

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON PROPERTY TAX

Call to Order: By CHAIRMAN COHEN, on March 20, 1991, at 7:30 AM

ROLL CALL

Members Present:

Rep. Ben Cohen, Chairman (D)
Rep. Ed Dolezal (D)
Rep. Orval Ellison (R)
Rep. Russell Fagg (R)
Rep. Dave Hoffman (R)
Rep. Ed McCaffree (D)
Rep. Mark O'Keefe (D)
Rep. Ted Schye (D)
Rep. Fred Thomas (R)
Rep. Dave Wanzenried (D)

Staff Present: Lee Heiman, Legislative Council
Julia Tonkovich, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON HB 781

REP. COHEN said information provided by the Air Quality Bureau (aqb) states that the revised Clean Air Act requires a permit fee of at least \$25 per ton of emissions. This is an interesting framework; the federal government has basically said if a state cannot prove it has an effective clean air program, it must charge a rather high permit fee.

Jeff Chaffee, aqb, presented the grey bill with all the amendments offered last week in committee, as well as new amendments. **Exhibit 1** The bill has two objectives: 1) giving the legislature statutory authority to develop an operating permit program to submit to the Environmental Protection Agency (EPA) by the fall of 1993, and 2) providing for a fee authority to fund the creation and ensure the continuation of the program. The bureau plans to build the program, and then come back and request the funds (if such a request is necessary) to keep it running. \$25/ton is more than is necessary to build the program, but aqb is not sure at present how much money it will take to keep the program running. At this point, the bureau is only asking for sufficient funds to build the program.

AQB currently operates a construction permit program, which states any new industrial facility of a certain size has to obtain an air quality permit. If the facility changes its operations or increases its overall emissions, it must alter the permit. AQB doesn't require these permits to be renewed or adjusted; however, these adjustments are required under the new Title V of the Clean Air Act. Our permit is essentially a one-time fee.

Tim Baker, AQB, discussed changes to the statement of intent. AQB is inserting language to indicate the board should not be allowing the department to charge fees which collect, in the aggregate, more than the legislature appropriates to the department to fund the program. When the program goes through the appropriations process, the bureau will need to come in and show what it's spending for the permit program.

REP. COHEN asked if the purpose for the permit fees is strictly to raise money to administer the program, or if the fees are also supposed to provide a disincentive for polluters (i.e. an incentive to clean up). **Mr. Chaffee** said the primary purpose is to fund the operating permit program; there may be secondary benefits encouraging industries to reduce emissions.

REP. COHEN asked whether "authorized" is a better word to use than "appropriated" to designate what the legislature will actually do. **John Augustine, DuPont-Conoco**, said the bill should read "authorized and appropriated." The people who will pay that fee may sue if fees are being assessed to collect money which is being used to fund activities that have not specifically been authorized by the legislature. Fee payers will not allow the administrative agency to decide how to spend this money between legislative sessions.

Mr. Baker said the amendment in section 2, subsection 2 addresses some of the points of contention between the department and industry. Originally, the bill required all permits to expire in five years; the department will provide new permits upon expiration. The industry was very concerned with this expiration date, as Title V restrictions do not apply to all sources that are presently holding permits issued by the department. Current language states that permits will not expire, but the department will have the discretion to determine whether or not they will expire and provide for renewal. Only those sources which are governed by Title V and for which expiration dates are required will be affected. **Mr. Chaffee** said at this point, there is not a clear definition of which permits shall be required to have an expiration date.

Mr. Augustine said the statement of intent should read "it is the intent of the legislature that the board enact only those rules necessary to assure primacy of the state's regulation of air contaminant sources governed by public law 101-5-49, MCA." This means the rules the board will enact pursuant to this bill are

intended to assure primacy. AQB said this language is unacceptable. This is a fundamental problem; the purpose of the bill is to obtain primacy, so why has AQB said they do not want the statement of intent to read as such? This could be interpreted to mean they want the bill to do something other than obtain primacy.

Kay Blehm, representing REP. KIMBERLEY, said REP. KIMBERLEY did not want to limit the state to the federal Clean Air Act; he wanted to allow the state to look beyond the what the federal act may be doing in certain cases. There are situations in Montana that may not be addressed if the bill is limited to the federal level. Mr. Chaffee said AQB has no plans to go beyond what is federally required; however, the bureau does not presently have the federal guidelines which will be coming out in the next six months. AQB is concerned with limiting the state requirements to being no more stringent than federal requirements. This may not allow the department to address some of the state's unique problems, such as the SO2 situation in Billings. If the state wants further development in this area, it may require tools that the federal Clean Air Act does not provide.

REP. FAGG asked for clarification of the term "primacy." Mr. Chaffee said "primacy" means having the statutory authority and the demonstrated resources to allow the state to receive delegation for federal funding. AQB needs to show EPA that the statutory authority as well as the resources and capabilities to carry out Title V are in place. If this is demonstrated, the state will get primacy from the EPA.

Mr. Augustine said it is not the industry's intent to use the bill to restrict the department's authority. Since the bill is intended to secure primacy, it should not be used as a vehicle to broaden the state's authority. Thus, the bill's statement of intent should read "it is the intent of the legislature that the board enact pursuant to this bill only those rules necessary to assure primacy of the state's regulation."

REP. ELLISON said the legislature should not give the department a blanket authorization. If they need something more than federal guidelines call for, they should request that during the next session. REP. HOFFMAN agreed, and asked if there were any other situation unique to Montana that Title V would not cover. Mr. Chaffee said that is difficult to determine, since new federal guidelines were just issued last week. In some cases, the federal regulations may have too much flexibility; at the state level, the department is concerned that the state will not be able to solve some of its problems by using the federal regulations only.

Kris Knutson, EPA, said flexibility should come from the state to cover state problems that the federal guidelines do not address. Some of the problems that are specific to the Northwest include pollution from road dust, slash-burning and woodstoves; the

Northeast has more industry source problems. People at federal headquarters do not always realize these problems exist because they are not exposed to this kind of pollution. Ms. Blehm added that Billings has a 200-foot ridge surrounding the city; many industrial smokestacks extend beyond this ridge. The space the ridge encloses often gets very polluted due to these stacks. This topographical uniqueness may require the state to do something more stringent than federal guidelines call for. EPA alluded to the West's specific problems, saying western land structures combined with varying air flows may create some situations that have not been covered in the Clean Air Act.

Mr. Chaffee said the department plans to develop a fee schedule to present to the Board of Health. To raise \$400,000/year, SO2 fees will be \$2.50/ton; the fees for Tier II pollutants will be 63 cents/ton (Tier I pollutants include lead and SO2; Tier 2 pollutants include nitrogen oxides and volatile organic compounds).

REP. COHEN clarified that REP. KIMBERLEY, AQB, and EPA are all talking about different fee structures. EPA requires \$25/ton of emissions. The fees proposed in this bill, compared to fees in eastern states, certainly give industries a break in Montana. Mr. Augustine said no other states have this fee. The entire fee process is tied to the appropriations process; the department has said that the first step of the study will cost \$400,000. This fee was not arbitrarily decided in terms of what would be good" or "bad" to the industry; it is a per ton calculation which resulted from the appropriation AQB requested and had authorized by the legislature. The department needs \$400,000, and the fees they are asking for raise that amount.

Ms. Knutson said 11 other states are currently working on similar legislation to require per ton permit fees. Mr. Chaffee said both Colorado and Utah charge permit fees, although the criteria for those fees varies.

Ms. Blehm said REP. KIMBERLEY drafted rule 3 in consideration of some special studies to help derive equitable permit fees and permit language that would help the industry in the long run. The preliminary figure for those special studies was over \$500,000. This cost is now approximately \$300,000. The majority of the savings came from taking out funds designated for Yellowstone County. A special study for this area would cost between \$100,000 and \$200,000. REP. KIMBERLEY also wanted to give some relief to the General Fund.

REP. COHEN asked how much the fee per ton would be in order to eradicate the need for a General Fund appropriation, and also asked if it were possible for the rate to be set by rule as it is in the bill, with additional language allowing the legislature to require that the rate be high enough to cover the program's entire budget, and allow the board to make necessary fee adjustments in the future. Mr. Chaffee replied the fees would

need to be doubled (to approximately \$5/ton for Tier I and \$1.22/ton for Tier II pollutants) for the program to be entirely "self-sufficient." Substantial amendments would be needed if the fees were to be raised to ensure that use of the funds will be limited to the permitting program only. **Mr. Augustine** said the language that the industry and the sponsor have drafted allows for this. The industry does not object to having the question submitted to the appropriations process, and the bill's current language does that. However, the appropriations process has already run its course. Next session, if there is an effort to fund the entire Department of Health on these fees, that can be addressed in appropriations.

Mr. Baker explained Subsection 2, Section 2, which limits the expiration and renewal of permits to only those sources covered by Title V of the Federal Clean Air Act, and provides a transition schedule for expiration and renewal to occur for all sources covered by Title V, including those which are not currently permitted. **REP. COHEN** clarified that the Grey Bill provides for expiration/renewal dates for all sources, and the industry would like to see expiration/renewal dates only for sources covered by Title V.

Mr. Baker said Subsection 3 clarifies that permits are required for continuing use of the facility. Subsection 4 would be stricken because the renewal dates are now covered in Subsection 2. Subsection 5 clarifies what the fees are based on and what they are supposed to cover (reasonable costs of emissions monitoring, analysis and demonstrations, tracking, etc.) **REP. FAGG** said he wants to ensure that the appropriate studies are done in order for the industry to do the best job it can in reducing emissions, and wondered if the language should be made stronger. **REP. KIMBERLEY's** new Subsection 6 is reasonable; it gives the Board of Health authority to ask for additional costs if it is appropriate, and requires a hearing and a notice. It does not mandate anything. The second amendment should be left out, however; the Board of Health should have the discretion to set fees.

Mr. Augustine said the committee should be aware that the current language in Subsection 5 comes straight out of the Federal Act; it is intended to secure primacy. All of the costs identified in this subsection are to be spread to all permit holders. If the committee inserts this new Subsection 6, every source in Montana will be required to pay for these expensive Billings-area studies. This is not appropriate.

REP. COHEN said that Subsection 5 is written so that AQB can still do the studies area by area, although it would have to raise the fees on a statewide basis. The new subsection proposes raising the fees only in the areas where studies are proposed. **Mr. Chaffee** said this was correct; the new subsection allows the board to set up a special fund (over and above the fee fund) for an area with a demonstrated need for a study, to charge the

sources in that area to fund that study.

REP. HOFFMAN said he did not approve of the new subsection; if the Missoula Valley starts to experience problems which warrant a study, all permitholders in the Missoula Valley will have to pay for that study, although the pollution may be caused by other sources. **REP. COHEN** said it is easy to permit point sources, and difficult to permit non-point sources. **Mr. Chaffee** agreed. The proposed Subsection 6 intends to portion the fees and costs fairly to the sources of the problem. For instance, in the Missoula Valley, if an industry were responsible for 30% of the pollution problem, the industry would pick up 30% (not the entire cost) of the study. **Mr. Augustine** asked how AQB would fund these studies. The study costs need to be paid before it is conducted, but the responsible parties cannot be determined until the study is completed. **Mr. Chaffee** said in some cases, AQB would be eligible to receive federal funding for the studies. **Mr. Augustine** asked whether the Board of Health would then decide who was responsible for the pollution before any studies were conducted in order to charge fees to fund the study. **Mr. Chaffee** said this is what the bill indicates.

REP. FAGG said at least in Billings, there is presently enough baseline data to determine who is responsible for the pollution. **REP. COHEN** said the Board of Health would be able to change the amount of fees collected from biennium to biennium; distribution of the funds could be changed from year to year.

Mr. Baker explained Subsection 6, which states that current permitholders may be issued fee requirements by AQB in order for those permits to remain valid. Subsection 7 says that those sources that are currently grandfathered (not obligated to hold a permit) will be required to hold a permit if they fall under Title V restrictions. Subsection 8 clarifies the distribution of fees; they will go into a special revenue fund to be appropriated by the legislature to the Department of Health. Lines 10-11 have been amended in response to the industry's request that the permit fees be used only for permitting activities. **Ms. Blehm** asked if doing away with the General Fund's appropriation will limit the special fund's availability. **Mr. Baker** said yes. **Mr. Augustine** said the fund will be limited in the sense that it will need to go through the appropriation process. However, the department is authorized to spend whatever moneys are appropriated for the studies. **Mr. Baker** said this is true if the studies are defined as being part of the permitting program; there may be studies that are not defined as such.

REP. COHEN asked why AQB wished to strike 72-2-215, MCA. **Mr. Baker** said AQB wants the bill to fund the entire permitting program. This section of the code refers to incinerator permits, and in order to make the language all-inclusive, it must be struck. **REP. COHEN** asked how the proposed language will restrict the department. **Mr. Chaffee** said the department would not be able to use the funds for other activities (i.e., studying the

effect of woodsmoke or road dust on western Montana). If the department did not have federal funds available, the legislature would have to approve additional funding.

Mr. Baker explained Subsection 9, which clarifies the appeal process. The Department of Health would have to give notice of the fees to be assessed and the basis of that assessment. The owner/operator may appeal that assessment to the board. The appeal must be based on the belief that the fee assessment is errant or excessive; the appeal may not be based on the amount of the fee schedule adopted by the board. If any part of the assessment is not appealed, it must be paid upon receipt of notice.

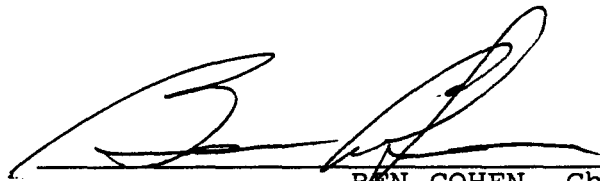
Ms. Blehm asked whether citizens could participate in the appeal process. Mr. Heiman said citizens could participate in the earlier process in which the Department of Health goes through the rulemaking procedure to establish the fees.

Mr. Baker clarified the remaining subsections, which allow the Department of Health to go back to formerly issued permits and assess a fee, and also addresses grandfathered industries, and applies permitted as well as non-permitted uses. Section 4 would also be simplified.

Mr. Augustine asked whether the bill should be effective upon approval, or on October 1, since the Department of Health needs retroactivity to institute the expiration/renewal process of Title V permits. REP. COHEN said this will be addressed later in the week.

ADJOURNMENT

Adjournment: 8:55 AM


BEN COHEN, Chair
JULIA TONKOVICH, Secretary

BC/jmt

HOUSE OF REPRESENTATIVES
PROPERTY TAX SUBCOMMITTEE

ROLL CALL

DATE

3/20/91

NAME	PRESENT	ABSENT	EXCUSED
REP. BEN COHEN, VICE-CHAIR	X		
REP. ED DOLEZAL	X		
REP. ORVAL ELLISON	X		
REP. RUSSELL FAGG	X		
REP. DAVID HOFFMAN	X		
REP. ED MCCAFFREE	X		
REP. MARK O'KEEFE	X		
REP. TED SCHYE	X		
REP. FRED THOMAS	X		
REP. DAVE WANZENRIED	X		
REP. DAN HARRINGTON, CHAIRMAN			

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EXHIBIT

DATE

3/20/91

HB 781

HOUSE BILL NO. 781

INTRODUCED BY

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 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 DEVELOPMENT AND administration, including implementation and enforcement, of all 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

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1 amount or type of regulated pollutants emitted. In such a
2 case, a fee based upon the tons of a regulated pollutant
3 emitted may be appropriate.

4 This bill also clarifies the authority of the department
5 of health and environmental sciences to issue an operating
6 permit for air contaminant sources. It is the legislature's
7 intent that all air contaminant sources operating within the
8 state ~~and not otherwise exempted~~ obtain an operating permit,
9 INCLUDING THOSE SOURCES THAT ARE "GRANDFATHERED" UNDER CURRENT
10 AIR QUALITY REGULATIONS. REASONABLE EXEMPTIONS FROM THIS
11 REQUIREMENT MAY BE IMPLEMENTED, BASED UPON THE SIZE OR NATURE
12 OF THE SOURCE OR ITS EMISSIONS.

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

19
20
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

23 "75-2-111. Powers of board. The board shall:

24 (1) adopt, amend, and repeal rules for the
25 administration, implementation, and enforcement of this
26 chapter, for issuing orders under and in accordance with 42
27 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C.
28 7420 and regulations adopted pursuant thereto;

29 (2) hold hearings relating to any aspect of or matter in
30 the administration of this chapter at a place designated by
31 the board. The board may compel the attendance of witnesses
32 and the production of evidence at hearings. The board shall
33 designate an attorney to assist in conducting hearings and
34 shall appoint a reporter who shall be present at all hearings
35 and take full stenographic notes of all proceedings thereat,
36 transcripts of which will be available to the public at cost.

37 (3) issue orders necessary to effectuate the purposes of

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1 this chapter;

2 (4) by rule require access to records relating to
3 emissions;

4 (5) by rule adopt a schedule of fees required for
5 permits and permit applications, consistent with ~~under~~ this
6 chapter;

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

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

10 "75-2-211. Permits for construction, installation,
11 alteration, or use. (1) The department shall provide for the
12 issuance, suspension, revocation, and renewal of a permit
13 issued under this section part.

14 ~~(2) A permit issued by the department pursuant to this~~
15 ~~part is not effective for more than 5 years, after which time~~
16 ~~renewal is required. THE DEPARTMENT MAY PROVIDE FOR THE~~
17 ~~EXPIRATION OF PERMITS ISSUED PURSUANT TO THIS PART AND FOR THE~~
18 ~~RENEWAL OF PERMITS THAT HAVE EXPIRED. The department may~~
19 ~~provide for the expiration of permits issued by the department~~
20 ~~under this part prior to October 1, 1991 [THE EFFECTIVE DATE~~
21 ~~OF THIS SUBSECTION].~~

22 ~~(2)(3)~~ Not later than 180 days before construction
23 ~~begins, not later than 120 days before, installation, or~~
24 ~~alteration begins, or as a condition of use of any machine,~~
25 equipment, device, or facility which the board finds may
26 directly or indirectly cause or contribute to air pollution or
27 which is intended primarily to prevent or control the emission
28 of air pollutants ~~and not later than 120 days before~~
29 ~~installation, alteration, or use begins, the owner or operator~~
30 shall file with the department the appropriate permit
31 application on forms available from the department, ~~and pay to~~
32 ~~the department a fee sufficient to cover:~~

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

35 ~~(b) the reasonable costs of implementing and enforcing~~
36 ~~the terms and conditions of such permit if the permit is~~
37 ~~granted (not including any court costs or other costs~~

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1 ~~associated with any enforcement action). The fee shall be~~
2 ~~deposited in the state special revenue fund to be used by the~~
3 ~~department for administration of this section.~~

4 (4) Not later than 90 120 days prior to the expiration
5 date of a permit issued pursuant to this part, the owner or
6 operator of the air contaminant source shall file with the
7 department the appropriate application for permit renewal on
8 forms available from the department.

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

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

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

24 (C) EMISSIONS AND AMBIENT MONITORING;

25 (D) PREPARING GENERALLY APPLICABLE REGULATIONS OR
26 GUIDANCE;

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

28 (F) PREPARING INVENTORIES AND TRACKING EMISSIONS.

29 (6) As a condition of the continuing validity of permits
30 issued by the department under this part prior to October 1,
31 1991, the department may require the permit holder to pay an
32 annual fee sufficient to cover the costs identified in
33 subsection (5)(b).

34 (7) FOR ANY EXISTING SOURCE OF AIR CONTAMINANTS THAT IS
35 SUBJECT TO TITLE V OF THE FEDERAL CLEAN AIR ACT, 42 U.S.C.
36 7401, ET SEQ., AS AMENDED, AND THAT IS NOT REQUIRED TO HOLD AN
37 AIR QUALITY PERMIT FROM THE DEPARTMENT AS OF [THE EFFECTIVE

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EXHIBIT 1

DATE 3/20/91

HB 781

1 DATE OF THIS SUBSECTION], THE BOARD MAY AS A CONDITION OF
2 CONTINUED OPERATION REQUIRE BY RULE THAT THE OWNER OR OPERATOR
3 OF THE SOURCE PAY THE ANNUAL FEE PROVIDED FOR IN SUBSECTION
4 (5). NOTHING IN THIS SUBSECTION MAY BE CONSTRUED AS ALLOWING
5 THE 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 (5).

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 administration of 75-2-215 and this section.

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

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

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

25 (D) THE CONTESTED CASE PROVISIONS OF THE MONTANA
26 ADMINISTRATIVE PROCEDURE ACT PROVIDED FOR IN TITLE 2, CHAPTER
27 4, APPLY TO ANY HEARING BEFORE THE BOARD UNDER THIS SUBSECTION
28 (9).

29 ~~(3)~~(8)(10) Nothing in this section shall restrict the
30 board's authority to adopt regulations providing for a single
31 air quality permit system.

32 ~~(4)~~(9)(11) The department may, for good cause shown,
33 waive or shorten the time required for filing the appropriate
34 applications.

35 ~~(5)~~(10)(12) The department shall require that
36 applications for permits be accompanied by any plans,
37 specifications, and other information it considers necessary.

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1 ~~(6)~~~~(11)~~(13) An application is not considered filed until
2 the applicant has submitted all fees and information and
3 completed all application forms required by subsections ~~(2)~~
4 ~~(3)~~ and ~~(5)~~ through (6) and ~~(10)~~ (12). However, if the
5 department fails to notify the applicant in writing within 30
6 days after the purported filing of an application that the
7 application is incomplete and fails to list the reasons why
8 the application is considered incomplete, the application is
9 considered filed as of the date of the purported filing.

10 ~~(7)~~~~(12)~~(14) (a) Where an application for a permit
11 requires the compilation of an environmental impact statement
12 under the Montana Environmental Policy Act, the department
13 shall notify the applicant in writing of the approval or
14 denial of the application within:

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

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

23 (b) However, where an application does not require the
24 compilation of an environmental impact statement, the
25 department shall notify the applicant in writing within 60
26 days of the receipt of a filed application, as defined in
27 subsection ~~(6)~~ ~~(11)~~ (13), of the approval or denial of the
28 application. Notification of approval or denial may be served
29 personally or by registered or certified mail on the applicant
30 or his agent.

31 ~~(8)~~~~(13)~~(15) When the department approves or denies the
32 application for a permit under this section, a person who is
33 jointly or severally adversely affected by the department's
34 decision may request, within 15 days after the department
35 renders its decision, upon affidavit setting forth the grounds
36 therefor, a hearing before the board. A hearing shall be held
37 under the provisions of the Montana Administrative Procedure

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EX. 1
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Act.

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

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

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

(3) [SUBSECTION (2) OF SECTION 2] APPLIES RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO ALL PERMITS ISSUED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES PURSUANT TO TITLE 75, CHAPTER 2, AND PRIOR TO THE [EFFECTIVE DATE OF THAT SUBSECTION].

NEW SECTION. Section 4. Effective date DATES. ~~[This act] is~~ (1) **[SECTION 1, SUBSECTIONS (1), (3), AND (5) THROUGH (16) OF SECTION 2, SECTION 3, AND THIS SECTION] ARE** effective on passage and approval

(2) **[SUBSECTIONS (2) AND (4) OF SECTION 2] ARE EFFECTIVE ON NOVEMBER 1, 1992.**

-End-

781 Amendment

NEW SUBSECTION 6:

(6) In addition to the fee required under subsection (5), above, the Board may order the assessment of additional fees required to fund specific activities of the Department which are directed at a particular geographic area, including emissions or ambient monitoring, modeling analysis or demonstrations, or emissions inventories or tracking. Any such additional assessments shall be levied only upon those sources which are within or are believed by the department to be impacting the geographic area, and whose emissions are of the type within the focus of the activities to be funded. Before the Board may require any such 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, and that the assessments apportion the funding required in an equitable manner.

CHANGES REQUIRED IF THE ABOVE SECTION IS ADDED:

1. A new paragraph should be added to the Statement of Intent:

This bill also allows for the assessment of those fees necessary to fund activities of the department which are intended to address specific air quality problems in the state. 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 which look at specific problems in particular geographic areas. The assessments for funding should be levied in an equitable fashion, and only upon those sources whose emissions both are of the type being focused upon, and are thought to impact the geographic area.

2. The following amendment to current Subsection (6) [new Subsection (7)] would be appropriate:

..., the department may require the permit holder to pay an annual fee which is sufficient to cover the costs identified in subsections (5) and (6) of this section.

3. Internal references would need to be corrected in Subsections (11), (12)(a)(i) and (b).

4. A new provision to the title is probably appropriate --
ALLOWING FEE ASSESSMENTS FOR SPECIFIC DEPARTMENT ACTIVITIES;

Ex. 2

3/20/91

HB 781

PROPOSED AMENDMENT FOR HB 781

Subsection (5) shall be amended as follows:

(5) by rule adopt a schedule of fees not less than \$9.00 per ton of sulfur dioxide (SO₂, particulates and lead and not less than \$3.00 for nitrogen oxides (NO_x) and volatile organic compounds (VOC) for permits and permit applications, consistent under this chapter. Nothing in this law precludes the Department from adopting fees for other pollutants.