). THE TRANSITION SCHEDULE MUST SPECIFY DATES FOR THE

EXPIRATION OF THE PERMITS, ABSENT AN APPLICATION FOR RENEWAL BY THE SOURCE. THE TRANSITION SCHEDULE MAY NOT SPECIFY EXPIRATION DATES THAT ARE EARLIER IN TIME THAN THOSE REQUIRED BY TITLE V OF THE FEDERAL CLEAN AIR ACT, 42 U.S.C. 7401, ET SEQ., AS AMENDED. THE TRANSITION SCHEDULE ESTABLISHED BY THE BOARD ALSO APPLIES TO EXISTING SOURCES OF AIR CONTAMINANTS THAT ARE SUBJECT TO THE PROVISIONS OF TITLE V OF THE FEDERAL CLEAN AIR ACT, 42 U.S.C. 7401, ET SEQ., AS AMENDED, AND THAT DO NOT HOLD AN AIR QUALITY PERMIT FROM THE DEPARTMENT AS OF NOVEMBER 2, 1992.

~~(2)(3) Not later than 180 days before construction, begins, not later than 120 days before installation, or alteration begins, or as a condition of use of any machine, equipment, device, or facility which the board finds may directly or indirectly cause or contribute to air pollution or which is intended primarily to prevent or control the emission of air pollutants and not later than 120 days before installation, alteration, or use begins, the owner or operator shall file with the department the appropriate permit application on forms available from the department, and pay to the department a fee sufficient to cover:~~

~~(a) the reasonable costs of reviewing and acting upon the application for such permit; and~~

~~(b) the reasonable costs of implementing and enforcing the terms and conditions of such permit if the permit is~~

1 granted ~~(not including any court costs or other costs~~  
 2 ~~associated with any enforcement action)~~. The fee shall be  
 3 deposited in the state special revenue fund to be used by  
 4 the department for administration of this section.

5 ~~(4) Not later than 90 days prior to the expiration date~~  
 6 ~~of a permit issued pursuant to this part, the owner or~~  
 7 ~~operator of the air contaminant source shall file with the~~  
 8 ~~department the appropriate application for permit renewal on~~  
 9 ~~forms available from the department.~~

10 ~~(5)(4) Concurrent with the submittal of a permit~~  
 11 ~~application required by subsection (3) and annually for the~~  
 12 ~~duration of the permit, the applicant shall submit to the~~  
 13 ~~department a fee sufficient to cover THE REASONABLE COSTS,~~  
 14 ~~BOTH DIRECT AND INDIRECT, OF DEVELOPING AND ADMINISTERING~~  
 15 ~~THE PERMITTING REQUIREMENTS IN THIS CHAPTER, INCLUDING THE~~  
 16 ~~REASONABLE COSTS OF:~~

17 ~~(a) the reasonable costs of reviewing and acting upon~~  
 18 ~~the application; and~~

19 ~~(b) the reasonable costs of implementing and enforcing~~  
 20 ~~the terms and conditions of the permit if the permit is~~  
 21 ~~issued. However, this amount does not include any court~~  
 22 ~~costs or other costs associated with any enforcement action.~~  
 23 ~~If the permit is not issued, the department shall return~~  
 24 ~~this portion of the fee to the applicant.~~

25 ~~(C) EMISSIONS AND AMBIENT MONITORING;~~

1 (D) PREPARING GENERALLY APPLICABLE REGULATIONS OR  
 2 GUIDANCE;

3 (E) MODELING, ANALYSIS, AND DEMONSTRATIONS; AND

4 (F) PREPARING INVENTORIES AND TRACKING EMISSIONS.

5 ~~(6)(5) As a condition of the continuing validity of~~  
 6 ~~permits issued by the department under this part prior to~~  
 7 ~~October 1, 1991, the department may require the permitholder~~  
 8 ~~to pay an annual fee sufficient to cover the costs~~  
 9 ~~identified in subsection (5)(b) (4).~~

10 (6) FOR ANY EXISTING SOURCE OF AIR CONTAMINANTS THAT IS  
 11 SUBJECT TO TITLE V OF THE FEDERAL CLEAN AIR ACT, 42 U.S.C.  
 12 7401, ET SEQ., AS AMENDED, AND THAT IS NOT REQUIRED TO HOLD  
 13 AN AIR QUALITY PERMIT FROM THE DEPARTMENT AS OF OCTOBER 1,  
 14 1991, THE BOARD MAY, AS A CONDITION OF CONTINUED OPERATION,  
 15 REQUIRE BY RULE THAT THE OWNER OR OPERATOR OF THE SOURCE PAY  
 16 THE ANNUAL FEE PROVIDED FOR IN SUBSECTION (4). NOTHING IN  
 17 THIS SUBSECTION MAY BE CONSTRUED AS ALLOWING THE DEPARTMENT  
 18 TO CHARGE ANY SOURCE OF AIR CONTAMINANTS MORE THAN ONE  
 19 ANNUAL FEE THAT IS DESIGNED TO COVER THE COSTS IDENTIFIED IN  
 20 SUBSECTION (4).

21 (7) The fees collected by the department pursuant to  
 22 this section must be deposited in the state special revenue  
 23 fund to be appropriated by the legislature to the department  
 24 for THE DEVELOPMENT AND administration of 75-2-215 and this  
 25 section THE PERMITTING REQUIREMENTS IN THIS CHAPTER.

1       (8) (A) THE DEPARTMENT SHALL GIVE WRITTEN NOTICE OF THE  
 2 AMOUNT OF THE FEE TO BE ASSESSED AND THE BASIS FOR THE  
 3 DEPARTMENT'S FEE ASSESSMENT UNDER THIS SECTION TO THE OWNER  
 4 OR OPERATOR OF THE AIR CONTAMINANT SOURCE. THE OWNER OR  
 5 OPERATOR MAY APPEAL THE DEPARTMENT'S FEE ASSESSMENT TO THE  
 6 BOARD WITHIN 20 DAYS AFTER RECEIPT OF THE WRITTEN NOTICE.

7       (B) AN APPEAL MUST BE BASED UPON THE ALLEGATION THAT  
 8 THE FEE ASSESSMENT IS ERRONEOUS OR EXCESSIVE. AN APPEAL MAY  
 9 NOT BE BASED ONLY ON THE AMOUNT OF THE FEE SCHEDULE ADOPTED  
 10 BY THE BOARD.

11       (C) IF ANY PART OF THE FEE ASSESSMENT IS NOT APPEALED,  
 12 IT MUST BE PAID TO THE DEPARTMENT UPON RECEIPT OF THE NOTICE  
 13 IN SUBSECTION (8)(A).

14       (D) THE CONTESTED CASE PROVISIONS OF THE MONTANA  
 15 ADMINISTRATIVE PROCEDURE ACT PROVIDED FOR IN TITLE 2,  
 16 CHAPTER 4, APPLY TO ANY HEARING BEFORE THE BOARD UNDER THIS  
 17 SUBSECTION (8).

18       ~~(3)~~~~(9)~~ Nothing in this section shall restrict the  
 19 board's authority to adopt regulations providing for a  
 20 single air quality permit system.

21       ~~(4)~~~~(9)~~~~(10)~~ The department may, for good cause shown,  
 22 waive or shorten the time required for filing the  
 23 appropriate applications.

24       ~~(5)~~~~(10)~~~~(11)~~ The department shall require that  
 25 applications for permits be accompanied by any plans,

1 specifications, and other information it considers  
 2 necessary.

3       ~~(6)~~~~(11)~~~~(12)~~ An application is not considered filed until  
 4 the applicant has submitted all fees and information and  
 5 completed all application forms required by subsections ~~(2)~~,  
 6 ~~(3)~~, and ~~(5)~~ through ~~(6)~~ and ~~(10)~~ ~~(11)~~. However, if the  
 7 department fails to notify the applicant in writing within  
 8 30 days after the purported filing of an application that  
 9 the application is incomplete and fails to list the reasons  
 10 why the application is considered incomplete, the  
 11 application is considered filed as of the date of the  
 12 purported filing.

13       ~~(7)~~~~(12)~~~~(13)~~ (a) Where an application for a permit  
 14 requires the compilation of an environmental impact  
 15 statement under the Montana Environmental Policy Act, the  
 16 department shall notify the applicant in writing of the  
 17 approval or denial of the application within:

18       (i) 180 days of the receipt of a filed application, as  
 19 defined in subsection ~~(6)~~ ~~(11)~~ ~~(12)~~, if the department  
 20 prepares the environmental impact statement; or

21       (ii) within 30 days after issuance of the final  
 22 environmental impact statement by the lead agency if a state  
 23 agency other than the department has been designated by the  
 24 governor as lead agency for preparation of the environmental  
 25 impact statement.

1 (b) However, where an application does not require the  
 2 compilation of an environmental impact statement, the  
 3 department shall notify the applicant in writing within 60  
 4 days of the receipt of a filed application, as defined in  
 5 subsection ~~(6)~~ ~~(11)~~ (12), of the approval or denial of the  
 6 application. Notification of approval or denial may be  
 7 served personally or by registered or certified mail on the  
 8 applicant or his agent.

9 ~~(8)~~ ~~(13)~~ (14) When the department approves or denies the  
 10 application for a permit under this section, a person who is  
 11 jointly or severally adversely affected by the department's  
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 13 renders its decision, upon affidavit setting forth the  
 14 grounds therefor, a hearing before the board. A hearing  
 15 shall be held under the provisions of the Montana  
 16 Administrative Procedure Act.

17 ~~(9)~~ ~~(14)~~ (15) The department's decision on the application  
 18 is not final unless 15 days have elapsed and there is no  
 19 request for a hearing under this section. The filing of a  
 20 request for a hearing postpones the effective date of the  
 21 department's decision until the conclusion of the hearing  
 22 and issuance of a final decision by the board."

23 NEW SECTION. Section 3. Retroactive applicability. (1)  
 24 [Subsections (2) and ~~(6)~~ (5) of section 2] apply  
 25 retroactively, within the meaning of 1-2-109, to all permits

1 issued by the department of health and environmental  
 2 sciences pursuant to Title 75, chapter 2, and prior to [the  
 3 effective date of ~~this act~~ THOSE SUBSECTIONS].

4 (2) ~~[Subsection 3~~ SUBSECTIONS (2), (3), AND (6) of  
 5 section 2] applies APPLY retroactively, within the meaning  
 6 of 1-2-109, to all uses identified in ~~that--section~~ THOSE  
 7 SUBSECTIONS that are not currently subject to a permit  
 8 issued by the department of health and environmental  
 9 sciences pursuant to Title 75, chapter 2, AS OF [THE  
 10 EFFECTIVE DATES OF THOSE SUBSECTIONS].

11 NEW SECTION. Section 4. Effective date -- RULEMAKING  
 12 AUTHORITY. [This act]--is-effective-on-passage-and-approval--  
 13 (1) [SECTION 1, SUBSECTIONS (1) AND (3) THROUGH (15) OF  
 14 SECTION 2, SECTION 3, AND THIS SECTION] ARE EFFECTIVE  
 15 OCTOBER 1, 1991, BUT THE DEPARTMENT MAY PROCEED WITH THE  
 16 RULEMAKING PROCESS UNDER TITLE 2, CHAPTER 4, PRIOR TO THAT  
 17 DATE. THE EFFECTIVE DATE OF ANY RULE ADOPTED TO IMPLEMENT  
 18 THOSE PARTS OF [THIS ACT] MAY BE EFFECTIVE NO EARLIER THAN  
 19 OCTOBER 1, 1991.

20 (2) [SUBSECTION (2) OF SECTION 2] IS EFFECTIVE NOVEMBER  
 21 1, 1992, BUT THE DEPARTMENT MAY PROCEED WITH THE RULEMAKING  
 22 PROCESS UNDER TITLE 2, CHAPTER 4, PRIOR TO THAT DATE. THE  
 23 EFFECTIVE DATE OF ANY RULE ADOPTED TO IMPLEMENT THOSE PARTS  
 24 OF [THIS ACT] MAY BE EFFECTIVE NO EARLIER THAN NOVEMBER 1,  
 25 1992.

-End-

## 1 HOUSE BILL NO. 781

2 INTRODUCED BY KIMBERLEY, DRISCOLL, BECKER, TOOLE,  
 3 SOUTHWORTH, R. JOHNSON, MENAHAN, O'KEEFE, DOWELL, MAZUREK,  
 4 KADAS, HARPER, LYNCH, WHALEN, DARKO, BRADLEY, COHEN,  
 5 MERCER, CRIPPEN, KEATING  
 6 BY REQUEST OF THE DEPARTMENT  
 7 OF HEALTH AND ENVIRONMENTAL SCIENCES

8  
 9 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE  
 10 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT  
 11 RULES FOR THE COLLECTION OF FEES FOR THE ISSUANCE AND  
 12 RENEWAL OF AIR QUALITY CONSTRUCTION AND OPERATING PERMITS;  
 13 PROVIDING FOR THE EXPIRATION OF THE PERMITS; CLARIFYING THE  
 14 AUTHORITY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL  
 15 SCIENCES TO ISSUE AN OPERATING PERMIT; AMENDING SECTIONS  
 16 75-2-111 AND 75-2-211, MCA; AND PROVIDING AN IMMEDIATE  
 17 EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES."

## 18 STATEMENT OF INTENT

19  
 20 A statement of intent is required for this bill because  
 21 [section 1] requires the board of health and environmental  
 22 sciences to adopt by rule fees for air quality permit  
 23 applications. The purpose of this bill is to allow the  
 24 collection of an ongoing annual fee to cover the costs  
 25 associated with the DEVELOPMENT AND administration,

1 including implementation and enforcement, of ~~all~~ AN air  
 2 quality permits PERMITTING PROGRAM. While there is a need  
 3 for a fee system to cover these costs, it is not the  
 4 legislature's intent that these fees be used to recover  
 5 other costs not delineated in this bill. The legislature  
 6 recognizes that the identification of actual costs  
 7 associated with specific permits AND PERMITTING ACTIVITIES  
 8 may be difficult and envisions that a fee schedule may be  
 9 established with generic applicability to, THIS MAY RESULT  
 10 IN FEES FOR classes of sources ACCORDING TO THE TYPE OR  
 11 AMOUNT OF EMISSIONS OR THE TYPE OF SOURCE. For example, it  
 12 may be determined that the costs associated with permit  
 13 implementation---and---enforcement THE DEVELOPMENT AND  
 14 ADMINISTRATION OF A PERMITTING PROGRAM vary directly with  
 15 the amount or type of regulated pollutants emitted. In such  
 16 a case, a fee based upon the tons of a regulated pollutant  
 17 emitted may be appropriate. THE BOARD'S RULES DEFINING THE  
 18 FEE STRUCTURE TO BE USED BY THE DEPARTMENT SHALL ENSURE THAT  
 19 THE FEES CHARGED WILL NOT COLLECT, IN THE AGGREGATE, MORE  
 20 THAN IS AUTHORIZED AND APPROPRIATED BY THE LEGISLATURE TO  
 21 THE DEPARTMENT FOR THE DEVELOPMENT AND ADMINISTRATION OF THE  
 22 PERMITTING PROGRAM.

23 This bill also clarifies the authority of the department  
 24 of health and environmental sciences to issue an operating  
 25 permit for air contaminant sources. It is the legislature's

1 intent that all air contaminant sources operating within the  
 2 state and-not-otherwise-exempted obtain an operating permit,  
 3 INCLUDING THOSE SOURCES THAT ARE "GRANDFATHERED" UNDER  
 4 CURRENT AIR QUALITY REGULATIONS. REASONABLE EXEMPTIONS FROM  
 5 THIS REQUIREMENT MAY BE APPROVED BY THE BOARD AND  
 6 IMPLEMENTED BASED UPON THE SIZE OR NATURE OF THE SOURCE OR  
 7 ITS EMISSIONS.

8 ~~This bill also provides for the insertion of expiration~~  
 9 ~~dates into all air quality permits, specifically including~~  
 10 ~~those issued prior to October 1, 1991. For permits issued~~  
 11 ~~prior to that date, the department is authorized to adopt~~  
 12 ~~rules providing for expiration dates, according to the year~~  
 13 ~~of issuance, in order to provide for staggered renewal. FOR~~  
 14 SOURCES OF AIR CONTAMINANTS THAT ARE SUBJECT TO TITLE V OF  
 15 THE FEDERAL CLEAN AIR ACT, 42 U.S.C. 7401, ET SEQ., AS  
 16 AMENDED, THE BOARD MAY PROVIDE FOR THE EXPIRATION AND  
 17 RENEWAL OF PERMITS ISSUED TO THOSE SOURCES, AS NECESSARY TO  
 18 MEET THE REQUIREMENTS OF TITLE V. TO PROVIDE FOR THE ORDERLY  
 19 TRANSITION TO TITLE V PERMITS FOR BOTH CURRENT PERMITHOLDERS  
 20 AND GRANDFATHERED SOURCES, THE BOARD SHALL ESTABLISH A  
 21 TRANSITION SCHEDULE. THE TRANSITION SCHEDULE MAY NOT SPECIFY  
 22 DATES FOR OBTAINING TITLE V PERMITS THAT ARE EARLIER THAN  
 23 THE TIMES CONTAINED IN THE ACT.

24  
 25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1 **Section 1.** Section 75-2-111, MCA, is amended to read:

2 **\*75-2-111. Powers of board.** The board shall:

3 (1) adopt, amend, and repeal rules for the  
 4 administration, implementation, and enforcement of this  
 5 chapter, for issuing orders under and in accordance with 42  
 6 U.S.C. 7419, and for fulfilling the requirements of 42  
 7 U.S.C. 7420 and regulations adopted pursuant thereto;

8 (2) hold hearings relating to any aspect of or matter  
 9 in the administration of this chapter at a place designated  
 10 by the board. The board may compel the attendance of  
 11 witnesses and the production of evidence at hearings. The  
 12 board shall designate an attorney to assist in conducting  
 13 hearings and shall appoint a reporter who shall be present  
 14 at all hearings and take full stenographic notes of all  
 15 proceedings thereat, transcripts of which will be available  
 16 to the public at cost.

17 (3) issue orders necessary to effectuate the purposes  
 18 of this chapter;

19 (4) by rule require access to records relating to  
 20 emissions;

21 (5) by rule adopt a schedule of fees required for  
 22 permits and permit applications, consistent with under this  
 23 chapter;

24 (6) have the power to issue orders under and in  
 25 accordance with 42 U.S.C. 7419."

**Section 2.** Section 75-2-211, MCA, is amended to read:

"75-2-211. Permits for construction, installation, alteration, or use. (1) The department shall provide for the issuance, suspension, revocation, and renewal of a permit issued under this section part.

~~(2) A permit issued by the department pursuant to this part is not effective for more than 5 years, after which time renewal is required. The department may provide for the expiration of permits issued by the department under this part prior to October 1, 1991.~~ FOR ALL SOURCES OF AIR CONTAMINANTS THAT ARE SUBJECT TO THE PROVISIONS OF TITLE V OF THE FEDERAL CLEAN AIR ACT, 42 U.S.C. 7401, ET SEQ., AS AMENDED, THE PROVISIONS OF THIS SECTION APPLY IN ADDITION TO THE OTHER APPLICABLE PROVISIONS OF THIS CHAPTER.

(A) THE BOARD SHALL BY RULE REQUIRE THAT PERMITS ISSUED TO SOURCES DESCRIBED IN SUBSECTION (2) BE OF LIMITED DURATION, BUT IT MAY NOT LIMIT THE DURATION OF THE PERMITS BEYOND THAT REQUIRED BY THE FEDERAL CLEAN AIR ACT, 42 U.S.C. 7401, ET SEQ., AS AMENDED.

(B) THE BOARD SHALL BY RULE PROVIDE FOR THE RENEWAL OF PERMITS ISSUED TO THE SOURCES.

(C) THE BOARD SHALL BY RULE ESTABLISH A TRANSITION SCHEDULE FOR AIR QUALITY PERMITS HELD BY SOURCES OF AIR CONTAMINANTS SUBJECT TO THE PROVISIONS OF SUBSECTION (2). THE TRANSITION SCHEDULE MUST SPECIFY DATES FOR THE

EXPIRATION OF THE PERMITS, ABSENT AN APPLICATION FOR RENEWAL BY THE SOURCE. THE TRANSITION SCHEDULE MAY NOT SPECIFY EXPIRATION DATES THAT ARE EARLIER IN TIME THAN THOSE REQUIRED BY TITLE V OF THE FEDERAL CLEAN AIR ACT, 42 U.S.C. 7401, ET SEQ., AS AMENDED. THE TRANSITION SCHEDULE ESTABLISHED BY THE BOARD ALSO APPLIES TO EXISTING SOURCES OF AIR CONTAMINANTS THAT ARE SUBJECT TO THE PROVISIONS OF TITLE V OF THE FEDERAL CLEAN AIR ACT, 42 U.S.C. 7401, ET SEQ., AS AMENDED, AND THAT DO NOT HOLD AN AIR QUALITY PERMIT FROM THE DEPARTMENT AS OF NOVEMBER 2, 1992.

~~(2)(3) Not later than 180 days before construction, begins, not later than 120 days before installation, or alteration begins, or as a condition of use of any machine, equipment, device, or facility which the board finds may directly or indirectly cause or contribute to air pollution or which is intended primarily to prevent or control the emission of air pollutants and not later than 120 days before installation, alteration, or use begins, the owner or operator shall file with the department the appropriate permit application on forms available from the department, and pay to the department a fee sufficient to cover:~~

~~(a) the reasonable costs of reviewing and acting upon the application for such permit; and~~

~~(b) the reasonable costs of implementing and enforcing the terms and conditions of such permit if the permit is~~



1 ~~granted (not including any court costs or other costs~~  
2 ~~associated with any enforcement action); The fee shall be~~  
3 ~~deposited in the state special revenue fund to be used by~~  
4 ~~the department for administration of this section:~~

5 ~~(4) Not later than 90 days prior to the expiration date~~  
6 ~~of a permit issued pursuant to this part, the owner or~~  
7 ~~operator of the air contaminant source shall file with the~~  
8 ~~department the appropriate application for permit renewal on~~  
9 ~~forms available from the department:~~

10 ~~(5)(4) Concurrent with the submittal of a permit~~  
11 ~~application required by subsection (3) and annually for the~~  
12 ~~duration of the permit, the applicant shall submit to the~~  
13 ~~department a fee sufficient to cover THE REASONABLE COSTS,~~  
14 ~~BOTH DIRECT AND INDIRECT, OF DEVELOPING AND ADMINISTERING~~  
15 ~~THE PERMITTING REQUIREMENTS IN THIS CHAPTER, INCLUDING THE~~  
16 ~~REASONABLE COSTS OF:~~

17 ~~(a) the reasonable costs of reviewing and acting upon~~  
18 ~~the application; and~~

19 ~~(b) the reasonable costs of implementing and enforcing~~  
20 ~~the terms and conditions of the permit if the permit is~~  
21 ~~issued. However, this amount does not include any court~~  
22 ~~costs or other costs associated with any enforcement action.~~  
23 ~~If the permit is not issued, the department shall return~~  
24 ~~this portion of the fee to the applicant.~~

25 ~~(C) EMISSIONS AND AMBIENT MONITORING;~~

1 (D) PREPARING GENERALLY APPLICABLE REGULATIONS OR  
2 GUIDANCE;

3 (E) MODELING, ANALYSIS, AND DEMONSTRATIONS; AND  
4 (F) PREPARING INVENTORIES AND TRACKING EMISSIONS.

5 ~~(5)(5) As a condition of the continuing validity of~~  
6 ~~permits issued by the department under this part prior to~~  
7 ~~October 1, 1991, the department may require the permitholder~~  
8 ~~to pay an annual fee sufficient to cover the costs~~  
9 ~~identified in subsection (5)(b) (4).~~

10 (6) FOR ANY EXISTING SOURCE OF AIR CONTAMINANTS THAT IS  
11 SUBJECT TO TITLE V OF THE FEDERAL CLEAN AIR ACT, 42 U.S.C.  
12 7401, ET SEQ., AS AMENDED, AND THAT IS NOT REQUIRED TO HOLD  
13 AN AIR QUALITY PERMIT FROM THE DEPARTMENT AS OF OCTOBER 1,  
14 1991, THE BOARD MAY, AS A CONDITION OF CONTINUED OPERATION,  
15 REQUIRE BY RULE THAT THE OWNER OR OPERATOR OF THE SOURCE PAY  
16 THE ANNUAL FEE PROVIDED FOR IN SUBSECTION (4). NOTHING IN  
17 THIS SUBSECTION MAY BE CONSTRUED AS ALLOWING THE DEPARTMENT  
18 TO CHARGE ANY SOURCE OF AIR CONTAMINANTS MORE THAN ONE  
19 ANNUAL FEE THAT IS DESIGNED TO COVER THE COSTS IDENTIFIED IN  
20 SUBSECTION (4).

21 (7) The fees collected by the department pursuant to  
22 this section must be deposited in the state special revenue  
23 fund to be appropriated by the legislature to the department  
24 for THE DEVELOPMENT AND administration of 75-2-215 and this  
25 section THE PERMITTING REQUIREMENTS IN THIS CHAPTER.

1       (8) (A) THE DEPARTMENT SHALL GIVE WRITTEN NOTICE OF THE  
 2 AMOUNT OF THE FEE TO BE ASSESSED AND THE BASIS FOR THE  
 3 DEPARTMENT'S FEE ASSESSMENT UNDER THIS SECTION TO THE OWNER  
 4 OR OPERATOR OF THE AIR CONTAMINANT SOURCE. THE OWNER OR  
 5 OPERATOR MAY APPEAL THE DEPARTMENT'S FEE ASSESSMENT TO THE  
 6 BOARD WITHIN 20 DAYS AFTER RECEIPT OF THE WRITTEN NOTICE.

7       (B) AN APPEAL MUST BE BASED UPON THE ALLEGATION THAT  
 8 THE FEE ASSESSMENT IS ERRONEOUS OR EXCESSIVE. AN APPEAL MAY  
 9 NOT BE BASED ONLY ON THE AMOUNT OF THE FEE SCHEDULE ADOPTED  
 10 BY THE BOARD.

11       (C) IF ANY PART OF THE FEE ASSESSMENT IS NOT APPEALED,  
 12 IT MUST BE PAID TO THE DEPARTMENT UPON RECEIPT OF THE NOTICE  
 13 IN SUBSECTION (8)(A).

14       (D) THE CONTESTED CASE PROVISIONS OF THE MONTANA  
 15 ADMINISTRATIVE PROCEDURE ACT PROVIDED FOR IN TITLE 2,  
 16 CHAPTER 4, APPLY TO ANY HEARING BEFORE THE BOARD UNDER THIS  
 17 SUBSECTION (8).

18       ~~{3}{8}~~(9) Nothing in this section shall restrict the  
 19 board's authority to adopt regulations providing for a  
 20 single air quality permit system.

21       ~~{4}{9}~~(10) The department may, for good cause shown,  
 22 waive or shorten the time required for filing the  
 23 appropriate applications.

24       ~~{5}{10}~~(11) The department shall require that  
 25 applications for permits be accompanied by any plans,

1 specifications, and other information it considers  
 2 necessary.

3       ~~{6}{11}~~(12) An application is not considered filed until  
 4 the applicant has submitted all fees and information and  
 5 completed all application forms required by subsections ~~{2}~~  
 6 (3) and ~~{5}~~ through (6) and ~~{10}~~ (11). However, if the  
 7 department fails to notify the applicant in writing within  
 8 30 days after the purported filing of an application that  
 9 the application is incomplete and fails to list the reasons  
 10 why the application is considered incomplete, the  
 11 application is considered filed as of the date of the  
 12 purported filing.

13       ~~{7}{12}~~(13) (a) Where an application for a permit  
 14 requires the compilation of an environmental impact  
 15 statement under the Montana Environmental Policy Act, the  
 16 department shall notify the applicant in writing of the  
 17 approval or denial of the application within:

18       (i) 180 days of the receipt of a filed application, as  
 19 defined in subsection ~~{6}~~ ~~{11}~~ (12), if the department  
 20 prepares the environmental impact statement; or

21       (ii) within 30 days after issuance of the final  
 22 environmental impact statement by the lead agency if a state  
 23 agency other than the department has been designated by the  
 24 governor as lead agency for preparation of the environmental  
 25 impact statement.

1 (b) However, where an application does not require the  
2 compilation of an environmental impact statement, the  
3 department shall notify the applicant in writing within 60  
4 days of the receipt of a filed application, as defined in  
5 subsection ~~(6)~~ ~~(11)~~ (12), of the approval or denial of the  
6 application. Notification of approval or denial may be  
7 served personally or by registered or certified mail on the  
8 applicant or his agent.

9 ~~(8)~~ ~~(13)~~ (14) When the department approves or denies the  
10 application for a permit under this section, a person who is  
11 jointly or severally adversely affected by the department's  
12 decision may request, within 15 days after the department  
13 renders its decision, upon affidavit setting forth the  
14 grounds therefor, a hearing before the board. A hearing  
15 shall be held under the provisions of the Montana  
16 Administrative Procedure Act.

17 ~~(9)~~ ~~(14)~~ (15) The department's decision on the application  
18 is not final unless 15 days have elapsed and there is no  
19 request for a hearing under this section. The filing of a  
20 request for a hearing postpones the effective date of the  
21 department's decision until the conclusion of the hearing  
22 and issuance of a final decision by the board."

23 NEW SECTION. Section 3. Retroactive applicability. (1)  
24 [Subsections (2) and ~~(6)~~ (5) of section 2] apply  
25 retroactively, within the meaning of 1-2-109, to all permits

1 issued by the department of health and environmental  
2 sciences pursuant to Title 75, chapter 2, and prior to [the  
3 effective date of this act THOSE SUBSECTIONS].

4 (2) ~~(Subsection-3~~ SUBSECTIONS (2), (3), AND (6) of  
5 section 2] applies APPLY retroactively, within the meaning  
6 of 1-2-109, to all uses identified in that--section THOSE  
7 SUBSECTIONS that are not currently subject to a permit  
8 issued by the department of health and environmental  
9 sciences pursuant to Title 75, chapter 2, AS OF [THE  
10 EFFECTIVE DATES OF THOSE SUBSECTIONS].

11 NEW SECTION. Section 4. Effective date -- RULEMAKING  
12 AUTHORITY. ~~(This act) is effective on passage and approval~~  
13 (1) [SECTION 1, SUBSECTIONS (1) AND (3) THROUGH (15) OF  
14 SECTION 2, SECTION 3, AND THIS SECTION] ARE EFFECTIVE  
15 OCTOBER 1, 1991, BUT THE DEPARTMENT MAY PROCEED WITH THE  
16 RULEMAKING PROCESS UNDER TITLE 2, CHAPTER 4, PRIOR TO THAT  
17 DATE. THE EFFECTIVE DATE OF ANY RULE ADOPTED TO IMPLEMENT  
18 THOSE PARTS OF [THIS ACT] MAY BE EFFECTIVE NO EARLIER THAN  
19 OCTOBER 1, 1991.

20 (2) [SUBSECTION (2) OF SECTION 2] IS EFFECTIVE NOVEMBER  
21 1, 1992, BUT THE DEPARTMENT MAY PROCEED WITH THE RULEMAKING  
22 PROCESS UNDER TITLE 2, CHAPTER 4, PRIOR TO THAT DATE. THE  
23 EFFECTIVE DATE OF ANY RULE ADOPTED TO IMPLEMENT THOSE PARTS  
24 OF [THIS ACT] MAY BE EFFECTIVE NO EARLIER THAN NOVEMBER 1,  
25 1992.

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 2  
April 13, 1991

Page 2 of 2  
April 13, 1991

MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill No. 781 (third reading copy -- blue), respectfully report that House Bill No. 781 be amended and as so amended be concurred in:

1. Title, line 13.

Following: "PERMITS;"

Insert: "ALLOWING FEE ASSESSMENTS TO FUND DEPARTMENTAL AIR QUALITY ACTIVITIES FOR PARTICULAR GEOGRAPHIC AREAS IF THE LEGISLATURE AUTHORIZES THE ACTIVITIES AND APPROPRIATES THE FUNDS FOR THE ACTIVITIES;"

2. Page 3.

Following: line 23

Insert: "This bill also allows for the assessment of those fees necessary to fund activities of the department that are intended to address specific air quality problems in the state if the legislature authorizes the activities and appropriates the funds for the activities. For example, it may be necessary to conduct additional ambient monitoring in a particular geographic area in order to determine the compliance status of that area with applicable ambient air quality standards. The legislature intends that this provision be used only to fund those activities that examine specific problems in particular geographical areas. The assessments for funding should be levied in an equitable fashion and only upon those sources whose emissions are both of the type being focused upon and thought to impact the geographical area."

3. Page 8.

Following: line 4.

Insert: "(5) In addition to the fee required under subsection (4), the board may order the assessment of additional fees required to fund specific activities of the department that are directed at a particular geographic area if the legislature authorizes the activities and appropriates the funds for the activities, including emissions or ambient monitoring, modeling analysis or demonstrations, or emissions inventories or tracking. Additional assessments may be levied only on those sources that are within or are believed by the department to be impacting the geographical area. Before the board may require the assessments, it shall first determine, after opportunity for hearing, that the activities to be funded are necessary for the administration or implementation of this chapter, that the assessments apportion the required funding in a equitable

manner, and that department has obtained legislative authorization for the expenditure and the necessary appropriation."

Re-number: subsequent subsections

4. Page 9, line 13.

Strike: "~~(8)(A)~~"

Insert: "(9)(a)"

5. Page 9, line 17.

Strike: "~~(8)~~"

Insert: "(9)"

6. Page 10, line 6.

Strike: "~~(6)~~"

Insert: "(7)"

Strike: "~~(11)~~"

Insert: "(12)"

7. Page 10, line 19.

Strike: "~~(12)~~"

Insert: "(13)"

8. Page 11, line 5.

Strike: "~~(12)~~"

Insert: "(13)"

9. Page 11, line 24.

Strike: "~~(5)~~"

Insert: "(6)"

10. Page 12, line 4.

Strike: "~~(6)~~"

Insert: "(7)"

11. Page 12, line 13.

Strike: "~~(15)~~"

Insert: "(16)"

Signed: \_\_\_\_\_

Mike Halligan, Chairman

R. 4/13/91  
Am. Coord.

SP 4/13 2:45  
Sec. of Senate

## 1 HOUSE BILL NO. 781

2 INTRODUCED BY KIMBERLEY, DRISCOLL, BECKER, TOOLE,  
 3 SOUTHWORTH, R. JOHNSON, MENAHAN, O'KEEFE, DOWELL, MAZUREK,  
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6 BY REQUEST OF THE DEPARTMENT  
 7 OF HEALTH AND ENVIRONMENTAL SCIENCES

8  
 9 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE  
 10 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT  
 11 RULES FOR THE COLLECTION OF FEES FOR THE ISSUANCE AND  
 12 RENEWAL OF AIR QUALITY CONSTRUCTION AND OPERATING PERMITS;  
 13 PROVIDING FOR THE EXPIRATION OF THE PERMITS; ALLOWING FEE  
 14 ASSESSMENTS TO FUND DEPARTMENTAL AIR QUALITY ACTIVITIES FOR  
 15 PARTICULAR GEOGRAPHIC AREAS IF THE LEGISLATURE AUTHORIZES  
 16 THE ACTIVITIES AND APPROPRIATES THE FUNDS FOR THE  
 17 ACTIVITIES; CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF  
 18 HEALTH AND ENVIRONMENTAL SCIENCES TO ISSUE AN OPERATING  
 19 PERMIT; AMENDING SECTIONS 75-2-111 AND 75-2-211, MCA; AND  
 20 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND RETROACTIVE  
 21 APPLICABILITY DATES."

## 22 STATEMENT OF INTENT

23  
 24 A statement of intent is required for this bill because  
 25 [section 1] requires the board of health and environmental

1 sciences to adopt by rule fees for air quality permit  
 2 applications. The purpose of this bill is to allow the  
 3 collection of an ongoing annual fee to cover the costs  
 4 associated with the DEVELOPMENT AND administration,  
 5 including implementation and enforcement, of ~~an~~ AN air  
 6 quality permits PERMITTING PROGRAM. While there is a need  
 7 for a fee system to cover these costs, it is not the  
 8 legislature's intent that these fees be used to recover  
 9 other costs not delineated in this bill. The legislature  
 10 recognizes that the identification of actual costs  
 11 associated with specific permits AND PERMITTING ACTIVITIES  
 12 may be difficult and envisions that a fee schedule may be  
 13 established with generic applicability to. THIS MAY RESULT  
 14 IN FEES FOR classes of sources ACCORDING TO THE TYPE OR  
 15 AMOUNT OF EMISSIONS OR THE TYPE OF SOURCE. For example, it  
 16 may be determined that the costs associated with permit  
 17 ~~implementation---and---enforcement~~ THE DEVELOPMENT AND  
 18 ADMINISTRATION OF A PERMITTING PROGRAM vary directly with  
 19 the amount or type of regulated pollutants emitted. In such  
 20 a case, a fee based upon the tons of a regulated pollutant  
 21 emitted may be appropriate. THE BOARD'S RULES DEFINING THE  
 22 FEE STRUCTURE TO BE USED BY THE DEPARTMENT SHALL ENSURE THAT  
 23 THE FEES CHARGED WILL NOT COLLECT, IN THE AGGREGATE, MORE  
 24 THAN IS AUTHORIZED AND APPROPRIATED BY THE LEGISLATURE TO  
 25 THE DEPARTMENT FOR THE DEVELOPMENT AND ADMINISTRATION OF THE

1 PERMITTING PROGRAM.

2 This bill also clarifies the authority of the department  
3 of health and environmental sciences to issue an operating  
4 permit for air contaminant sources. It is the legislature's  
5 intent that all air contaminant sources operating within the  
6 state and not otherwise exempted obtain an operating permit,  
7 including those sources that are "grandfathered" under  
8 current air quality regulations. Reasonable exemptions from  
9 this requirement may be approved by the board and  
10 implemented based upon the size or nature of the source or  
11 its emissions.

12 This bill also provides for the insertion of expiration  
13 dates into all air quality permits, specifically including  
14 those issued prior to October 17, 1991. For permits issued  
15 prior to that date, the department is authorized to adopt  
16 rules providing for expiration dates, according to the year  
17 of issuance, in order to provide for staggered renewal. For  
18 sources of air contaminants that are subject to Title V of  
19 the Federal Clean Air Act, 42 U.S.C. 7401, et seq., as  
20 amended, the board may provide for the expiration and  
21 renewal of permits issued to those sources, as necessary to  
22 meet the requirements of Title V. To provide for the orderly  
23 transition to Title V permits for both current permit holders  
24 and grandfathered sources, the board shall establish a  
25 transition schedule. The transition schedule may not specify

1 DATES FOR OBTAINING TITLE V PERMITS THAT ARE EARLIER THAN  
2 THE TIMES CONTAINED IN THE ACT.

3 THIS BILL ALSO ALLOWS FOR THE ASSESSMENT OF THOSE FEES  
4 NECESSARY TO FUND ACTIVITIES OF THE DEPARTMENT THAT ARE  
5 INTENDED TO ADDRESS SPECIFIC AIR QUALITY PROBLEMS IN THE  
6 STATE IF THE LEGISLATURE AUTHORIZES THE ACTIVITIES AND  
7 APPROPRIATES THE FUNDS FOR THE ACTIVITIES. FOR EXAMPLE, IT  
8 MAY BE NECESSARY TO CONDUCT ADDITIONAL AMBIENT MONITORING IN  
9 A PARTICULAR GEOGRAPHIC AREA IN ORDER TO DETERMINE THE  
10 COMPLIANCE STATUS OF THAT AREA WITH APPLICABLE AMBIENT AIR  
11 QUALITY STANDARDS. THE LEGISLATURE INTENDS THAT THIS  
12 PROVISION BE USED ONLY TO FUND THOSE ACTIVITIES THAT EXAMINE  
13 SPECIFIC PROBLEMS IN PARTICULAR GEOGRAPHIC AREAS. THE  
14 ASSESSMENTS FOR FUNDING SHOULD BE LEVIED IN AN EQUITABLE  
15 FASHION AND ONLY UPON THOSE SOURCES WHOSE EMISSIONS ARE BOTH  
16 OF THE TYPE BEING FOCUSED UPON AND THOUGHT TO IMPACT THE  
17 GEOGRAPHIC AREA.

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 **Section 1.** Section 75-2-111, MCA, is amended to read:

21 "75-2-111. Powers of board. The board shall:  
22 (1) adopt, amend, and repeal rules for the  
23 administration, implementation, and enforcement of this  
24 chapter, for issuing orders under and in accordance with 42  
25 U.S.C. 7419, and for fulfilling the requirements of 42

1 U.S.C. 7420 and regulations adopted pursuant thereto;  
 2 (2) hold hearings relating to any aspect of or matter  
 3 in the administration of this chapter at a place designated  
 4 by the board. The board may compel the attendance of  
 5 witnesses and the production of evidence at hearings. The  
 6 board shall designate an attorney to assist in conducting  
 7 hearings and shall appoint a reporter who shall be present  
 8 at all hearings and take full stenographic notes of all  
 9 proceedings thereat, transcripts of which will be available  
 10 to the public at cost.

11 (3) issue orders necessary to effectuate the purposes  
 12 of this chapter;

13 (4) by rule require access to records relating to  
 14 emissions;

15 (5) by rule adopt a schedule of fees required for  
 16 permits and permit applications, consistent with under this  
 17 chapter;

18 (6) have the power to issue orders under and in  
 19 accordance with 42 U.S.C. 7419."

20 **Section 2.** Section 75-2-211, MCA, is amended to read:

21 "75-2-211. Permits for construction, installation,  
 22 alteration, or use. (1) The department shall provide for the  
 23 issuance, suspension, revocation, and renewal of a permit  
 24 issued under this section part.

25 (2) A permit issued by the department pursuant to this

1 ~~part--is--not--effective--for--more--than--5--years--after--which~~  
 2 ~~time--renewal--is--required--The--department--may--provide--for--the~~  
 3 ~~expiration--of--permits--issued--by--the--department--under--this~~  
 4 ~~part--prior--to--October--17--1991.~~ FOR ALL SOURCES OF AIR  
 5 CONTAMINANTS THAT ARE SUBJECT TO THE PROVISIONS OF TITLE V  
 6 OF THE FEDERAL CLEAN AIR ACT, 42 U.S.C. 7401, ET SEQ., AS  
 7 AMENDED, THE PROVISIONS OF THIS SECTION APPLY IN ADDITION TO  
 8 THE OTHER APPLICABLE PROVISIONS OF THIS CHAPTER.

9 (A) THE BOARD SHALL BY RULE REQUIRE THAT PERMITS ISSUED  
 10 TO SOURCES DESCRIBED IN SUBSECTION (2) BE OF LIMITED  
 11 DURATION, BUT IT MAY NOT LIMIT THE DURATION OF THE PERMITS  
 12 BEYOND THAT REQUIRED BY THE FEDERAL CLEAN AIR ACT, 42 U.S.C.  
 13 7401, ET SEQ., AS AMENDED.

14 (B) THE BOARD SHALL BY RULE PROVIDE FOR THE RENEWAL OF  
 15 PERMITS ISSUED TO THE SOURCES.

16 (C) THE BOARD SHALL BY RULE ESTABLISH A TRANSITION  
 17 SCHEDULE FOR AIR QUALITY PERMITS HELD BY SOURCES OF AIR  
 18 CONTAMINANTS SUBJECT TO THE PROVISIONS OF SUBSECTION (2).  
 19 THE TRANSITION SCHEDULE MUST SPECIFY DATES FOR THE  
 20 EXPIRATION OF THE PERMITS, ABSENT AN APPLICATION FOR RENEWAL  
 21 BY THE SOURCE. THE TRANSITION SCHEDULE MAY NOT SPECIFY  
 22 EXPIRATION DATES THAT ARE EARLIER IN TIME THAN THOSE  
 23 REQUIRED BY TITLE V OF THE FEDERAL CLEAN AIR ACT, 42 U.S.C.  
 24 7401, ET SEQ., AS AMENDED. THE TRANSITION SCHEDULE  
 25 ESTABLISHED BY THE BOARD ALSO APPLIES TO EXISTING SOURCES OF

1 AIR CONTAMINANTS THAT ARE SUBJECT TO THE PROVISIONS OF TITLE  
 2 V OF THE FEDERAL CLEAN AIR ACT, 42 U.S.C. 7401, ET SEQ., AS  
 3 AMENDED, AND THAT DO NOT HOLD AN AIR QUALITY PERMIT FROM THE  
 4 DEPARTMENT AS OF NOVEMBER 2, 1992.

5 ~~(2)~~(3) Not later than 180 days before construction,  
 6 ~~begins, not later than 120 days before~~ installation, or  
 7 ~~alteration begins,~~ or as a condition of use of any machine,  
 8 equipment, device, or facility which the board finds may  
 9 directly or indirectly cause or contribute to air pollution  
 10 or which is intended primarily to prevent or control the  
 11 emission of air pollutants ~~and not later than 120 days~~  
 12 ~~before installation, alteration, or use begins,~~ the owner or  
 13 operator shall file with the department the appropriate  
 14 permit application on forms available from the department,  
 15 ~~and pay to the department a fee sufficient to cover:~~

16 ~~(a) the reasonable costs of reviewing and acting upon~~  
 17 ~~the application for such permit; and~~

18 ~~(b) the reasonable costs of implementing and enforcing~~  
 19 ~~the terms and conditions of such permit if the permit is~~  
 20 ~~granted (not including any court costs or other costs~~  
 21 ~~associated with any enforcement action); the fee shall be~~  
 22 ~~deposited in the state special revenue fund to be used by~~  
 23 ~~the department for administration of this section;~~

24 ~~(4) Not later than 90 days prior to the expiration date~~  
 25 ~~of a permit issued pursuant to this part, the owner or~~

1 ~~operator of the air contaminant source shall file with the~~  
 2 ~~department the appropriate application for permit renewal on~~  
 3 ~~forms available from the department;~~

4 ~~(5)~~(4) Concurrent with the submittal of a permit  
 5 ~~application required by subsection (3) and annually for the~~  
 6 ~~duration of the permit, the applicant shall submit to the~~  
 7 ~~department a fee sufficient to cover THE REASONABLE COSTS,~~  
 8 ~~BOTH DIRECT AND INDIRECT, OF DEVELOPING AND ADMINISTERING~~  
 9 ~~THE PERMITTING REQUIREMENTS IN THIS CHAPTER, INCLUDING THE~~  
 10 ~~REASONABLE COSTS OF:~~

11 ~~(a) the reasonable costs of reviewing and acting upon~~  
 12 ~~the application; and~~

13 ~~(b) the reasonable costs of implementing and enforcing~~  
 14 ~~the terms and conditions of the permit if the permit is~~  
 15 ~~issued. However, this amount does not include any court~~  
 16 ~~costs or other costs associated with any enforcement action.~~  
 17 ~~If the permit is not issued, the department shall return~~  
 18 ~~this portion of the fee to the applicant.~~

19 ~~(C) EMISSIONS AND AMBIENT MONITORING;~~

20 ~~(D) PREPARING GENERALLY APPLICABLE REGULATIONS OR~~  
 21 ~~GUIDANCE;~~

22 ~~(E) MODELING, ANALYSIS, AND DEMONSTRATIONS; AND~~

23 ~~(F) PREPARING INVENTORIES AND TRACKING EMISSIONS.~~

24 ~~(5) IN ADDITION TO THE FEE REQUIRED UNDER SUBSECTION~~  
 25 ~~(4), THE BOARD MAY ORDER THE ASSESSMENT OF ADDITIONAL FEES~~



1 REQUIRED TO FUND SPECIFIC ACTIVITIES OF THE DEPARTMENT THAT  
 2 ARE DIRECTED AT A PARTICULAR GEOGRAPHIC AREA IF THE  
 3 LEGISLATURE AUTHORIZES THE ACTIVITIES AND APPROPRIATES THE  
 4 FUNDS FOR THE ACTIVITIES, INCLUDING EMISSIONS OR AMBIENT  
 5 MONITORING, MODELING ANALYSIS OR DEMONSTRATIONS, OR  
 6 EMISSIONS INVENTORIES OR TRACKING. ADDITIONAL ASSESSMENTS  
 7 MAY BE LEVIED ONLY ON THOSE SOURCES THAT ARE WITHIN OR ARE  
 8 BELIEVED BY THE DEPARTMENT TO BE IMPACTING THE GEOGRAPHIC  
 9 AREA. BEFORE THE BOARD MAY REQUIRE THE ASSESSMENTS, IT  
 10 SHALL FIRST DETERMINE, AFTER OPPORTUNITY FOR HEARING, THAT  
 11 THE ACTIVITIES TO BE FUNDED ARE NECESSARY FOR THE  
 12 ADMINISTRATION OR IMPLEMENTATION OF THIS CHAPTER, THAT THE  
 13 ASSESSMENTS APPORTION THE REQUIRED FUNDING IN AN EQUITABLE  
 14 MANNER, AND THAT THE DEPARTMENT HAS OBTAINED LEGISLATIVE  
 15 AUTHORIZATION FOR THE EXPENDITURE AND THE NECESSARY  
 16 APPROPRIATION.

17 (6)(5)(6) As a condition of the continuing validity of  
 18 permits issued by the department under this part prior to  
 19 October 1, 1991, the department may require the permitholder  
 20 to pay an annual fee sufficient to cover the costs  
 21 identified in subsection (5)(b) (4).

22 (6)(7) FOR ANY EXISTING SOURCE OF AIR CONTAMINANTS THAT  
 23 IS SUBJECT TO TITLE V OF THE FEDERAL CLEAN AIR ACT, 42  
 24 U.S.C. 7401, ET SEQ., AS AMENDED, AND THAT IS NOT REQUIRED  
 25 TO HOLD AN AIR QUALITY PERMIT FROM THE DEPARTMENT AS OF

1 OCTOBER 1, 1991, THE BOARD MAY, AS A CONDITION OF CONTINUED  
 2 OPERATION, REQUIRE BY RULE THAT THE OWNER OR OPERATOR OF THE  
 3 SOURCE PAY THE ANNUAL FEE PROVIDED FOR IN SUBSECTION (4).  
 4 NOTHING IN THIS SUBSECTION MAY BE CONSTRUED AS ALLOWING THE  
 5 DEPARTMENT TO CHARGE ANY SOURCE OF AIR CONTAMINANTS MORE  
 6 THAN ONE ANNUAL FEE THAT IS DESIGNED TO COVER THE COSTS  
 7 IDENTIFIED IN SUBSECTION (4).

8 (7)(8) The fees collected by the department pursuant to  
 9 this section must be deposited in the state special revenue  
 10 fund to be appropriated by the legislature to the department  
 11 for THE DEVELOPMENT AND administration of 75-2-215-and--this  
 12 section THE PERMITTING REQUIREMENTS IN THIS CHAPTER.

13 (8)(9) (A) THE DEPARTMENT SHALL GIVE WRITTEN NOTICE OF  
 14 THE AMOUNT OF THE FEE TO BE ASSESSED AND THE BASIS FOR THE  
 15 DEPARTMENT'S FEE ASSESSMENT UNDER THIS SECTION TO THE OWNER  
 16 OR OPERATOR OF THE AIR CONTAMINANT SOURCE. THE OWNER OR  
 17 OPERATOR MAY APPEAL THE DEPARTMENT'S FEE ASSESSMENT TO THE  
 18 BOARD WITHIN 20 DAYS AFTER RECEIPT OF THE WRITTEN NOTICE.

19 (B) AN APPEAL MUST BE BASED UPON THE ALLEGATION THAT  
 20 THE FEE ASSESSMENT IS ERRONEOUS OR EXCESSIVE. AN APPEAL MAY  
 21 NOT BE BASED ONLY ON THE AMOUNT OF THE FEE SCHEDULE ADOPTED  
 22 BY THE BOARD.

23 (C) IF ANY PART OF THE FEE ASSESSMENT IS NOT APPEALED,  
 24 IT MUST BE PAID TO THE DEPARTMENT UPON RECEIPT OF THE NOTICE  
 25 IN SUBSECTION (8)(A) (9)(A).

1        (D) THE CONTESTED CASE PROVISIONS OF THE MONTANA  
 2 ADMINISTRATIVE PROCEDURE ACT PROVIDED FOR IN TITLE 2,  
 3 CHAPTER 4, APPLY TO ANY HEARING BEFORE THE BOARD UNDER THIS  
 4 SUBSECTION ~~8~~ (9).

5        ~~3~~~~8~~~~9~~~~10~~ Nothing in this section shall restrict the  
 6 board's authority to adopt regulations providing for a  
 7 single air quality permit system.

8        ~~4~~~~9~~~~10~~~~11~~ The department may, for good cause shown,  
 9 waive or shorten the time required for filing the  
 10 appropriate applications.

11        ~~5~~~~10~~~~11~~~~12~~ The department shall require that  
 12 applications for permits be accompanied by any plans,  
 13 specifications, and other information it considers  
 14 necessary.

15        ~~6~~~~11~~~~12~~~~13~~ An application is not considered filed  
 16 until the applicant has submitted all fees and information  
 17 and completed all application forms required by subsections  
 18 ~~2~~~~7~~ (3), ~~and~~~~5~~ through ~~6~~ (7) and ~~10~~ ~~11~~ (12).  
 19 However, if the department fails to notify the applicant in  
 20 writing within 30 days after the purported filing of an  
 21 application that the application is incomplete and fails to  
 22 list the reasons why the application is considered  
 23 incomplete, the application is considered filed as of the  
 24 date of the purported filing.

25        ~~7~~~~12~~~~13~~~~14~~ (a) Where an application for a permit

1 requires the compilation of an environmental impact  
 2 statement under the Montana Environmental Policy Act, the  
 3 department shall notify the applicant in writing of the  
 4 approval or denial of the application within:

5        (i) 180 days of the receipt of a filed application, as  
 6 defined in subsection ~~6~~ ~~11~~ ~~12~~ (13), if the department  
 7 prepares the environmental impact statement; or

8        (ii) within 30 days after issuance of the final  
 9 environmental impact statement by the lead agency if a state  
 10 agency other than the department has been designated by the  
 11 governor as lead agency for preparation of the environmental  
 12 impact statement.

13        (b) However, where an application does not require the  
 14 compilation of an environmental impact statement, the  
 15 department shall notify the applicant in writing within 60  
 16 days of the receipt of a filed application, as defined in  
 17 subsection ~~6~~ ~~11~~ ~~12~~ (13), of the approval or denial of  
 18 the application. Notification of approval or denial may be  
 19 served personally or by registered or certified mail on the  
 20 applicant or his agent.

21        ~~8~~~~13~~~~14~~~~15~~ When the department approves or denies  
 22 the application for a permit under this section, a person  
 23 who is jointly or severally adversely affected by the  
 24 department's decision may request, within 15 days after the  
 25 department renders its decision, upon affidavit setting

1 forth the grounds therefor, a hearing before the board. A  
 2 hearing shall be held under the provisions of the Montana  
 3 Administrative Procedure Act.

4 ~~(9)~~~~(14)~~~~(15)~~(16) The department's decision on the  
 5 application is not final unless 15 days have elapsed and  
 6 there is no request for a hearing under this section. The  
 7 filing of a request for a hearing postpones the effective  
 8 date of the department's decision until the conclusion of  
 9 the hearing and issuance of a final decision by the board."

10 NEW SECTION. Section 3. Retroactive applicability. (1)  
 11 [Subsections (2) and ~~(6)~~ ~~(5)~~ (6) of section 2] apply  
 12 retroactively, within the meaning of 1-2-109, to all permits  
 13 issued by the department of health and environmental  
 14 sciences pursuant to Title 75, chapter 2, and prior to [the  
 15 effective date of ~~this act~~ THOSE SUBSECTIONS].

16 (2) [~~Subsection--(3)~~ SUBSECTIONS (2), (3), AND ~~(6)~~ (7)  
 17 of section 2] ~~applies~~ APPLY retroactively, within the  
 18 meaning of 1-2-109, to all uses identified in ~~that--section~~  
 19 THOSE SUBSECTIONS that are not ~~currently~~ subject to a permit  
 20 issued by the department of health and environmental  
 21 sciences pursuant to Title 75, chapter 2, AS OF [THE  
 22 EFFECTIVE DATES OF THOSE SUBSECTIONS].

23 NEW SECTION. Section 4. Effective date -- RULEMAKING  
 24 AUTHORITY. ~~{This act} is effective on passage and --approval--~~  
 25 (1) [SECTION 1, SUBSECTIONS (1) AND (3) THROUGH ~~(15)~~ (16) OF

1 SECTION 2, SECTION 3, AND THIS SECTION] ARE EFFECTIVE  
 2 OCTOBER 1, 1991, BUT THE DEPARTMENT MAY PROCEED WITH THE  
 3 RULEMAKING PROCESS UNDER TITLE 2, CHAPTER 4, PRIOR TO THAT  
 4 DATE. THE EFFECTIVE DATE OF ANY RULE ADOPTED TO IMPLEMENT  
 5 THOSE PARTS OF [THIS ACT] MAY BE EFFECTIVE NO EARLIER THAN  
 6 OCTOBER 1, 1991.

7 (2) [SUBSECTION (2) OF SECTION 2] IS EFFECTIVE NOVEMBER  
 8 1, 1992, BUT THE DEPARTMENT MAY PROCEED WITH THE RULEMAKING  
 9 PROCESS UNDER TITLE 2, CHAPTER 4, PRIOR TO THAT DATE. THE  
 10 EFFECTIVE DATE OF ANY RULE ADOPTED TO IMPLEMENT THOSE PARTS  
 11 OF [THIS ACT] MAY BE EFFECTIVE NO EARLIER THAN NOVEMBER 1,  
 12 1992.

-End-