

CHAPTER NO. 560

HOUSE BILL NO. 716

INTRODUCED BY BLAYLOCK, KEMMIS, BARDANOUE, GERKE,
DUSSAULT, LORY, McBRIDE, COONEY, JERGESON,
SHELDEN, KESSLER, REICHERT

BY REQUEST OF THE
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

IN THE HOUSE

February 10, 1979	Introduced and referred to Committee on Natural Resources.
February 19, 1979	Intent statement attached. Committee recommend bill do pass as amended. Report adopted.
February 21, 1979	Printed and placed on members' desks.
February 22, 1979	Second reading, do pass.
February 23, 1979	Considered correctly engrossed. Third reading, passed. Transmitted to second house.

IN THE SENATE

February 23, 1979	Introduced and referred to Committee on Natural Resources.
March 21, 1979	Committee recommend bill be concurring in as amended. Report adopted. Statement of Intent as amended be adopted.
March 23, 1979	Second reading, concurred in.
March 27, 1979	Third reading, concurred in as amended.

IN THE HOUSE

March 28, 1979

Returned from second house.
Concurred in as amended with
Intent statement.

March 31, 1979

Second reading, amendments
adopted.

April 2, 1979

Third reading, amendments
adopted. Sent to enrolling.

Reported correctly enrolled.

House BILL NO. *716*

INTRODUCED BY *Kenneth Burdick & Steve Whisnand by*
McBride & Blaylock BY REQUEST OF THE *Jerguson Stalder*
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES *Kessler*
Reichert

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A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE CLEAN AIR ACT OF MONTANA TO GRANT THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES AUTHORITY TO ADOPT RULES REQUIRED BY FEDERAL LAW; TO PERMIT FEES TO BE ASSESSED FOR ENVIRONMENTAL IMPACT ANALYSIS; TO PROVIDE NOTICE AND HEARING IN ACCORDANCE WITH THE MONTANA ADMINISTRATIVE PROCEDURE ACT AND REDUCE TIME REQUIRED FOR NOTIFICATION TO THE AIR POLLUTION ADVISORY COUNCIL; TO PERMIT FEES TO BE ASSESSED FOR REVIEWING PERMIT APPLICATIONS AND IMPLEMENTING AND ENFORCING PERMIT REQUIREMENTS; TO PROVIDE THAT NOTICE MAY BE GIVEN PERSONALLY OR BY MAIL; TO REVISE AND CLARIFY THE ROLE OF LOCAL GOVERNMENT IN THE CONTROL OF AIR CONTAMINATION; TO ESTABLISH NONCOMPLIANCE PENALTY FEES; AND TO INCREASE THE MAXIMUM CIVIL PENALTY FROM \$1,000 TO \$25,000; AMENDING SECTIONS 75-2-111, 75-2-112, 75-2-205, 75-2-211, 75-2-301, 75-2-401, AND 75-2-413, MCA."

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:

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(1) adopt, amend, and repeal rules ~~implementing and consistent with for the administration, implementation, and enforcement of~~ this chapter ~~and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant thereto;~~

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

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

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

~~(5) by rule adopt a schedule of fees required for permits under this chapter."~~

Section 2. Section 75-2-112, MCA, is amended to read:
"75-2-112. Powers and responsibilities of department.
(1) The department is responsible for the administration of this chapter.
(2) The department shall:

1 (a) by appropriate administrative and judicial
2 proceedings, enforce orders issued by the board;

3 (b) secure necessary scientific, technical,
4 administrative, and operational services, including
5 laboratory facilities, by contract or otherwise;

6 (c) prepare and develop a comprehensive plan for the
7 prevention, abatement, and control of air pollution in this
8 state;

9 (d) encourage voluntary cooperation by persons and
10 affected groups to achieve the purposes of this chapter;

11 (e) encourage local units of government to handle air
12 pollution problems within their respective jurisdictions on
13 a cooperative basis and provide technical and consultative
14 assistance for this. If local programs are financed with
15 public funds, the department may contract with the local
16 government to share the cost of the program. However, the
17 state share may not exceed 30% of the total cost.

18 (f) encourage and conduct studies, investigations, and
19 research relating to air contamination and air pollution and
20 their causes, effects, prevention, abatement, and control;

21 (g) determine, by means of field studies and sampling,
22 the degree of air contamination and air pollution in the
23 state;

24 (h) make a continuing study of the effects of the
25 emission of air contaminants from motor vehicles on the

1 quality of the outdoor atmosphere of this state and make
2 recommendations to appropriate public and private bodies
3 with respect to this;

4 (i) collect and disseminate information and conduct
5 educational and training programs relating to air
6 contamination and air pollution;

7 (j) advise, consult, contract, and cooperate with
8 other agencies of the state, local governments, industries,
9 other states, interstate and interlocal agencies, the United
10 States, and any interested persons or groups;

11 (k) consult, on request, with any person proposing to
12 construct, install, or otherwise acquire an air contaminant
13 source or device or system for the control thereof
14 concerning the efficacy of this device or system or the air
15 pollution problems which may be related to the source,
16 device, or system. Nothing in this consultation relieves a
17 person from compliance with this chapter, rules in force
18 under it, or any other provision of law.

19 (l) accept, receive, and administer grants or other
20 funds or gifts from public or private agencies, including
21 the United States, for the purpose of carrying out this
22 chapter. Funds received under this section shall be
23 deposited in the state treasury to the account of the
24 department.

25 (3) The department may assess fees for the analysis of

1 the environmental impact of an application to redesignate
 2 the classification of any area, except those areas within
 3 the exterior boundaries of a reservation of a federally
 4 recognized Indian tribe, under the classifications
 5 established by 42 U.S.C. 7470 through 7479 (prevention of
 6 significant deterioration of air quality). The determination
 7 of whether or not a fee will be assessed is to be on a
 8 case-by-case basis."

9 Section 3. Section 75-2-205, MCA, is amended to read:

10 "75-2-205. Public hearings on rules. No rule and no
 11 amendment or repeal thereof may take effect except after
 12 public hearing on due notice and after the advisory council
 13 has been given, at ~~least 30 days before the time of~~
 14 publication, of the proposed text to comment thereon. ~~The~~
 15 ~~Such~~ notice shall be given by ~~public advertisement not less~~
 16 ~~than 20 or more than 30 days before the date set for the~~
 17 ~~public hearing and any hearing conducted in accordance with~~
 18 ~~the provisions of the Montana Administrative Procedure Act~~
 19 ~~and rules made pursuant thereto."~~

20 Section 4. 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.

25 (2) Not later than 180 days before construction begins

1 of any machine, equipment, device, or facility which the
 2 board finds may directly or indirectly cause or contribute
 3 to air pollution or which is intended primarily to prevent
 4 or control the emission of air pollutants and not later than
 5 120 days before installation, alteration, or use begins, the
 6 owner or operator shall file with the department the
 7 appropriate permit application on forms available from the
 8 department, and pay to a local government exercising
 9 authority under 75-2-301(9) or to the department if such
 10 local authority is not exercised a fee sufficient to cover:
 11 (a) the reasonable costs of reviewing and acting upon
 12 the application for such permit; and
 13 (b) the reasonable costs of implementing and enforcing
 14 the terms and conditions of such permit if the permit is
 15 granted. The fee shall be deposited in an earmarked revenue
 16 fund to be used by the department for administration of this
 17 section.

18 (3) The department may, for good cause shown, waive
 19 ~~the provisions of subsection (2)~~ or shorten the time
 20 required for filing the appropriate applications.

21 (4) The department shall require that applications for
 22 permits be accompanied by any plans, specifications, and
 23 other information it considers necessary.

24 (5) An application is not considered filed until the
 25 applicant has submitted all information and completed all

1 application forms required by subsections (2), (3), and (4).
 2 However, if the department fails to notify the applicant in
 3 writing within 30 days after the purported filing of an
 4 application that the application is incomplete and fails to
 5 list the reasons why the application is considered
 6 incomplete, the application is considered filed as of the
 7 date of the purported filing.

8 (6) Where an application for a permit requires the
 9 compilation of an environmental impact statement under the
 10 Montana Environmental Policy Act, the department shall
 11 notify the applicant in writing within 180 days of the
 12 receipt of a filed application, as defined in subsection
 13 (5), of the approval or denial of the application. However,
 14 where an application does not require the compilation of an
 15 environmental impact statement, the department shall notify
 16 the applicant in writing within 60 days of the receipt of a
 17 filed application, as defined in subsection (5), of the
 18 approval or denial of the application. Notification of
 19 approval or denial may be served personally or by mail on
 20 the applicant or his agent.

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

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

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

10 Section 5. Section 75-2-301, MCA, is amended to read:

11 "75-2-301. Local air pollution control programs. (1) A
 12 municipality or county may establish a local air pollution
 13 control program on being petitioned by 15% of the qualified
 14 electors in its jurisdiction and, if the program is
 15 consistent with this chapter and is approved by the board
 16 after a public hearing conducted under 75-2-111, may
 17 thereafter administer in its jurisdiction the air polluti
 18 control program which:

19 (a) provides by ordinance or local law for
 20 requirements compatible with, more stringent, or more
 21 extensive than those imposed by 75-2-203, ~~75-2-204,~~
 22 ~~75-2-211,~~ 75-2-212, and 75-2-402 and rules issued under
 23 these sections;

24 (b) provides for the enforcement of these requirements
 25 by appropriate administrative and judicial process; and

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

4 (2) If the board finds that the location, character,
5 or extent of particular concentrations of population, air
6 contaminant sources, or geographic, topographic, or
7 meteorological considerations or any combination of these
8 are such as to make impracticable the maintenance of
9 appropriate levels of air quality without an areawide air
10 pollution control program, the board may determine the
11 boundaries within which the program is necessary and require
12 it as the only acceptable alternative to direct state
13 administration.

14 (3) If the board has reason to believe that an air
15 pollution control program in force under this section is
16 inadequate to prevent and control air pollution in the
17 jurisdiction to which the program relates or that the
18 program is being administered in a manner inconsistent with
19 this chapter, the board shall, on notice, conduct a hearing
20 on the matter.

21 (4) If, after the hearing, the board determines that
22 the program is inadequate to prevent and control air
23 pollution in the jurisdiction to which it relates or that it
24 is not accomplishing the purposes of this chapter, it shall
25 require that necessary corrective measures be taken within a

1 reasonable time, not to exceed 60 days.

2 (5) If the jurisdiction fails to take these measures
3 within the time required, the department shall administer
4 within such jurisdiction all of the provisions of this
5 chapter. The department's control program supersedes all
6 municipal or county air pollution laws, rules, ordinances,
7 and requirements in the affected jurisdiction. The cost of
8 the program shall be a charge on the municipality or county.

9 (6) If the board finds that the control of a
10 particular ~~class~~ of air contaminant source because of its
11 complexity or magnitude is beyond the reasonable capability
12 of the local jurisdiction ~~or may be more efficiently and~~
13 ~~economically performed at the state level~~ and that the
14 department is better able than the local jurisdiction to
15 control the air contaminant source, it may direct the
16 department to assume and retain control over that ~~class~~ of
17 air contaminant source. No charge may be assessed against
18 the jurisdiction therefor. Findings made under this
19 subsection may be either on the basis of the nature of the
20 sources involved or on the basis of their relationship to
21 the size of the communities in which they are located.

22 (7) A jurisdiction in which the department administers
23 its air pollution control program under subsection (5) of
24 this section may, with the approval of the board, establish
25 or resume an air pollution control program which meets the

1 requirements of subsection (1) of this section.

2 (8) A municipality or county may administer all or
3 part of its air pollution control program in cooperation
4 with one or more municipalities or counties of this state or
5 of other states.

6 (9) A municipality or county that is administering an
7 air pollution control program under this section may
8 exercise the following powers:

9 (a) The municipality or county may assess and collect
10 noncompliance penalties provided for in [sections 7 through
11 15] for air contaminant sources under its jurisdiction. All
12 noncompliance penalties collected by the municipality or
13 county pursuant to [sections 7 through 15] shall be
14 deposited in a trust and agency account until a final
15 determination and adjustment are made as provided in
16 [section 10] and amounts are deducted by the municipality or
17 county for costs attributable to implementation of [sections
18 7 through 15] and for contract costs incurred pursuant to
19 [subsection (3) of section 8], if any. After a final
20 determination is made and additional payments or refunds are
21 made, the remaining penalty money shall be transferred to
22 the general fund of the municipality or county.

23 (b) The municipality or county may collect permit fees
24 provided for in 75-2-211."

25 Section 6. Section 75-2-401, MCA, is amended to read:

1 "75-2-401. Enforcement. (1) When the department
2 believes that a violation of this chapter or a rule made
3 under it has occurred, it may cause written notice to be
4 served personally or by mail on the alleged violator or his
5 agent. The notice shall specify the provision of this
6 chapter or rule alleged to be violated and the facts alleged
7 to constitute a violation and may include an order to take
8 necessary corrective action within a reasonable period of
9 time stated in the order. The order becomes final unless,
10 within 30 days after the notice is received, the person
11 named requests in writing a hearing before the board. On
12 receipt of the request, the board shall ~~hold~~ schedule a
13 hearing.

14 (2) If, after a hearing held under subsection (1) of
15 this section, the board finds that violations have occurred,
16 it shall either affirm or modify an order previously issued
17 or issue an appropriate order for the prevention, abatement-
18 or control of the emissions involved or for the taking of
19 other corrective action it considers appropriate. An order
20 issued as part of a notice or after a hearing may prescribe
21 the date by which the violation shall cease and may
22 prescribe time limits for particular action in preventing,
23 abating, or controlling the emissions. If, after hearing on
24 an order contained in a notice, the board finds that no
25 violation is occurring, it shall rescind the order.

1 (3) Instead of issuing the order provided for in
2 subsection (1), the department may either:

3 (a) require that the alleged violators appear before
4 the board for a hearing at a time and place specified in the
5 notice and answer the charges complained of; or

6 (b) initiate action under 75-2-412 or 75-2-413.

7 ~~(4) Action under 75-2-412 is not a bar to enforcement~~
8 ~~of this chapter or of rules or orders made under it by~~
9 ~~injunction or other appropriate remedy. The department may~~
10 ~~institute and maintain in the name of the state any~~
11 ~~enforcement proceedings.~~

12 ~~(4)(5) This chapter does not prevent the board or~~
13 ~~department from making efforts to obtain voluntary~~
14 ~~compliance through warning, conference, or any other~~
15 ~~appropriate means.~~

16 ~~(5)(6) In connection with a hearing held under this~~
17 ~~section, the board may and on application by a party shall~~
18 ~~compel the attendance of witnesses and the production of~~
19 ~~evidence on behalf of the parties."~~

20 NEW SECTION. Section 7. Persons subject to
21 noncompliance penalties -- exemptions. (1) Except as
22 provided in subsection (2) and subject to collection by a
23 local government pursuant to 75-2-301(9), the department
24 shall assess and collect a noncompliance penalty from any
25 person who owns or operates:

1 (a) a stationary source which is not in compliance
2 with any provision of [Title 75, chapter 2] or any rule
3 adopted or order issued pursuant to [Title 75, chapter 2];

4 (b) a stationary source which is not in compliance
5 with an emission limitation, emission standard, standard of
6 performance, or other requirement under 42 U.S.C. 7411 or 42
7 U.S.C. 7412; or

8 (c) any source referred to in subsections (1)(b) or
9 (1)(c) which has been granted an exemption, extension, or
10 suspension under subsection (2) or which is covered by a
11 compliance order if such source is not in compliance with
12 any interim emission control requirement or schedule of
13 compliance under such extension, order, or suspension.

14 (2) Notwithstanding the requirements of subsection
15 (1), the department may, after notice and opportunity for a
16 public hearing, exempt any source from the requirements of
17 [sections 7 through 15] with respect to a particular
18 instance of noncompliance which:

19 (a) the department finds is de minimus in nature and
20 in duration; or

21 (b) is exempt under 42 U.S.C. 7420(a)(2)(B) of the
22 federal Clean Air Act.

23 NEW SECTION. Section 8. Amount of noncompliance
24 penalty -- late charge. (1) The amount of the penalty which
25 shall be assessed and collected with respect to any source

1 under [sections 7 through 15] shall be equal to:

2 (a) the amount determined in accordance with the rules
3 adopted by the board, which shall be no less than the
4 economic value which a delay in compliance after July 1,
5 1979, may have for the owner of such source, including the
6 quarterly equivalent of the capital costs of compliance and
7 debt service over a normal amortization period not to exceed
8 10 years, operation and maintenance costs foregone as a
9 result of noncompliance, and any additional economic value
10 which such a delay may have for the owner or operator of
11 such source; minus

12 (b) the amount of any expenditure made by the owner or
13 operator of that source during any such quarter for the
14 purpose of bringing that source into and maintaining
15 compliance with such requirement, to the extent that such
16 expenditures have not been taken into account in the
17 calculation of the penalty under subsection (1)(a).

18 (2) To the extent that any expenditure under
19 subsection (1)(b) made during any quarter is not subtracted
20 for such quarter from the costs under subsection (1)(a),
21 such expenditure may be subtracted for any subsequent
22 quarter from such costs. In no event may the amount paid be
23 less than the quarterly payment minus the amount attributed
24 to actual cost of construction.

25 (3) If the owner or operator of any stationary source

1 to whom notice is issued under [section 11] does not submit
2 a timely petition under [subsection (2)(b) of section 11] or
3 submits a petition which is denied and if the owner or
4 operator fails to submit a calculation of the penalty
5 assessment, a schedule for payment, and the information
6 necessary for independent verification thereof, the
7 department may enter into a contract with any person who has
8 no financial interest in the matter to assist in determining
9 the amount of the penalty assessment or payment schedule
10 with respect to such source. The cost of carrying out such
11 contract may be added to the penalty to be assessed against
12 the owner or operator of such source.

13 (4) Any person who fails to pay the amount of any
14 penalty with respect to any source under [sections 7 through
15 15] on a timely basis shall be required to pay in addition a
16 quarterly nonpayment penalty for each quarter during which
17 such failure to pay persists. Such nonpayment penalty shall
18 be equal to 20% of the aggregate amount of such person's
19 penalties and nonpayment penalties with respect to such
20 source which are unpaid as of the beginning of such quarter.

21 NEW SECTION. Section 9. Manner of making payment. (1)
22 The assessed penalty required under [sections 7 through 15]
23 shall be paid in quarterly installments for the period of
24 covered noncompliance. All quarterly payments, determined
25 without regard to any adjustment or any subtraction under

1 [subsection (1)(b) of section 8], after the first payment
2 shall be equal.

3 (2) The first payment shall be due on the date 6
4 months after the date of issuance of the notice of
5 noncompliance under [section 11] with respect to any source.
6 Such first payment shall be in the amount of the quarterly
7 installment for the upcoming quarter, plus the amount owed
8 for any preceding period within the period of covered
9 noncompliance for such source.

10 (3) For the purpose of this section, the term "period
11 of covered noncompliance" means the period which begins on
12 the date of issuance of the notice of noncompliance under
13 [section 11] and ends on the date on which such source comes
14 into or, for the purpose of establishing the schedule of
15 payments, is estimated to come into compliance with such
16 requirement.

17 NEW SECTION. Section 10. Adjustment of fee. (1) The
18 department shall adjust from time to time the amount of the
19 penalty assessment calculated or the payment schedule
20 proposed by such owner or operator under [subsection (2)(a)
21 of section 11], if the department finds after notice and
22 opportunity for a hearing on the record that the penalty or
23 schedule does not meet the requirements of [sections 7
24 through 15].

25 (2) Upon making a determination that a source with

1 respect to which a penalty has been paid under [sections 7
2 through 15] is in compliance and is maintaining compliance
3 with the applicable requirement, the department shall review
4 the actual expenditures made by the owner or operator of
5 such source for the purpose of attaining and maintaining
6 compliance and shall make a final adjustment within 180 days
7 after such source comes into compliance and:

8 (a) provide reimbursement with interest to be paid by
9 the state at appropriate prevailing rates for overpayment by
10 such person; or

11 (b) assess and collect an additional payment with
12 interest at appropriate prevailing rates for any
13 underpayment by such person.

14 NEW SECTION. Section 11. Notice of noncompliance --
15 challenge. (1) The department shall give a brief but
16 reasonably specific notice of noncompliance to each person
17 who owns or operates a source subject to [subsection (1) of
18 section 7] which is not in compliance as provided in that
19 subsection, within 30 days after the department has
20 discovered the noncompliance.

21 (2) Each person to whom notice has been given pursuant
22 to subsection (1) shall:

23 (a) calculate the amount of penalty owed (determined
24 in accordance with [subsection (1) of section 8]) and the
25 schedule of payments (determined in accordance with [section

1 9)) for each source and, within 45 days after issuance of
 2 the notice of noncompliance, submit that calculation and
 3 proposed schedule, together with the information necessary
 4 for an independent verification thereof, to the department;
 5 or

6 (b) submit to the board a petition within 45 days
 7 after the issuance of such notice, challenging such notice
 8 of noncompliance or alleging entitlement to an exemption
 9 under [subsection (2) of section 7] with respect to a
 10 particular source.

11 (3) Each person to whom notice of noncompliance is
 12 given shall pay the department the amount determined under
 13 [section 8] as the appropriate penalty unless there has been
 14 a final determination granting a petition filed pursuant to
 15 subsection (2)(b).

16 NEW SECTION. Section 12. Hearing on challenge. (1)
 17 The board shall provide a hearing on the record and make a
 18 decision (including findings of fact and conclusions of law)
 19 not later than 90 days after the receipt of any petition
 20 under [subsection (2)(b) of section 11] with respect to such
 21 source.

22 (2) If the petition is denied, the petitioner shall
 23 submit the material required by [subsection (2)(a) of
 24 section 11] to the department within 45 days of the date of
 25 decision.

1 NEW SECTION. Section 13. Deposit of noncompliance
 2 penalty fees. All noncompliance penalties collected by the
 3 department pursuant to [sections 7 through 15] shall be
 4 deposited in an earmarked revenue fund until a final
 5 determination and adjustment have been made as provided in
 6 [section 10] and amounts have been deducted by the
 7 department for costs attributable to implementation of
 8 [sections 7 through 15] and for contract costs incurred
 9 pursuant to [subsection (3) of section 8], if any. After a
 10 final determination has been made and additional payments or
 11 refunds have been made, the penalty money remaining shall be
 12 transferred to the state general fund.

13 NEW SECTION. Section 14. Effect of new standards on
 14 noncompliance penalty. In the case of any emission
 15 limitation, emission standard, or other requirement approved
 16 or adopted by the board under [Title 75, chapter 2] after
 17 [the effective date of this act] which is more stringent
 18 than the emission limitation or requirement for the source
 19 in effect prior to such approval or promulgation, if any, or
 20 where there was no emission limitation, emission standard,
 21 or other requirement approved or adopted before [the
 22 effective date of this act], the date for imposition of the
 23 noncompliance penalty under [sections 7 through 15] shall
 24 be the date on which the source is required to be in full
 25 compliance with such emission limitation, emission standard,

1 or other requirement or 3 years after the approval or
2 promulgation of such emission limitation or requirement,
3 whichever is sooner.

4 NEW SECTION. Section 15. Effect of noncompliance
5 penalty on other remedies. (1) Any orders, payments,
6 sanctions, or other requirements under [sections 7 through
7 15] shall be in addition to any other permits, orders,
8 payments, sanctions, or other requirements established under
9 [Title 75, chapter 2] and shall in no way affect any civil
10 or criminal enforcement proceedings brought under 75-2-412
11 or 75-2-413.

12 (2) The noncompliance penalties collected pursuant to
13 [sections 7 through 15] are intended to be cumulative and in
14 addition to any other remedies, procedures, and requirements
15 authorized by [Title 75, chapter 2].

16 Section 16. Section 75-2-413, MCA, is amended to read:

17 "75-2-413. Civil penalties -- out-of-state litigants
18 -- effect of action. (1) Any person who violates any
19 provision of this chapter or any rule enforced thereunder or
20 any order made pursuant thereto shall be subject to a civil
21 penalty not to exceed ~~\$17,000~~ \$25,000. Each day of violation
22 shall constitute a separate violation. The department may
23 institute and maintain in the name of the state any
24 enforcement proceedings hereunder. Upon request of the
25 department, the attorney general or the county attorney of

1 the county of violation shall petition the district court to
2 impose, assess, and recover the civil penalty. The civil
3 penalty is in lieu of the criminal penalty provided for in
4 75-2-412.

5 (2) (a) Action under subsection (1) of this section is
6 not a bar to enforcement of this chapter or of rules or
7 orders made under it by injunction or other appropriate
8 civil remedies.

9 (b) An action under subsection (1) or to enforce this
10 chapter or the rules or orders made under it may be brought
11 in the district court of any county where a violation occurs
12 or is threatened if the defendant cannot be located in
13 Montana.

14 (3) Moneys collected hereunder shall be deposited in
15 the state general fund."

16 Section 17. Codification. It is intended that sections
17 7 through 15 be codified as an integral part of Title 75,
18 chapter 2, part 4, and the provisions of Title 75, chapter
19 2, apply to sections 7 through 15.

20 Section 18. Saving clause. This act does not affect
21 rights and duties that matured, penalties that were
22 incurred, or proceedings that were begun before the
23 effective date of this act.

24 Section 19. Severability. If a part of this act is
25 invalid, all valid parts that are severable from the invalid

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LC 0291/01

1 part remain in effect. If a part of this act is invalid in
2 one or more of its applications, the part remains in effect
3 in all valid applications that are severable from the
4 invalid applications.

-End-

1 STATEMENT OF INTENT RE: HB 716

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4 The Legislature intends to grant to the Board of Health
5 and Environmental Sciences rulemaking authority to adopt a
6 permit fee schedule. Local air pollution control agencies
7 that assess fees in accordance with these rules shall use
8 the same permit fee schedule.

9 First adopted by the HOUSE COMMITTEE ON NATURAL
10 RESOURCES on February 19, 1979.

HB 716

Approved by Committee
on Natural Resources

HOUSE BILL NO. 716

INTRODUCED BY BLAYLOCK, KEMMIS, BARDANOUVE, GERKE,

DUSSAULT, LORY, MCBRIDE, COONEY, JERGESON,

SHELDON, KESSLER, REICHERT

BY REQUEST OF THE

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE CLEAN AIR ACT OF MONTANA TO GRANT THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES AUTHORITY TO ADOPT RULES REQUIRED BY FEDERAL LAW; TO ISSUE ORDERS PROVIDED FOR BY FEDERAL LAW; TO PERMIT FEES TO BE ASSESSED FOR ENVIRONMENTAL IMPACT ANALYSIS; TO PROVIDE NOTICE AND HEARING IN ACCORDANCE WITH THE MONTANA ADMINISTRATIVE PROCEDURE ACT AND REDUCE TIME REQUIRED FOR NOTIFICATION TO THE AIR POLLUTION ADVISORY COUNCIL; TO CLARIFY THE BOARD'S AUTHORITY TO ADOPT BY RULE A SIMPLIFIED PERMIT SYSTEM FOR AIR CONTAMINANT SOURCES; TO PERMIT FEES TO BE ASSESSED FOR REVIEWING PERMIT APPLICATIONS AND IMPLEMENTING AND ENFORCING PERMIT REQUIREMENTS; TO PROVIDE THAT NOTICE MAY BE GIVEN PERSONALLY OR BY MAIL; TO REVISE AND CLARIFY THE ROLE OF LOCAL GOVERNMENT IN THE CONTROL OF AIR CONTAMINATION; TO ESTABLISH NONCOMPLIANCE PENALTY FEES; AND TO INCREASE THE MAXIMUM CIVIL PENALTY FROM \$1,000 TO \$25,000; AMENDING SECTIONS 75-2-111, 75-2-112, 75-2-205, 75-2-211, 75-2-301, 75-2-401, AND 75-2-413, MCA."

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) ~~adopt, amend, and repeal rules implementing and consistent with for the administration, implementation, and enforcement of this chapter, FOR ISSUING ORDERS UNDER AND IN ACCORDANCE WITH 42 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant thereto;~~

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

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

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

~~(2) by rule adopt a schedule of fees required for permits under this chapter;~~

1 ~~(6) HAVE THE POWER TO ISSUE ORDERS UNDER AND IN~~
 2 ~~ACCORDANCE WITH 42 U.S.C. 7419.~~"

3 Section 2. Section 75-2-112, MCA, is amended to read:
 4 "75-2-112. Powers and responsibilities of department.

5 (1) The department is responsible for the administration of
 6 this chapter.

7 (2) The department shall:

8 (a) by appropriate administrative and judicial
 9 proceedings, enforce orders issued by the board;

10 (b) secure necessary scientific, technical,
 11 administrative, and operational services, including
 12 laboratory facilities, by contract or otherwise;

13 (c) prepare and develop a comprehensive plan for the
 14 prevention, abatement, and control of air pollution in this
 15 state;

16 (d) encourage voluntary cooperation by persons and
 17 affected groups to achieve the purposes of this chapter;

18 (e) encourage local units of government to handle air
 19 pollution problems within their respective jurisdictions on
 20 a cooperative basis and provide technical and consultative
 21 assistance for this. If local programs are financed with
 22 public funds, the department may contract with the local
 23 government to share the cost of the program. However, the
 24 state share may not exceed 30% of the total cost.

25 (f) encourage and conduct studies, investigations, and

1 research relating to air contamination and air pollution and
 2 their causes, effects, prevention, abatement, and control;

3 (g) determine, by means of field studies and sampling,
 4 the degree of air contamination and air pollution in the
 5 state;

6 (h) make a continuing study of the effects of the
 7 emission of air contaminants from motor vehicles on the
 8 quality of the outdoor atmosphere of this state and make
 9 recommendations to appropriate public and private bodies
 10 with respect to this;

11 (i) collect and disseminate information and conduct
 12 educational and training programs relating to air
 13 contamination and air pollution;

14 (j) advise, consult, contract, and cooperate with
 15 other agencies of the state, local governments, industries,
 16 other states, interstate and interlocal agencies, the United
 17 States, and any interested persons or groups;

18 (k) consult, on request, with any person proposing to
 19 construct, install, or otherwise acquire an air contaminant
 20 source or device or system for the control thereof
 21 concerning the efficacy of this device or system or the air
 22 pollution problems which may be related to the source,
 23 device, or system. Nothing in this consultation relieves a
 24 person from compliance with this chapter, rules in force
 25 under it, or any other provision of law.

1 (1) accept, receive, and administer grants or other
 2 funds or gifts from public or private agencies, including
 3 the United States, for the purpose of carrying out this
 4 chapter. Funds received under this section shall be
 5 deposited in the state treasury to the account of the
 6 department.

7 ~~(3) The department may assess fees for the analysis of
 8 the environmental impact of an application to redesignate
 9 the classification of any area, except those areas within
 10 the exterior boundaries of a reservation of a federally
 11 recognized Indian tribe, under the classifications
 12 established by 42 U.S.C. 7470 through 7479 (prevention of
 13 significant deterioration of air quality). The determination
 14 of whether or not a fee will be assessed is to be on a
 15 case-by-case basis."~~

16 Section 3. Section 75-2-205, MCA, is amended to read:

17 "75-2-205. Public hearings on rules. No rule and no
 18 amendment or repeal thereof may take effect except after
 19 public hearing on due notice and after the advisory council
 20 has been given, at least 30 days before the time of
 21 publication, of the proposed text to comment thereon. The
 22 such notice shall be given by public advertisement not less
 23 than 20 or more than 30 days before the date set for the
 24 public hearing and any hearing conducted in accordance with
 25 the provisions of the Montana Administrative Procedure Act

1 and rules made pursuant thereto."

2 Section 4. Section 75-2-211, MCA, is amended to read:

3 "75-2-211. Permits for construction, installation,
 4 alteration, or use. (1) The department shall provide for the
 5 issuance, suspension, revocation, and renewal of a permit
 6 issued under this section.

7 (2) Not later than 180 days before construction begins
 8 of any machine, equipment, device, or facility which the
 9 board finds may directly or indirectly cause or contribute
 10 to air pollution or which is intended primarily to prevent
 11 or control the emission of air pollutants and not later than
 12 120 days before installation, alteration, or use begins, the
 13 owner or operator shall file with the department the
 14 appropriate permit application on forms available from the
 15 department, and pay to a local government exercising
 16 authority under 75-2-301(9) or to the department if such
 17 local authority is not exercised a fee sufficient to cover:

18 (a) the reasonable costs of reviewing and acting upon
 19 the application for such permits and

20 (b) the reasonable costs of implementing and enforcing
 21 the terms and conditions of such permit if the permit is
 22 granted (NOT INCLUDING ANY COURT COSTS OR OTHER COSTS
 23 ASSOCIATED WITH ANY ENFORCEMENT ACTION). The fee shall be
 24 deposited in an earmarked revenue fund to be used by the
 25 department OR SAID LOCAL GOVERNMENT for administration of

1 ~~this section.~~

2 ~~(3) NOTHING IN THIS SECTION SHALL RESTRICT THE BOARD'S~~
 3 ~~AUTHORITY TO ADOPT REGULATIONS PROVIDING FOR A SINGLE AIR~~
 4 ~~QUALITY PERMIT SYSTEM.~~

5 ~~(3)(4) The department may, for good cause shown, waive~~
 6 ~~the provisions of subsection (2) or shorten the time~~
 7 ~~required for filing the appropriate applications.~~

8 ~~(4)(5) The department shall require that applications~~
 9 ~~for permits be accompanied by any plans, specifications, and~~
 10 ~~other information it considers necessary.~~

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

20 ~~(6)(7) Where an application for a permit requires the~~
 21 ~~compilation of an environmental impact statement under the~~
 22 ~~Montana Environmental Policy Act, the department shall~~
 23 ~~notify the applicant in writing within 180 days of the~~
 24 ~~receipt of a filed application, as defined in subsection~~
 25 ~~(5), of the approval or denial of the application. However,~~

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

8 ~~(7)(8) When the department approves or denies the~~
 9 ~~application for a permit under this section, a person who is~~
 10 ~~jointly or severally adversely affected by the department's~~
 11 ~~decision may request, within 15 days after the department~~
 12 ~~renders its decision, upon affidavit setting forth the~~
 13 ~~grounds therefor, a hearing before the board. A hearing~~
 14 ~~shall be held under the provisions of the Montana~~
 15 ~~Administrative Procedure Act.~~

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

22 Section 5. Section 75-2-301, MCA, is amended to read:

23 "75-2-301. Local air pollution control programs. (1) A
 24 municipality or county may establish a local air pollution
 25 control program on being petitioned by 15% of the qualified

1 electors in its jurisdiction and, if the program is
 2 consistent with this chapter and is approved by the board
 3 after a public hearing conducted under 75-2-111, may
 4 thereafter administer in its jurisdiction the air pollution
 5 control program which:

6 (a) provides by ordinance or local law for
 7 requirements compatible with, more stringent, or more
 8 extensive than those imposed by 75-2-203, ~~75-2-204~~,
 9 ~~75-2-211~~, 75-2-212, and 75-2-402 and rules issued under
 10 these sections;

11 (b) provides for the enforcement of these requirements
 12 by appropriate administrative and judicial process; and

13 (c) provides for administrative organization, staff,
 14 financial, and other resources necessary to effectively and
 15 efficiently carry out its program.

16 (2) If the board finds that the location, character,
 17 or extent of particular concentrations of population, air
 18 contaminant sources, or geographic, topographic, or
 19 meteorological considerations or any combination of these
 20 are such as to make impracticable the maintenance of
 21 appropriate levels of air quality without an areawide air
 22 pollution control program, the board may determine the
 23 boundaries within which the program is necessary and require
 24 it as the only acceptable alternative to direct state
 25 administration.

1 (3) If the board has reason to believe that an air
 2 pollution control program in force under this section is
 3 inadequate to prevent and control air pollution in the
 4 jurisdiction to which the program relates or that the
 5 program is being administered in a manner inconsistent with
 6 this chapter, the board shall, on notice, conduct a hearing
 7 on the matter.

8 (4) If, after the hearing, the board determines that
 9 the program is inadequate to prevent and control air
 10 pollution in the jurisdiction to which it relates or that it
 11 is not accomplishing the purposes of this chapter, it shall
 12 require that necessary corrective measures be taken within a
 13 reasonable time, not to exceed 60 days.

14 (5) If the jurisdiction fails to take these measures
 15 within the time required, the department shall administer
 16 within such jurisdiction all of the provisions of this
 17 chapter. The department's control program supersedes all
 18 municipal or county air pollution laws, rules, ordinances,
 19 and requirements in the affected jurisdiction. The cost of
 20 the program shall be a charge on the municipality or county.

21 (6) If the board finds that the control of a
 22 particular class of air contaminant source because of its
 23 complexity or magnitude is beyond the reasonable capability
 24 of the local jurisdiction or may be more efficiently and
 25 economically performed at the state level and that the

1 department is better able than the local jurisdiction to
 2 control the air contaminant source, it may direct the
 3 department to assume and retain control over that class--of
 4 air contaminant source. No charge may be assessed against
 5 the jurisdiction therefor. Findings made under this
 6 subsection may be either on the basis of the nature of the
 7 sources involved or on the basis of their relationship to
 8 the size of the communities in which they are located.

9 (7) A jurisdiction in which the department administers
 10 its air pollution control program under subsection (5) of
 11 this section may, with the approval of the board, establish
 12 or resume an air pollution control program which meets the
 13 requirements of subsection (1) of this section.

14 (8) A municipality or county may administer all or
 15 part of its air pollution control program in cooperation
 16 with one or more municipalities or counties of this state or
 17 of other states.

18 ~~(9) A municipality or county that is administering an~~
 19 ~~air pollution control program under this section may~~
 20 ~~exercise the following powers:~~

21 ~~(a) The municipality or county may assess and collect~~
 22 ~~noncompliance penalties provided for in [sections 7 through~~
 23 ~~15] for air contaminant sources under its jurisdiction. All~~
 24 ~~noncompliance penalties collected by the municipality or~~
 25 ~~county pursuant to [sections 7 through 15] shall be~~

1 deposited in a trust and agency account until a final
 2 determination and adjustment are made as provided in
 3 [section 10] and amounts are deducted by the municipality or
 4 county for costs attributable to implementation of [sections
 5 7 through 15] and for contract costs incurred pursuant to
 6 [subsection (3) of section 8], if any. After a final
 7 determination is made and additional payments or refunds are
 8 made, the remaining penalty money shall be transferred to
 9 the general fund of the municipality or county.

10 (b) ~~The municipality or county may collect permit fees~~
 11 ~~provided for in 75-2-211a."~~

12 Section 6. Section 75-2-401, MCA, is amended to read:
 13 "75-2-401. Enforcement. (1) When the department
 14 believes that a violation of this chapter or a rule made
 15 under it has occurred, it may cause written notice to be
 16 served personally or by REGISTERED OR CERTIFIED mail on the
 17 alleged violator or his agent. The notice shall specify the
 18 provision of this chapter or rule alleged to be violated and
 19 the facts alleged to constitute a violation and may include
 20 an order to take necessary corrective action within a
 21 reasonable period of time stated in the order. The order
 22 becomes final unless, within 30 days after the notice is
 23 received, the person named requests in writing a hearing
 24 before the board. On receipt of the request, the board shall
 25 hold schedule a hearing.

1 (2) If, after a hearing held under subsection (1) of
 2 this section, the board finds that violations have occurred,
 3 it shall either affirm or modify an order previously issued
 4 or issue an appropriate order for the prevention, abatement,
 5 or control of the emissions involved or for the taking of
 6 other corrective action it considers appropriate. An order
 7 issued as part of a notice or after a hearing may prescribe
 8 the date by which the violation shall cease and may
 9 prescribe time limits for particular action in preventing,
 10 abating, or controlling the emissions. If, after hearing on
 11 an order contained in a notice, the board finds that no
 12 violation is occurring, it shall rescind the order.

13 (3) Instead of issuing the order provided for in
 14 subsection (1), the department may either:

15 (a) require that the alleged violators appear before
 16 the board for a hearing at a time and place specified in the
 17 notice and answer the charges complained of; or

18 (b) initiate action under 75-2-412 or 75-2-413.

19 ~~44--Action under 75-2-412 is not a bar to enforcement~~
 20 ~~of this chapter or of rules or orders made under it by~~
 21 ~~injunction or other appropriate remedy; the department may~~
 22 ~~institute and maintain in the name of the state any~~
 23 ~~enforcement proceedings;~~

24 (4) (5) (4) This chapter does not prevent the board or
 25 department from making efforts to obtain voluntary

1 compliance through warning, conference, or any other
 2 appropriate means.

3 (5) (5) (1) In connection with a hearing held under this
 4 section, the board may and on application by a party shall
 5 compel the attendance of witnesses and the production of
 6 evidence on behalf of the parties.*

7 NEW SECTION. Section 7. Persons subject to
 8 noncompliance penalties -- exemptions. (1) Except as
 9 provided in subsection (2) and subject to collection by a
 10 local government pursuant to 75-2-301(9), the department
 11 shall assess and collect a noncompliance penalty from any
 12 person who owns or operates:

13 (a) a stationary source (OTHER THAN A PRIMARY
 14 NONFERROUS SMELTER WHICH HAS RECEIVED A NONFERROUS SMELTER
 15 ORDER UNDER 42 U.S.C. 7419) which is not in compliance with
 16 any provision of ~~[title 75, chapter 2] or any rule adopted~~
 17 ~~or order issued pursuant to [title 75, chapter 2]~~ EMISSION
 18 LIMITATION SPECIFIED IN AN ORDER OF THE BOARD, EMISSION
 19 STANDARD, OR COMPLIANCE SCHEDULE UNDER THE STATE
 20 IMPLEMENTATION PLAN APPROVED BY THE FEDERAL ENVIRONMENTAL
 21 PROTECTION AGENCY;

22 (b) a stationary source which is not in compliance
 23 with an emission limitation, emission standard, standard of
 24 performance, or other requirement under 42 U.S.C. 7411 or 42
 25 U.S.C. 7412; or

1 (c) any source referred to in subsections (1)(b)(A) or
 2 (1)(c)(B) which has been granted an exemption, extension, or
 3 suspension under subsection (2) or which is covered by a
 4 compliance order, OR A PRIMARY NONFERROUS SMELTER WHICH HAS
 5 RECEIVED A PRIMARY NONFERROUS SMELTER ORDER UNDER 42 U.S.C.
 6 7412, if such source is not in compliance with any interim
 7 emission control requirement or schedule of compliance under
 8 such extension, order, or suspension.

9 (2) Notwithstanding the requirements of subsection
 10 (1), the department may, after notice and opportunity for a
 11 public hearing, exempt any source from the requirements of
 12 [sections 7 through 15] with respect to a particular
 13 instance of noncompliance which:

14 (a) the department finds is de minimus in nature and
 15 in duration; or

16 (b) is exempt under 42 U.S.C. 7420(a)(2)(B) of the
 17 Federal Clean Air Act.

18 NEW SECTION. Section 8. Amount of noncompliance
 19 penalty -- late charge. (1) The amount of the penalty which
 20 shall be assessed and collected with respect to any source
 21 under [sections 7 through 15] shall be equal to:

22 (a) the amount determined in accordance with the rules
 23 adopted by the board, which shall be no less than the
 24 economic value which a delay in compliance after July 1,
 25 1979, may have for the owner of such source, including the

1 quarterly equivalent of the capital costs of compliance and
 2 debt service over a normal amortization period not to exceed
 3 10 years, operation and maintenance costs foregone as a
 4 result of noncompliance, and any additional economic value
 5 which such a delay may have for the owner or operator of
 6 such source; minus

7 (b) the amount of any expenditure made by the owner or
 8 operator of that source during any such quarter for the
 9 purpose of bringing that source into and maintaining
 10 compliance with such requirement, to the extent that such
 11 expenditures have not been taken into account in the
 12 calculation of the penalty under subsection (1)(a).

13 (2) To the extent that any expenditure under
 14 subsection (1)(b) made during any quarter is not subtracted
 15 for such quarter from the costs under subsection (1)(a),
 16 such expenditure may be subtracted for any subsequent
 17 quarter from such costs. In no event may the amount paid be
 18 less than the quarterly payment minus the amount attributed
 19 to actual cost of construction.

20 (3) If the owner or operator of any stationary source
 21 to whom notice is issued under [section 11] does not submit
 22 a timely petition under [subsection (2)(b) of section 11] or
 23 submits a petition which is denied and if the owner or
 24 operator fails to submit a calculation of the penalty
 25 assessment, a schedule for payment, and the information

1 necessary for independent verification thereof, the
 2 department may enter into a contract with any person who has
 3 no financial interest in the matter to assist in determining
 4 the amount of the penalty assessment or payment schedule
 5 with respect to such source. The cost of carrying out such
 6 contract may be added to the penalty to be assessed against
 7 the owner or operator of such source.

8 (4) Any person who fails to pay the amount of any
 9 penalty with respect to any source under [sections 7 through
 10 15] on a timely basis shall be required to pay in addition a
 11 quarterly nonpayment penalty for each quarter during which
 12 such failure to pay persists. Such nonpayment penalty shall
 13 be equal to 20% of the aggregate amount of such person's
 14 penalties and nonpayment penalties with respect to such
 15 source which are unpaid as of the beginning of such quarter.

16 NEW SECTION. Section 9. Manner of making payment. (1)
 17 The assessed penalty required under [sections 7 through 15]
 18 shall be paid in quarterly installments for the period of
 19 covered noncompliance. All quarterly payments, determined
 20 without regard to any adjustment or any subtraction under
 21 [subsection (1)(D) of section 8], after the first payment
 22 shall be equal.

23 (2) The first payment shall be due on the date 6
 24 months after the date of issuance of the notice of
 25 noncompliance under [section 11] with respect to any source.

1 Such first payment shall be in the amount of the quarterly
 2 installment for the upcoming quarter, plus the amount owed
 3 for any preceding period within the period of covered
 4 noncompliance for such source.

5 (3) For the purpose of this section, the term "period
 6 of covered noncompliance" means the period which begins on
 7 the date of issuance of the notice of noncompliance under
 8 [section 11] and ends on the date on which such source comes
 9 into or, for the purpose of establishing the schedule of
 10 payments, is estimated to come into compliance with such
 11 requirement.

12 NEW SECTION. Section 10. Adjustment of fee. (1) The
 13 department shall adjust from time to time the amount of the
 14 penalty assessment calculated or the payment schedule
 15 proposed by such owner or operator under [subsection (2)(a)
 16 of section 11], if the department finds after notice and
 17 opportunity for a hearing on the record that the penalty or
 18 schedule does not meet the requirements of [sections 7
 19 through 15].

20 (2) Upon making a determination that a source with
 21 respect to which a penalty has been paid under [sections 7
 22 through 15] is in compliance and is maintaining compliance
 23 with the applicable requirement, the department shall review
 24 the actual expenditures made by the owner or operator of
 25 such source for the purpose of attaining and maintaining

1 compliance and shall make a final adjustment within 180 days
2 after such source comes into compliance and:

3 (a) provide reimbursement with interest to be paid by
4 the state at appropriate prevailing rates for overpayment by
5 such person; or

6 (b) assess and collect an additional payment with
7 interest at appropriate prevailing rates for any
8 underpayment by such person.

9 **NEW SECTION.** Section 11. Notice of noncompliance --
10 challenge. (1) The department shall give a brief but
11 reasonably specific notice of noncompliance to each person
12 who owns or operates a source subject to [subsection (1) of
13 section 7] which is not in compliance as provided in that
14 subsection, within 30 days after the department has
15 discovered the noncompliance.

16 (2) Each person to whom notice has been given pursuant
17 to subsection (1) shall:

18 (a) calculate the amount of penalty owed (determined
19 in accordance with [subsection (1) of section 8]) and the
20 schedule of payments (determined in accordance with [section
21 9]) for each source and, within 45 days after issuance of
22 the notice of noncompliance, submit that calculation and
23 proposed schedule, together with the information necessary
24 for an independent verification thereof, to the department;
25 or

1 (b) submit to the board a petition within 45 days
2 after the issuance of such notice, challenging such notice
3 of noncompliance or alleging entitlement to an exemption
4 under [subsection (2) of section 7] with respect to a
5 particular source.

6 (3) Each person to whom notice of noncompliance is
7 given shall pay the department the amount determined under
8 [section 8] as the appropriate penalty unless there has been
9 a final determination granting a petition filed pursuant to
10 subsection (2)(b).

11 **NEW SECTION.** Section 12. Hearing on challenge. (1)
12 The board shall provide a hearing on the record and make a
13 decision (including findings of fact and conclusions of law)
14 not later than 90 days after the receipt of any petition
15 under [subsection (2)(b) of section 11] with respect to such
16 source.

17 (2) If the petition is denied, the petitioner shall
18 submit the material required by [subsection (2)(a) of
19 section 11] to the department within 45 days of the date of
20 decision.

21 **NEW SECTION.** Section 13. Deposit of noncompliance
22 penalty fees. All noncompliance penalties collected by the
23 department pursuant to [sections 7 through 15] shall be
24 deposited in an earmarked revenue fund until a final
25 determination and adjustment have been made as provided in

1 [section 10] and amounts have been deducted by the
 2 department for costs attributable to implementation of
 3 [sections 7 through 15] and for contract costs incurred
 4 pursuant to [subsection (3) of section 8], if any. After a
 5 final determination has been made and additional payments or
 6 refunds have been made, the penalty money remaining shall be
 7 transferred to the state general fund.

8 NEW SECTION. Section 14. Effect of new standards on
 9 noncompliance penalty. In the case of any emission
 10 limitation, emission standard, or other requirement approved
 11 or adopted by the board under [Title 75, chapter 2] after
 12 [the effective date of this act], AND APPROVED BY THE
 13 FEDERAL ENVIRONMENTAL PROTECTION AGENCY AS AN AMENDMENT TO
 14 THE STATE IMPLEMENTATION PLAN, which is more stringent than
 15 the emission limitation or requirement for the source in
 16 effect prior to such approval or promulgation, if any, or
 17 where there was no emission limitation, emission standard,
 18 or other requirement approved or adopted before [the
 19 effective date of this act], the date for imposition of the
 20 noncompliance penalty under [sections 7 through 15] shall
 21 be the date on which the source is required to be in full
 22 compliance with such emission limitation, emission standard,
 23 or other requirement or 3 years after the approval or
 24 promulgation of such emission limitation or requirement,
 25 whichever is sooner.

1 NEW SECTION. Section 15. Effect of noncompliance
 2 penalty on other remedies. (1) Any orders, payments,
 3 sanctions, or other requirements under [sections 7 through
 4 15] shall be in addition to any other permits, orders,
 5 payments, sanctions, or other requirements established under
 6 [Title 75, chapter 2] and shall in no way affect any civil
 7 or criminal enforcement proceedings brought under 75-2-412
 8 or 75-2-413.

9 (2) The noncompliance penalties collected pursuant to
 10 [sections 7 through 15] are intended to be cumulative and in
 11 addition to any other remedies, procedures, and requirements
 12 authorized by [Title 75, chapter 2].

13 Section 16. Section 75-2-413, MCA, is amended to read:
 14 "75-2-413. Civil penalties -- out-of-state litigants
 15 -- effect of action. (1) Any person who violates any
 16 provision of this chapter or any rule enforced thereunder or
 17 any order made pursuant thereto shall be subject to a civil
 18 penalty not to exceed ~~\$17,000~~ \$25,000. Each day of violation
 19 shall constitute a separate violation. The department may
 20 institute and maintain in the name of the state any
 21 enforcement proceedings hereunder. Upon request of the
 22 department, the attorney general or the county attorney of
 23 the county of violation shall petition the district court to
 24 impose, assess, and recover the civil penalty. The civil
 25 penalty is in lieu of the criminal penalty provided for in

1 75-2-412.

2 (2) (a) Action under subsection (1) of this section is
 3 not a bar to enforcement of this chapter or of rules or
 4 orders made under it by injunction or other appropriate
 5 civil remedies.

6 (b) An action under subsection (1) or to enforce this
 7 chapter or the rules or orders made under it may be brought
 8 in the district court of any county where a violation occurs
 9 or is threatened if the defendant cannot be located in
 10 Montana.

11 (3) Moneys collected hereunder shall be deposited in
 12 the state general fund."

13 Section 17. Codification. It is intended that sections
 14 7 through 15 be codified as an integral part of Title 75,
 15 chapter 2, part 4, and the provisions of Title 75, chapter
 16 2, apply to sections 7 through 15.

17 Section 18. Saving clause. This act does not affect
 18 rights and duties that matured, penalties that were
 19 incurred, or proceedings that were begun before the
 20 effective date of this act.

21 Section 19. Severability. If a part of this act is
 22 invalid, all valid parts that are severable from the invalid
 23 part remain in effect. If a part of this act is invalid in
 24 one or more of its applications, the part remains in effect
 25 in all valid applications that are severable from the

1 invalid applications.

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STATEMENT OF INTENT RE: HB 716

The Legislature intends to grant to the Board of Health and Environmental Sciences rulemaking authority to adopt a permit fee schedule. ~~Local air-pollution-control agencies that assess fees in accordance with these rates shall use the same permit fee schedule.~~ AND TO ADOPT A SCHEDULE OF PENALTY ASSESSMENTS FOR NONCOMPLIANCE WITH RESPECT TO ANY SOURCE UNDER SECTIONS 7 THROUGH 15 OF THIS ACT.

First adopted by the HOUSE COMMITTEE ON NATURAL RESOURCES on February 19, 1979.

1 STATEMENT OF INTENT RE: HB 716

2

3

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5 and Environmental Sciences rulemaking authority to adopt a
6 permit fee schedule. Local air pollution control agencies
7 that assess fees in accordance with these rules shall use
8 the same permit fee schedule.

9 First adopted by the HOUSE COMMITTEE ON NATURAL
10 RESOURCES on February 19, 1979.

HB 716

1 HOUSE BILL NO. 716

2 INTRODUCED BY BLAYLOCK, KEMMIS, BARDANOUVE, GERKE,

3 DOUSSAULT, LORY, McBRIDE, COONEY, JERGESON,

4 SHELDEN, KESSLER, REICHERT

5 BY REQUEST OF THE

6 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

7
 8 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE CLEAN AIR
 9 ACT OF MONTANA TO GRANT THE BOARD OF HEALTH AND
 10 ENVIRONMENTAL SCIENCES AUTHORITY TO ADOPT RULES REQUIRED BY
 11 FEDERAL LAW; TO ISSUE ORDERS PROVIDED FOR BY FEDERAL LAW; TO
 12 PERMIT FEES TO BE ASSESSED FOR ENVIRONMENTAL IMPACT
 13 ANALYSIS; TO PROVIDE NOTICE AND HEARING IN ACCORDANCE WITH
 14 THE MONTANA ADMINISTRATIVE PROCEDURE ACT AND REDUCE TIME
 15 REQUIRED FOR NOTIFICATION TO THE AIR POLLUTION ADVISORY
 16 COUNCIL; TO CLARIFY THE BOARD'S AUTHORITY TO ADOPT BY RULE A
 17 SIMPLIFIED PERMIT SYSTEM FOR AIR CONTAMINANT SOURCES; TO
 18 PERMIT FEES TO BE ASSESSED FOR REVIEWING PERMIT APPLICATIONS
 19 AND IMPLEMENTING AND ENFORCING PERMIT REQUIREMENTS; TO
 20 PROVIDE THAT NOTICE MAY BE GIVEN PERSONALLY OR BY MAIL; TO
 21 REVISE AND CLARIFY THE ROLE OF LOCAL GOVERNMENT IN THE
 22 CONTROL OF AIR CONTAMINATION; TO ESTABLISH NONCOMPLIANCE
 23 PENALTY FEES; AND TO INCREASE THE MAXIMUM CIVIL PENALTY FROM
 24 \$1,000 TO \$25,000; AMENDING SECTIONS 75-2-111, 75-2-112,
 25 75-2-205, 75-2-211, 75-2-301, 75-2-401, AND 75-2-413, MCA."

1

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

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

4 "75-2-111. Powers of board. The board shall:

5 (1) adopt, amend, and repeal rules implementing and
 6 consistent with ~~for the administration, implementation, and~~
 7 ~~enforcement of~~ this chapter, FOR ISSUING ORDERS UNDER AND IN
 8 ACCORDANCE WITH 42 U.S.C. 7419, and for fulfilling the
 9 requirements of 42 U.S.C. 7420 and regulations adopted
 10 pursuant thereto;

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

20 (3) issue orders necessary to effectuate the purposes
 21 of this chapter;

22 (4) by rule require access to records relating to
 23 emissions;

24 (5) by rule adopt a schedule of fees required for
 25 permits under this chapter;

1 16) HAVE THE POWER TO ISSUE ORDERS UNDER AND IN
 2 ACCORDANCE WITH 42 U.S.C. 7412."

3 Section 2. Section 75-2-112, MCA, is amended to read:

4 "75-2-112. Powers and responsibilities of department.

5 (1) The department is responsible for the administration of
 6 this chapter.

7 (2) The department shall:

8 (a) by appropriate administrative and judicial
 9 proceedings, enforce orders issued by the board;

10 (b) secure necessary scientific, technical,
 11 administrative, and operational services, including
 12 laboratory facilities, by contract or otherwise;

13 (c) prepare and develop a comprehensive plan for the
 14 prevention, abatement, and control of air pollution in this
 15 state;

16 (d) encourage voluntary cooperation by persons and
 17 affected groups to achieve the purposes of this chapter;

18 (e) encourage local units of government to handle air
 19 pollution problems within their respective jurisdictions on
 20 a cooperative basis and provide technical and consultative
 21 assistance for this. If local programs are financed with
 22 public funds, the department may contract with the local
 23 government to share the cost of the program. However, the
 24 state share may not exceed 30% of the total cost.

25 (f) encourage and conduct studies, investigations, and

1 research relating to air contamination and air pollution and
 2 their causes, effects, prevention, abatement, and control;

3 (j) determine, by means of field studies and sampling,
 4 the degree of air contamination and air pollution in the
 5 state;

6 (h) make a continuing study of the effects of the
 7 emission of air contaminants from motor vehicles on the
 8 quality of the outdoor atmosphere of this state and make
 9 recommendations to appropriate public and private bodies
 10 with respect to this;

11 (i) collect and disseminate information and conduct
 12 educational and training programs relating to air
 13 contamination and air pollution;

14 (j) advise, consult, contract, and cooperate with
 15 other agencies of the state, local governments, industries,
 16 other states, interstate and interlocal agencies, the United
 17 States, and any interested persons or groups;

18 (k) consult, on request, with any person proposing to
 19 construct, install, or otherwise acquire an air contaminant
 20 source or device or system for the control thereof
 21 concerning the efficacy of this device or system or the air
 22 pollution problems which may be related to the source,
 23 device, or system. Nothing in this consultation relieves a
 24 person from compliance with this chapter, rules in force
 25 under it, or any other provision of law.

1 (1) accept, receive, and administer grants or other
 2 funds or gifts from public or private agencies, including
 3 the United States, for the purpose of carrying out this
 4 chapter. Funds received under this section shall be
 5 deposited in the state treasury to the account of the
 6 department.

7 (3) The department may assess fees for the analysis of
 8 the environmental impact of an application to redesignate
 9 the classification of any area, except those areas within
 10 the exterior boundaries of a reservation of a federally
 11 recognized Indian tribe, under the classifications
 12 established by 42 U.S.C. 7470 through 7479 (prevention of
 13 significant deterioration of air quality). The determination
 14 of whether or not a fee will be assessed is to be on a
 15 case-by-case basis."

16 Section 3. Section 75-2-205, MCA, is amended to read:

17 "75-2-205. Public hearings on rules. No rule and no
 18 amendment or repeal thereof may take effect except after
 19 public hearing on due notice and after the advisory council
 20 has been given, at least--30--days--before the time of
 21 publication, of the proposed text to comment thereon. The
 22 such notice shall be given by public advertisement not less
 23 than--20--or--more--than--30--days--before--the--date--set--for--the
 24 public hearing and any hearing conducted in accordance with
 25 the provisions of the Montana Administrative Procedure Act

1 and rules made pursuant thereto."

2 Section 4. Section 75-2-211, MCA, is amended to read:
 3 "75-2-211. Permits for construction, installation,
 4 alteration, or use. (1) The department shall provide for the
 5 issuance, suspension, revocation, and renewal of a permit
 6 issued under this section.

7 (2) Not later than 180 days before construction begins
 8 of any machine, equipment, device, or facility which the
 9 board finds may directly or indirectly cause or contribute
 10 to air pollution or which is intended primarily to prevent
 11 or control the emission of air pollutants and not later than
 12 120 days before installation, alteration, or use begins, the
 13 owner or operator shall file with the department the
 14 appropriate permit application on forms available from the
 15 department, and pay to a local government exercising
 16 authority under 75-2-301(9) or to the department if such
 17 local authority is not exercised a fee sufficient to cover:
 18 (a) the reasonable costs of reviewing and acting upon
 19 the application for such permit; and

20 (b) the reasonable costs of implementing and enforcing
 21 the terms and conditions of such permit if the permit is
 22 granted (NOT INCLUDING ANY COURT COSTS OR OTHER COSTS
 23 ASSOCIATED WITH ANY ENFORCEMENT ACTION). The fee shall be
 24 deposited in an earmarked revenue fund to be used by the
 25 department OR SAID LOCAL GOVERNMENT for administration of

1 this section.

2 ~~(3) NOTHING IN THIS SECTION SHALL RESTRICT THE BOARD'S~~
 3 ~~AUTHORITY TO ADOPT REGULATIONS PROVIDING FOR A SINGLE AIR~~
 4 ~~QUALITY PERMIT SYSTEM.~~

5 ~~(4)(A) The department may, for good cause shown, waive~~
 6 ~~the provisions of subsection (2) or shorten the time~~
 7 ~~required for filing the appropriate applications.~~

8 ~~(4)(B) The department shall require that applications~~
 9 ~~for permits be accompanied by any plans, specifications, and~~
 10 ~~other information it considers necessary.~~

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

20 ~~(6)(A) Where an application for a permit requires the~~
 21 ~~compilation of an environmental impact statement under the~~
 22 ~~Montana Environmental Policy Act, the department shall~~
 23 ~~notify the applicant in writing within 180 days of the~~
 24 ~~receipt of a filed application, as defined in subsection~~
 25 ~~(5), of the approval or denial of the application. However,~~

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

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

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

22 Section 5. Section 75-2-301, MCA, is amended to read:
 23 "75-2-301. Local air pollution control programs. (1) A
 24 municipality or county may establish a local air pollution
 25 control program on being petitioned by 15% of the qualified

1 electors in its jurisdiction and, if the program is
 2 consistent with this chapter and is approved by the board
 3 after a public hearing conducted under 75-2-111, may
 4 thereafter administer in its jurisdiction the air pollution
 5 control program which:

6 (a) provides by ordinance or local law for
 7 requirements compatible with, more stringent, or more
 8 extensive than those imposed by 75-2-203, ~~75-2-204,~~
 9 ~~75-2-211,~~ 75-2-212, and 75-2-402 and rules issued under
 10 these sections;

11 (b) provides for the enforcement of these requirements
 12 by appropriate administrative and judicial process; and

13 (c) provides for administrative organization, staff,
 14 financial, and other resources necessary to effectively and
 15 efficiently carry out its program.

16 (2) If the board finds that the location, character,
 17 or extent of particular concentrations of population, air
 18 contaminant sources, or geographic, topographic, or
 19 meteorological considerations or any combination of these
 20 are such as to make impracticable the maintenance of
 21 appropriate levels of air quality without an areawide air
 22 pollution control program, the board may determine the
 23 boundaries within which the program is necessary and require
 24 it as the only acceptable alternative to direct state
 25 administration.

1 (3) If the board has reason to believe that an air
 2 pollution control program in force under this section is
 3 inadequate to prevent and control air pollution in the
 4 jurisdiction to which the program relates or that the
 5 program is being administered in a manner inconsistent with
 6 this chapter, the board shall, on notice, conduct a hearing
 7 on the matter.

8 (4) If, after the hearing, the board determines that
 9 the program is inadequate to prevent and control air
 10 pollution in the jurisdiction to which it relates or that it
 11 is not accomplishing the purposes of this chapter, it shall
 12 require that necessary corrective measures be taken within a
 13 reasonable time, not to exceed 60 days.

14 (5) If the jurisdiction fails to take these measures
 15 within the time required, the department shall administer
 16 within such jurisdiction all of the provisions of this
 17 chapter. The department's control program supersedes all
 18 municipal or county air pollution laws, rules, ordinances,
 19 and requirements in the affected jurisdiction. The cost of
 20 the program shall be a charge on the municipality or county.

21 (6) If the board finds that the control of a
 22 particular class-of air contaminant source because of its
 23 complexity or magnitude is beyond the reasonable capability
 24 of the local jurisdiction or may--be--more--efficiently--and
 25 economically--performed--at--the--state--level and that the

1 ~~department is better able than the local jurisdiction to~~
 2 ~~control the air contaminant source,~~ it may direct the
 3 department to assume and retain control over that class--of
 4 air contaminant source. No charge may be assessed against
 5 the jurisdiction therefor. Findings made under this
 6 subsection may be either on the basis of the nature of the
 7 sources involved or on the basis of their relationship to
 8 the size of the communities in which they are located.

9 (7) A jurisdiction in which the department administers
 10 its air pollution control program under subsection (5) of
 11 this section may, with the approval of the board, establish
 12 or resume an air pollution control program which meets the
 13 requirements of subsection (1) of this section.

14 (8) A municipality or county may administer all or
 15 part of its air pollution control program in cooperation
 16 with one or more municipalities or counties of this state or
 17 of other states.

18 ~~(9) A municipality or county that is administering an~~
 19 ~~air pollution control program under this section may~~
 20 ~~exercise the following powers:~~

21 ~~(a) The municipality or county may assess and collect~~
 22 ~~noncompliance penalties provided for in [sections 7 through~~
 23 ~~15] for air contaminant sources under its jurisdiction. All~~
 24 ~~noncompliance penalties collected by the municipality or~~
 25 ~~county pursuant to [sections 7 through 15] shall be~~

1 ~~deposited in a trust and agency account until a final~~
 2 ~~determination and adjustment are made as provided in~~
 3 ~~[section 10] and amounts are deducted by the municipality or~~
 4 ~~county for costs attributable to implementation of [sections~~
 5 ~~7 through 15] and for contract costs incurred pursuant to~~
 6 ~~[subsection (3) of section 8], if any. After a final~~
 7 ~~determination is made and additional payments or refunds are~~
 8 ~~made, the remaining penalty money shall be transferred to~~
 9 ~~the general fund of the municipality or county.~~

10 ~~(b) The municipality or county may collect permit fees~~
 11 ~~provided for in 75-2-211."~~

12 Section 6. Section 75-2-401, MCA, is amended to read:
 13 *75-2-401. Enforcement. (1) When the department
 14 believes that a violation of this chapter or a rule made
 15 under it has occurred, it may cause written notice to be
 16 served ~~personally or by REGISTERED OR CERTIFIED~~ mail on the
 17 alleged violator ~~or his agent~~. The notice shall specify the
 18 provision of this chapter or rule alleged to be violated and
 19 the facts alleged to constitute a violation and may include
 20 an order to take necessary corrective action within a
 21 reasonable period of time stated in the order. The order
 22 becomes final unless, within 30 days after the notice is
 23 received, the person named requests in writing a hearing
 24 before the board. On receipt of the request, the board shall
 25 hold schedule a hearing.

1 (2) If, after a hearing held under subsection (1) of
 2 this section, the board finds that violations have occurred,
 3 it shall either affirm or modify an order previously issued
 4 or issue an appropriate order for the prevention, abatement,
 5 or control of the emissions involved or for the taking of
 6 other corrective action it considers appropriate. An order
 7 issued as part of a notice or after a hearing may prescribe
 8 the date by which the violation shall cease and may
 9 prescribe time limits for particular action in preventing,
 10 abating, or controlling the emissions. If, after hearing on
 11 an order contained in a notice, the board finds that no
 12 violation is occurring, it shall rescind the order.

13 (3) Instead of issuing the order provided for in
 14 subsection (1), the department may either:

15 (a) require that the alleged violators appear before
 16 the board for a hearing at a time and place specified in the
 17 notice and answer the charges complained of; or

18 (b) initiate action under 75-2-412 or 75-2-413.

19 ~~(4) Action under 75-2-412 is not a bar to enforcement~~
 20 ~~of this chapter or of rules or orders made under it by~~
 21 ~~injunction or other appropriate remedy. The department may~~
 22 ~~institute and maintain in the name of the state any~~
 23 ~~enforcement proceedings.~~

24 (4)(5)(4) This chapter does not prevent the board or
 25 department from making efforts to obtain voluntary

1 compliance through warning, conference, or any other
 2 appropriate means.

3 (5)(6)(5) In connection with a hearing held under this
 4 section, the board may and on application by a party shall
 5 compel the attendance of witnesses and the production of
 6 evidence on behalf of the parties."

7 NEW SECTION. Section 7. Persons subject to
 8 noncompliance penalties -- exemptions. (1) Except as
 9 provided in subsection (2) and subject to collection by a
 10 local government pursuant to 75-2-301(9), the department
 11 shall assess and collect a noncompliance penalty from any
 12 person who owns or operates:

13 (a) a stationary source (OTHER THAN A PRIMARY
 14 NONFERROUS SMELTER WHICH HAS RECEIVED A NONFERROUS SMELTER
 15 ORDER UNDER 42 U.S.C. 7419) which is not in compliance with
 16 any provision of ~~[title 75, chapter 2]~~ or any rule adopted
 17 or order issued pursuant to ~~[title 75, chapter 2]~~ EMISSION
 18 LIMITATION SPECIFIED IN AN ORDER OF THE BOARD, EMISSION
 19 STANDARD, OR COMPLIANCE SCHEDULE UNDER THE STATE
 20 IMPLEMENTATION PLAN APPROVED BY THE FEDERAL ENVIRONMENTAL
 21 PROTECTION AGENCY;

22 (b) a stationary source which is not in compliance
 23 with an emission limitation, emission standard, standard of
 24 performance, or other requirement under 42 U.S.C. 7411 or 42
 25 U.S.C. 7412; or

1 (c) any source referred to in subsections (1)(b)(A) or
 2 (1)(c)(B) which has been granted an exemption, extension, or
 3 suspension under subsection (2) or which is covered by a
 4 compliance order, OR A PRIMARY NONFERROUS SMELTER WHICH HAS
 5 RECEIVED A PRIMARY NONFERROUS SMELTER ORDER UNDER 42 U.S.C.
 6 7419, if such source is not in compliance with any interim
 7 emission control requirement or schedule of compliance under
 8 such extension, order, or suspension.

9 (2) Notwithstanding the requirements of subsection
 10 (1), the department may, after notice and opportunity for a
 11 public hearing, exempt any source from the requirements of
 12 [sections 7 through 15] with respect to a particular
 13 instance of noncompliance which:

14 (a) the department finds is de minimus in nature and
 15 in duration; or

16 (b) is exempt under 42 U.S.C. 7420(a)(2)(B) of the
 17 federal Clean Air Act.

18 NEW SECTION. Section 8. Amount of noncompliance
 19 penalty -- late charge. (1) The amount of the penalty which
 20 shall be assessed and collected with respect to any source
 21 under [sections 7 through 15] shall be equal to:

22 (a) the amount determined in accordance with the rules
 23 adopted by the board, which shall be no less than the
 24 economic value which a delay in compliance after July 1,
 25 1979, may have for the owner of such source, including the

1 quarterly equivalent of the capital costs of compliance and
 2 debt service over a normal amortization period not to exceed
 3 10 years, operation and maintenance costs foregone as a
 4 result of noncompliance, and any additional economic value
 5 which such a delay may have for the owner or operator of
 6 such source; minus

7 (b) the amount of any expenditure made by the owner or
 8 operator of that source during any such quarter for the
 9 purpose of bringing that source into and maintaining
 10 compliance with such requirement, to the extent that such
 11 expenditures have not been taken into account in the
 12 calculation of the penalty under subsection (1)(a).

13 (2) To the extent that any expenditure under
 14 subsection (1)(b) made during any quarter is not subtracted
 15 for such quarter from the costs under subsection (1)(a),
 16 such expenditure may be subtracted for any subsequent
 17 quarter from such costs. In no event may the amount paid be
 18 less than the quarterly payment minus the amount attributed
 19 to actual cost of construction.

20 (3) If the owner or operator of any stationary source
 21 to whom notice is issued under [section 11] does not submit
 22 a timely petition under [subsection (2)(b) of section 11] or
 23 submits a petition which is denied and if the owner or
 24 operator fails to submit a calculation of the penalty
 25 assessment, a schedule for payment, and the information

1 necessary for independent verification thereof, the
 2 department may enter into a contract with any person who has
 3 no financial interest in the matter to assist in determining
 4 the amount of the penalty assessment or payment schedule
 5 with respect to such source. The cost of carrying out such
 6 contract may be added to the penalty to be assessed against
 7 the owner or operator of such source.

8 (4) Any person who fails to pay the amount of any
 9 penalty with respect to any source under [sections 7 through
 10 15] on a timely basis shall be required to pay in addition a
 11 quarterly nonpayment penalty for each quarter during which
 12 such failure to pay persists. Such nonpayment penalty shall
 13 be equal to 20% of the aggregate amount of such person's
 14 penalties and nonpayment penalties with respect to such
 15 source which are unpaid as of the beginning of such quarter.

16 NEW_SECTION. Section 9. Manner of making payment. (1)
 17 The assessed penalty required under [sections 7 through 15]
 18 shall be paid in quarterly installments for the period of
 19 covered noncompliance. All quarterly payments, determined
 20 without regard to any adjustment or any subtraction under
 21 [subsection (1)(b) of section 8], after the first payment
 22 shall be equal.

23 (2) The first payment shall be due on the date 6
 24 months after the date of issuance of the notice of
 25 noncompliance under [section 11] with respect to any source.

1 Such first payment shall be in the amount of the quarterly
 2 installment for the upcoming quarter, plus the amount owed
 3 for any preceding period within the period of covered
 4 noncompliance for such source.

5 (3) For the purpose of this section, the term "period
 6 of covered noncompliance" means the period which begins on
 7 the date of issuance of the notice of noncompliance under
 8 [section 11] and ends on the date on which such source comes
 9 into or, for the purpose of establishing the schedule of
 10 payments, is estimated to come into compliance with such
 11 requirement.

12 NEW_SECTION. Section 10. Adjustment of fee. (1) The
 13 department shall adjust from time to time the amount of the
 14 penalty assessment calculated or the payment schedule
 15 proposed by such owner or operator under [subsection (2)(a)
 16 of section 11], if the department finds after notice and
 17 opportunity for a hearing on the record that the penalty or
 18 schedule does not meet the requirements of [sections 7
 19 through 15].

20 (2) Upon making a determination that a source with
 21 respect to which a penalty has been paid under [sections 7
 22 through 15] is in compliance and is maintaining compliance
 23 with the applicable requirement, the department shall review
 24 the actual expenditures made by the owner or operator of
 25 such source for the purpose of attaining and maintaining

1 compliance and shall make a final adjustment within 180 days
2 after such source comes into compliance and:

3 (a) provide reimbursement with interest to be paid by
4 the state at appropriate prevailing rates for overpayment by
5 such person; or

6 (b) assess and collect an additional payment with
7 interest at appropriate prevailing rates for any
8 underpayment by such person.

9 NEW SECTION. Section 11. Notice of noncompliance --
10 challenge. (1) The department shall give a brief but
11 reasonably specific notice of noncompliance to each person
12 who owns or operates a source subject to [subsection (1) of
13 section 7] which is not in compliance as provided in that
14 subsection, within 30 days after the department has
15 discovered the noncompliance.

16 (2) Each person to whom notice has been given pursuant
17 to subsection (1) shall:

18 (a) calculate the amount of penalty owed (determined
19 in accordance with [subsection (1) of section 8]) and the
20 schedule of payments (determined in accordance with [section
21 9]) for each source and, within 45 days after issuance of
22 the notice of noncompliance, submit that calculation and
23 proposed schedule, together with the information necessary
24 for an independent verification thereof, to the department;
25 or

1 (b) submit to the board a petition within 45 days
2 after the issuance of such notice, challenging such notice
3 of noncompliance or alleging entitlement to an exemption
4 under [subsection (2) of section 7] with respect to a
5 particular source.

6 (3) Each person to whom notice of noncompliance is
7 given shall pay the department the amount determined under
8 [section 8] as the appropriate penalty unless there has been
9 a final determination granting a petition filed pursuant to
10 subsection (2)(b).

11 NEW SECTION. Section 12. Hearing on challenge. (1)
12 The board shall provide a hearing on the record and make a
13 decision (including findings of fact and conclusions of law)
14 not later than 90 days after the receipt of any petition
15 under [subsection (2)(b) of section 11] with respect to such
16 source.

17 (2) If the petition is denied, the petitioner shall
18 submit the material required by [subsection (2)(a) of
19 section 11] to the department within 45 days of the date of
20 decision.

21 NEW SECTION. Section 13. Deposit of noncompliance
22 penalty fees. All noncompliance penalties collected by the
23 department pursuant to [sections 7 through 15] shall be
24 deposited in an earmarked revenue fund until a final
25 determination and adjustment have been made as provided in

1 [section 10] and amounts have been deducted by the
 2 department for costs attributable to implementation of
 3 [sections 7 through 15] and for contract costs incurred
 4 pursuant to [subsection (3) of section 8], if any. After a
 5 final determination has been made and additional payments or
 6 refunds have been made, the penalty money remaining shall be
 7 transferred to the state general fund.

8 NEW SECTION. Section 14. Effect of new standards on
 9 noncompliance penalty. In the case of any emission
 10 limitation, emission standard, or other requirement approved
 11 or adopted by the board under [Title 75, chapter 2] after
 12 [the effective date of this act], AND APPROVED BY THE
 13 FEDERAL ENVIRONMENTAL PROTECTION AGENCY AS AN AMENDMENT TO
 14 THE STATE IMPLEMENTATION PLAN, which is more stringent than
 15 the emission limitation or requirement for the source in
 16 effect prior to such approval or promulgation, if any, or
 17 where there was no emission limitation, emission standard,
 18 or other requirement approved or adopted before [the
 19 effective date of this act], the date for imposition of the
 20 noncompliance penalty under [sections 7 through 15] shall
 21 be the date on which the source is required to be in full
 22 compliance with such emission limitation, emission standard,
 23 or other requirement or 3 years after the approval or
 24 promulgation of such emission limitation or requirement,
 25 whichever is sooner.

1 NEW SECTION. Section 15. Effect of noncompliance
 2 penalty on other remedies. (1) Any orders, payments,
 3 sanctions, or other requirements under [sections 7 through
 4 15] shall be in addition to any other permits, orders,
 5 payments, sanctions, or other requirements established under
 6 [Title 75, chapter 2] and shall in no way affect any civil
 7 or criminal enforcement proceedings brought under 75-2-412
 8 or 75-2-413.

9 (2) The noncompliance penalties collected pursuant to
 10 [sections 7 through 15] are intended to be cumulative and in
 11 addition to any other remedies, procedures, and requirements
 12 authorized by [Title 75, chapter 2].

13 Section 16. Section 75-2-413, MCA, is amended to read:
 14 "75-2-413. Civil penalties -- out-of-state litigants
 15 -- effect of action. (1) Any person who violates any
 16 provision of this chapter or any rule enforced thereunder or
 17 any order made pursuant thereto shall be subject to a civil
 18 penalty not to exceed ~~\$1,000~~ \$25,000. Each day of violation
 19 shall constitute a separate violation. The department may
 20 institute and maintain in the name of the state any
 21 enforcement proceedings hereunder. Upon request of the
 22 department, the attorney general or the county attorney of
 23 the county of violation shall petition the district court to
 24 impose, assess, and recover the civil penalty. The civil
 25 penalty is in lieu of the criminal penalty provided for in

1 75-2-412.

2 (2) (a) Action under subsection (1) of this section is
 3 not a bar to enforcement of this chapter or of rules or
 4 orders made under it by injunction or other appropriate
 5 civil remedies.

6 (b) An action under subsection (1) or to enforce this
 7 chapter or the rules or orders made under it may be brought
 8 in the district court of any county where a violation occurs
 9 or is threatened if the defendant cannot be located in
 10 Montana.

11 (3) Moneys collected hereunder shall be deposited in
 12 the state general fund."

13 Section 17. Codification. It is intended that sections
 14 7 through 15 be codified as an integral part of Title 75,
 15 chapter 2, part 4, and the provisions of Title 75, chapter
 16 2, apply to sections 7 through 15.

17 Section 18. Saving clause. This act does not affect
 18 rights and duties that matured, penalties that were
 19 incurred, or proceedings that were begun before the
 20 effective date of this act.

21 Section 19. Severability. If a part of this act is
 22 invalid, all valid parts that are severable from the invalid
 23 part remain in effect. If a part of this act is invalid in
 24 one or more of its applications, the part remains in effect
 25 in all valid applications that are severable from the

1 invalid applications.

-End-

1 STATEMENT OF INTENT RE: HB 716

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The Legislature intends to grant to the Board of Health and Environmental Sciences rulemaking authority to adopt a permit fee schedule. ~~Local air-pollution-control agencies that assess fees in accordance with these rules shall use the same permit fee schedule.~~ AND TO ADOPT A SCHEDULE OF PENALTY ASSESSMENTS FOR NONCOMPLIANCE WITH RESPECT TO ANY SOURCE UNDER SECTIONS 7 THROUGH 15 OF THIS ACT.

First adopted by the HOUSE COMMITTEE ON NATURAL RESOURCES on February 19, 1979.

HB 716

HOUSE BILL NO. 716

INTRODUCED BY BLAYLOCK, KEMMIS, BARDANOUVE, GERKE,

DUSSAULT, LORY, McBRIDE, COONEY, JERGESON,

SHELDEN, KESSLER, REICHERT

BY REQUEST OF THE

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE CLEAN AIR ACT OF MONTANA TO GRANT THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES AUTHORITY TO ADOPT RULES REQUIRED BY FEDERAL LAW; TO ISSUE ORDERS PROVIDED FOR BY FEDERAL LAW; TO PERMIT FEES TO BE ASSESSED FOR ENVIRONMENTAL IMPACT ANALYSIS; TO PROVIDE NOTICE AND HEARING IN ACCORDANCE WITH THE MONTANA ADMINISTRATIVE PROCEDURE ACT AND REDUCE TIME REQUIRED FOR NOTIFICATION TO THE AIR POLLUTION ADVISORY COUNCIL; TO CLARIFY THE BOARD'S AUTHORITY TO ADOPT BY RULE A SIMPLIFIED PERMIT SYSTEM FOR AIR CONTAMINANT SOURCES; TO PERMIT FEES TO BE ASSESSED FOR REVIEWING PERMIT APPLICATIONS AND IMPLEMENTING AND ENFORCING PERMIT REQUIREMENTS; TO PROVIDE THAT NOTICE MAY BE GIVEN PERSONALLY OR BY MAIL; ~~TO REVISE AND CLARIFY THE ROLE OF LOCAL GOVERNMENT IN THE CONTROL OF AIR CONTAMINATION;~~ TO ESTABLISH NONCOMPLIANCE PENALTY FEES; AND TO INCREASE THE MAXIMUM CIVIL PENALTY FROM \$1,000 TO \$25,000; AMENDING SECTIONS 75-2-111, 75-2-112, 75-2-205, 75-2-211, 75-2-301, 75-2-401, AND 75-2-413, MCA."

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) ~~adopt, amend, and repeal rules implementing and consistent with for the administration, implementation, and enforcement of this chapter, FOR ISSUING ORDERS UNDER AND IN ACCORDANCE WITH 42 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant thereto;~~

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

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

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

(5) by rule adopt a schedule of fees required for permits under this chapter;

1 (6) HAVE THE POWER TO ISSUE ORDERS UNDER AND IN
 2 ACCORDANCE WITH 42 U.S.C. 7419."

3 Section 2. Section 75-2-112, MCA, is amended to read:
 4 "75-2-112. Powers and responsibilities of department.

5 (1) The department is responsible for the administration of
 6 this chapter.

7 (2) The department shall:

8 (a) by appropriate administrative and judicial
 9 proceedings, enforce orders issued by the board;

10 (b) secure necessary scientific, technical,
 11 administrative, and operational services, including
 12 laboratory facilities, by contract or otherwise;

13 (c) prepare and develop a comprehensive plan for the
 14 prevention, abatement, and control of air pollution in this
 15 state;

16 (d) encourage voluntary cooperation by persons and
 17 affected groups to achieve the purposes of this chapter;

18 (e) encourage local units of government to handle air
 19 pollution problems within their respective jurisdictions on
 20 a cooperative basis and provide technical and consultative
 21 assistance for this. If local programs are financed with
 22 public funds, the department may contract with the local
 23 government to share the cost of the program. However, the
 24 state share may not exceed 30% of the total cost.

25 (f) encourage and conduct studies, investigations, and

1 research relating to air contamination and air pollution and
 2 their causes, effects, prevention, abatement, and control;

3 (g) determine, by means of field studies and sampling,
 4 the degree of air contamination and air pollution in the
 5 state;

6 (h) make a continuing study of the effects of the
 7 emission of air contaminants from motor vehicles on the
 8 quality of the outdoor atmosphere of this state and make
 9 recommendations to appropriate public and private bodies
 10 with respect to this;

11 (i) collect and disseminate information and conduct
 12 educational and training programs relating to air
 13 contamination and air pollution;

14 (j) advise, consult, contract, and cooperate with
 15 other agencies of the state, local governments, industries,
 16 other states, interstate and interlocal agencies, the United
 17 States, and any interested persons or groups;

18 (k) consult, on request, with any person proposing to
 19 construct, install, or otherwise acquire an air contaminant
 20 source or device or system for the control thereof
 21 concerning the efficacy of this device or system or the air
 22 pollution problems which may be related to the source,
 23 device, or system. Nothing in this consultation relieves a
 24 person from compliance with this chapter, rules in force
 25 under it, or any other provision of law.

1 (1) accept, receive, and administer grants or other
 2 funds or gifts from public or private agencies, including
 3 the United States, for the purpose of carrying out this
 4 chapter. Funds received under this section shall be
 5 deposited in the state treasury to the account of the
 6 department.

7 ~~(3) The department may assess fees TO THE APPLICANT~~
 8 ~~for the analysis of the environmental impact of an~~
 9 ~~application to redesignate the classification of any areas~~
 10 ~~except those areas within the exterior boundaries of a~~
 11 ~~reservation of a federally recognized Indian tribe, under~~
 12 ~~the classifications established by 42 U.S.C. 7470 through~~
 13 ~~7479 (prevention of significant deterioration of air~~
 14 ~~quality). The determination of whether or not a fee will be~~
 15 ~~assessed is to be on a case-by-case basis."~~

16 Section 3. Section 75-2-205, MCA, is amended to read:
 17 "75-2-205. Public hearings on rules. No rule and no
 18 amendment or repeal thereof may take effect except after
 19 public hearing on due notice and after the advisory council
 20 has been given, at least 30 days before the time of
 21 publication, of the proposed text to comment thereon. The
 22 such notice shall be given by public advertisement not less
 23 than 20 or more than 30 days before the date set for the
 24 public hearing and any hearing conducted in accordance with
 25 the provisions of the Montana Administrative Procedure Act

1 and rules made pursuant thereto."

2 Section 4. Section 75-2-211, MCA, is amended to read:
 3 "75-2-211. Permits for construction, installation,
 4 alteration, or use. (1) The department shall provide for the
 5 issuance, suspension, revocation, and renewal of a permit
 6 issued under this section.

7 (2) Not later than 180 days before construction begins
 8 of any machine, equipment, device, or facility which the
 9 board finds may directly or indirectly cause or contribute
 10 to air pollution or which is intended primarily to prevent
 11 or control the emission of air pollutants and not later than
 12 120 days before installation, alteration, or use begins, the
 13 owner or operator shall file with the department the
 14 appropriate permit application on forms available from the
 15 department, and pay to a local government exercising
 16 authority under 75-2-301(9) or to the department if such
 17 local authority is not exercised a fee sufficient to cover:

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

20 (b) the reasonable costs of implementing and enforcing
 21 the terms and conditions of such permit, if the permit is
 22 granted (NOT INCLUDING ANY COURT COSTS OR OTHER COSTS
 23 ASSOCIATED WITH ANY ENFORCEMENT ACTION). The fee shall be
 24 deposited in an earmarked revenue fund to be used by the
 25 department BE-FAIR-TO-EAT-GOVERNMENT for administration of

1 this section.

2 (3) NOTHING IN THIS SECTION SHALL RESIBICI THE BOARD'S
 3 AUTHORITY TO ADOPT REGULATIONS PROVIDING FOR A SINGLE AIR
 4 QUALITY PERMIT SYSTEM.

5 ~~(3)(4)~~ The department may, for good cause shown, waive
 6 ~~the provisions of subsection (2)~~ or shorten the time
 7 required for filing the appropriate applications.

8 ~~(4)(5)~~ The department shall require that applications
 9 for permits be accompanied by any plans, specifications, and
 10 other information it considers necessary.

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

20 ~~(6)(7)~~ Where an application for a permit requires the
 21 compilation of an environmental impact statement under the
 22 Montana Environmental Policy Act, the department shall
 23 notify the applicant in writing within 180 days of the
 24 receipt of a filed application, as defined in subsection
 25 (5), of the approval or denial of the application. However,

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

8 ~~(7)(8)~~ When the department approves or denies the
 9 application for a permit under this section, a person who is
 10 jointly or severally adversely affected by the department's
 11 decision may request, within 15 days after the department
 12 renders its decision, upon affidavit setting forth the
 13 grounds therefor, a hearing before the board. A hearing
 14 shall be held under the provisions of the Montana
 15 Administrative Procedure Act.

16 ~~(8)(9)~~ The department's decision on the application is
 17 not final unless 15 days have elapsed and there is no
 18 request for a hearing under this section. The filing of a
 19 request for a hearing postpones the effective date of the
 20 department's decision until the conclusion of the hearing
 21 and issuance of a final decision by the board.*

22 Section 5. Section 75-2-301, MCA, is amended to read:
 23 *75-2-301. Local air pollution control programs. (1) A
 24 municipality or county may establish a local air pollution
 25 control program on being petitioned by 15% of the qualified

1 electors in its jurisdiction and, if the program is
 2 consistent with this chapter and is approved by the board
 3 after a public hearing conducted under 75-2-111, may
 4 thereafter administer in its jurisdiction the air pollution
 5 control program which:

6 (a) provides by ordinance or local law for
 7 requirements compatible with, more stringent, or more
 8 extensive than those imposed by 75-2-203, ~~75-2-204~~
 9 ~~75-2-211~~ 75-2-212, and 75-2-402 and rules issued under
 10 these sections;

11 (b) provides for the enforcement of these requirements
 12 by appropriate administrative and judicial process; and

13 (c) provides for administrative organization, staff,
 14 financial, and other resources necessary to effectively and
 15 efficiently carry out its program.

16 (2) If the board finds that the location, character,
 17 or extent of particular concentrations of population, air
 18 contaminant sources, or geographic, topographic, or
 19 meteorological considerations or any combination of these
 20 are such as to make impracticable the maintenance of
 21 appropriate levels of air quality without an areawide air
 22 pollution control program, the board may determine the
 23 boundaries within which the program is necessary and require
 24 it as the only acceptable alternative to direct state
 25 administration.

1 (3) If the board has reason to believe that an air
 2 pollution control program in force under this section is
 3 inadequate to prevent and control air pollution in the
 4 jurisdiction to which the program relates or that the
 5 program is being administered in a manner inconsistent with
 6 this chapter, the board shall, on notice, conduct a hearing
 7 on the matter.

8 (4) If, after the hearing, the board determines that
 9 the program is inadequate to prevent and control air
 10 pollution in the jurisdiction to which it relates or that it
 11 is not accomplishing the purposes of this chapter, it shall
 12 require that necessary corrective measures be taken within a
 13 reasonable time, not to exceed 60 days.

14 (5) If the jurisdiction fails to take these measures
 15 within the time required, the department shall administer
 16 within such jurisdiction all of the provisions of this
 17 chapter. The department's control program supersedes all
 18 municipal or county air pollution laws, rules, ordinances,
 19 and requirements in the affected jurisdiction. The cost of
 20 the program shall be a charge on the municipality or county.

21 (6) If the board finds that the control of a
 22 particular class of air contaminant source because of its
 23 complexity or magnitude is beyond the reasonable capability
 24 of the local jurisdiction or may be more efficiently and
 25 economically performed at the state level and that the

1 ~~department is better able than the local jurisdiction to~~
 2 ~~control the air contaminant source OR MAY BE MORE~~
 3 ~~EFFICIENTLY AND ECONOMICALLY PERFORMED AT THE STATE LEVEL.~~
 4 it may direct the department to assume and retain control
 5 over that class of air contaminant source. No charge may be
 6 assessed against the jurisdiction therefor. Findings made
 7 under this subsection may be either on the basis of the
 8 nature of the sources involved or on the basis of their
 9 relationship to the size of the communities in which they
 10 are located.

11 (7) A jurisdiction in which the department administers
 12 its air pollution control program under subsection (5) of
 13 this section may, with the approval of the board, establish
 14 or resume an air pollution control program which meets the
 15 requirements of subsection (1) of this section.

16 (8) A municipality or county may administer all or
 17 part of its air pollution control program in cooperation
 18 with one or more municipalities or counties of this state or
 19 of other states.

20 ~~(9) A municipality or county that is administering an~~
 21 ~~air pollution control program under this section may~~
 22 ~~exercise the following powers:~~

23 ~~(a) The municipality or county may assess and collect~~
 24 ~~noncompliance penalties provided for in sections 7 through~~
 25 ~~15j for air contaminant sources under its jurisdiction. All~~

1 ~~noncompliance penalties collected by the municipality or~~
 2 ~~county pursuant to sections 7 through 15j shall be~~
 3 ~~deposited in a trust and agency account until a final~~
 4 ~~determination and adjustment are made as provided in~~
 5 ~~section 10j and amounts are deducted by the municipality or~~
 6 ~~county for costs attributable to implementation of sections~~
 7 ~~7 through 15j and for contract costs incurred pursuant to~~
 8 ~~subsection (3) of section 8j, if any. After a final~~
 9 ~~determination is made and additional payments or refunds are~~
 10 ~~made, the remaining penalty money shall be transferred to~~
 11 ~~the general fund of the municipality or county.~~

12 ~~(b) The municipality or county may collect permit fees~~
 13 ~~provided for in 75-2-213."~~

14 Section 6. Section 75-2-401, MCA, is amended to read:
 15 "75-2-401. Enforcement. (1) When the department
 16 believes that a violation of this chapter or a rule made
 17 under it has occurred, it may cause written notice to be
 18 served personally or by REGISTERED OR CERTIFIED mail on the
 19 alleged violator or his agent. The notice shall specify the
 20 provision of this chapter or rule alleged to be violated and
 21 the facts alleged to constitute a violation and may include
 22 an order to take necessary corrective action within a
 23 reasonable period of time stated in the order. The order
 24 becomes final unless, within 30 days after the notice is
 25 received, the person named requests in writing a hearing

1 before the board. On receipt of the request, the board shall
2 hold ~~schedule~~ a hearing.

3 (2) If, after a hearing held under subsection (1) of
4 this section, the board finds that violations have occurred,
5 it shall either affirm or modify an order previously issued
6 or issue an appropriate order for the prevention, abatement,
7 or control of the emissions involved or for the taking of
8 other corrective action it considers appropriate. An order
9 issued as part of a notice or after a hearing may prescribe
10 the date by which the violation shall cease and may
11 prescribe time limits for particular action in preventing,
12 abating, or controlling the emissions. If, after hearing on
13 an order contained in a notice, the board finds that no
14 violation is occurring, it shall rescind the order.

15 (3) Instead of issuing the order provided for in
16 subsection (1), the department may either:

17 (a) require that the alleged violators appear before
18 the board for a hearing at a time and place specified in the
19 notice and answer the charges complained of; or

20 (b) initiate action under 75-2-412 or 75-2-413.

21 ~~(4) Action under 75-2-412 is not a bar to enforcement~~
22 ~~of this chapter or of rules or orders made under it by~~
23 ~~injunction or other appropriate remedy; the department may~~
24 ~~institute and maintain in the name of the state any~~
25 ~~enforcement proceedings.~~

1 ~~(4)(5)(4)~~ This chapter does not prevent the board or
2 department from making efforts to obtain voluntary
3 compliance through warning, conference, or any other
4 appropriate means.

5 ~~(5)(6)(5)~~ In connection with a hearing held under this
6 section, the board may and on application by a party shall
7 compel the attendance of witnesses and the production of
8 evidence on behalf of the parties."

9 **NEW SECTION.** Section 7. Persons subject to
10 noncompliance penalties -- exemptions. (1) Except as
11 provided in subsection (2) ~~and subject to collection by a~~
12 ~~local government pursuant to 75-2-301(9),~~ the department
13 shall assess and collect a noncompliance penalty from any
14 person who owns or operates:

15 (a) a stationary source ~~OTHER THAN A PRIMARY~~
16 ~~NONFERROUS SMELTER WHICH HAS RECEIVED A NONFERROUS SMELTER~~
17 ~~ORDER UNDER 42 U.S.C. 14121~~ which is not in compliance with
18 any provision ~~of title 75v chapter 2~~ or any rule adopted
19 or order issued pursuant to ~~title 75v chapter 2~~ EMISSION
20 LIMITATION SPECIFIED IN AN ORDER OF THE BOARD, EMISSION
21 STANDARD, OR COMPLIANCE SCHEDULE UNDER THE STATE
22 IMPLEMENTATION PLAN APPROVED BY THE FEDERAL ENVIRONMENTAL
23 PROTECTION AGENCY;

24 (b) a stationary source which is not in compliance
25 with an emission limitation, emission standard, standard of

1 performance, or other requirement under 42 U.S.C. 7411 or 42
 2 U.S.C. 7412; or

3 (c) any source referred to in subsections (1)(b)(A) or
 4 (1)(c)(B) which has been granted an exemption, extension, or
 5 suspension under subsection (2) or which is covered by a
 6 compliance order, OR A PRIMARY NONFERROUS SMELTER WHICH HAS
 7 RECEIVED A PRIMARY NONFERROUS SMELTER ORDER UNDER 42 U.S.C.
 8 7419, if such source is not in compliance with any interim
 9 emission control requirement or schedule of compliance under
 10 such extension, order, or suspension.

11 (2) Notwithstanding the requirements of subsection
 12 (1), the department may, after notice and opportunity for a
 13 public hearing, exempt any source from the requirements of
 14 [sections 7 through 15] with respect to a particular
 15 instance of noncompliance which:

16 (a) the department finds is de minimus in nature and
 17 in duration; or

18 (B) IS CAUSED BY CONDITIONS BEYOND THE REASONABLE
 19 CONTROL OF THE SOURCE AND IS OF NO DEMONSTRABLE ADVANTAGE TO
 20 THE SOURCE; OR

21 (b)(C) is exempt under 42 U.S.C. 7420(a)(2)(B) of the
 22 federal Clean Air Act.

23 (3) ANY PERSON WHO IS JOINTLY OR SEVERALLY ADVERSELY
 24 AFFECTED BY THE DEPARTMENT'S DECISION MAY REQUEST, WITHIN 15
 25 DAYS AFTER THE DEPARTMENT RENDERS ITS DECISION, UPON

1 AFFIDAVIT SETTING FORTH THE GROUNDS THEREFOR, A HEARING
 2 BEFORE THE BOARD, A HEARING SHALL BE HELD UNDER THE
 3 PROVISIONS OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT.

4 NEW SECTION. Section 8. Amount of noncompliance
 5 penalty -- late charge. (1) The amount of the penalty which
 6 shall be assessed and collected with respect to any source
 7 under [sections 7 through 15] shall be equal to:

8 (a) the amount determined in accordance with the rules
 9 adopted by the board, which shall be no less than the
 10 economic value which a delay in compliance after July 1,
 11 1979, may have for the owner of such source, including the
 12 quarterly equivalent of the capital costs of compliance and
 13 debt service over a normal amortization period not to exceed
 14 10 years, operation and maintenance costs foregone as a
 15 result of noncompliance, and any additional economic value
 16 which such a delay may have for the owner or operator of
 17 such source; minus

18 (b) the amount of any expenditure made by the owner or
 19 operator of that source during any such quarter for the
 20 purpose of bringing that source into and maintaining
 21 compliance with such requirement, to the extent that such
 22 expenditures have not been taken into account in the
 23 calculation of the penalty under subsection (1)(a).

24 (2) To the extent that any expenditure under
 25 subsection (1)(b) made during any quarter is not subtracted

1 for such quarter from the costs under subsection (1)(a),
 2 such expenditure may be subtracted for any subsequent
 3 quarter from such costs. In no event may the amount paid be
 4 less than the quarterly payment minus the amount attributed
 5 to actual cost of construction.

6 (3) If the owner or operator of any stationary source
 7 to whom notice is issued under [section 11] does not submit
 8 a timely petition under [subsection (2)(b) of section 11] or
 9 submits a petition which is denied and if the owner or
 10 operator fails to submit a calculation of the penalty
 11 assessment, a schedule for payment, and the information
 12 necessary for independent verification thereof, the
 13 department may enter into a contract with any person who has
 14 no financial interest in the matter to assist in determining
 15 the amount of the penalty assessment or payment schedule
 16 with respect to such source. The cost of carrying out such
 17 contract may be added to the penalty to be assessed against
 18 the owner or operator of such source.

19 (4) Any person who fails to pay the amount of any
 20 penalty with respect to any source under [sections 7 through
 21 15] on a timely basis shall be required to pay in addition a
 22 quarterly nonpayment penalty for each quarter during which
 23 such failure to pay persists. Such nonpayment penalty shall
 24 be equal to 20% of the aggregate amount of such person's
 25 penalties and nonpayment penalties with respect to such

1 source which are unpaid as of the beginning of such quarter.

2 **NEW SECTION.** Section 9. Manner of making payment. (1)
 3 The assessed penalty required under [sections 7 through 15]
 4 shall be paid in quarterly installments for the period of
 5 covered noncompliance. All quarterly payments, determined
 6 without regard to any adjustment or any subtraction under
 7 [subsection (1)(b) of section 8], after the first payment
 8 shall be equal.

9 (2) The first payment shall be due on the date 6
 10 months after the date of issuance of the notice of
 11 noncompliance under [section 11] with respect to any source.
 12 Such first payment shall be in the amount of the quarterly
 13 installment for the upcoming quarter, plus the amount owed
 14 for any preceding period within the period of covered
 15 noncompliance for such source.

16 (3) For the purpose of this section, the term "period
 17 of covered noncompliance" means the period which begins on
 18 the date of issuance of the notice of noncompliance under
 19 [section 11] and ends on the date on which such source comes
 20 into or, for the purpose of establishing the schedule of
 21 payments, is estimated to come into compliance with such
 22 requirement.

23 **NEW SECTION.** Section 10. Adjustment of fee. (1) The
 24 department shall adjust from time to time the amount of the
 25 penalty assessment calculated or the payment schedule

1 proposed by such owner or operator under [subsection (2)(a)
2 of section 11], if the department finds after notice and
3 opportunity for a hearing on the record that the penalty or
4 schedule does not meet the requirements of [sections 7
5 through 15].

6 (2) Upon making a determination that a source with
7 respect to which a penalty has been paid under [sections 7
8 through 15] is in compliance and is maintaining compliance
9 with the applicable requirement, the department shall review
10 the actual expenditures made by the owner or operator of
11 such source for the purpose of attaining and maintaining
12 compliance and shall make a final adjustment within 180 days
13 after such source comes into compliance and:

14 (a) provide reimbursement with interest to be paid by
15 the state at appropriate prevailing rates for overpayment by
16 such person; or

17 (b) assess and collect an additional payment with
18 interest at appropriate prevailing rates for any
19 underpayment by such person.

20 NEW SECTION. Section 11. Notice of noncompliance --
21 challenge. (1) The department shall give a brief but
22 reasonably specific notice of noncompliance to each person
23 who owns or operates a source subject to [subsection (1) of
24 section 7] which is not in compliance as provided in that
25 subsection, within 30 days after the department has

1 discovered the noncompliance.

2 (2) Each person to whom notice has been given pursuant
3 to subsection (1) shall:

4 (a) calculate the amount of penalty owed (determined
5 in accordance with [subsection (1) of section 8]) and the
6 schedule of payments (determined in accordance with [section
7 9]) for each source and, within 45 days after issuance of
8 the notice of noncompliance, submit that calculation and
9 proposed schedule, together with the information necessary
10 for an independent verification thereof, to the department;
11 or

12 (b) submit to the board a petition within 45 days
13 after the issuance of such notice, challenging such notice
14 of noncompliance or alleging entitlement to an exemption
15 under [subsection (2) of section 7] with respect to a
16 particular source.

17 (3) Each person to whom notice of noncompliance is
18 given shall pay the department the amount determined under
19 [section 8] as the appropriate penalty unless there has been
20 a final determination granting a petition filed pursuant to
21 subsection (2)(b).

22 NEW SECTION. Section 12. Hearing on challenge. (1)
23 The board shall provide a hearing on the record and make a
24 decision (including findings of fact and conclusions of law)
25 not later than 90 days after the receipt of any petition

1 under [subsection (?) (b) of section 11] with respect to such
2 source.

3 (2) If the petition is denied, the petitioner shall
4 submit the material required by [subsection (2)(a) of
5 section 11] to the department within 45 days of the date of
6 decision.

7 NEW SECTION. Section 13. Deposit of noncompliance
8 penalty fees. All noncompliance penalties collected by the
9 department pursuant to [sections 7 through 15] shall be
10 deposited in an earmarked revenue fund until a final
11 determination and adjustment have been made as provided in
12 [section 10] and amounts have been deducted by the
13 department for costs attributable to implementation of
14 [sections 7 through 15] and for contract costs incurred
15 pursuant to [subsection (3) of section 8], if any. After a
16 final determination has been made and additional payments or
17 refunds have been made, the penalty money remaining shall be
18 transferred to the state general fund.

19 NEW SECTION. Section 14. Effect of new standards on
20 noncompliance penalty. In the case of any emission
21 limitation, emission standard, or other requirement approved
22 or adopted by the board under [Title 75, chapter 2] after
23 [the effective date of this act], AND APPROVED BY THE
24 FEDERAL ENVIRONMENTAL PROTECTION AGENCY AS AN AMENDMENT TO
25 THE STATE IMPLEMENTATION PLAN, which is more stringent than

1 the emission limitation or requirement for the source in
2 effect prior to such approval or promulgation, if any, or
3 where there was no emission limitation, emission standard,
4 or other requirement approved or adopted before [the
5 effective date of this act], the date for imposition of the
6 noncompliance penalty under [sections 7 through 15] shall
7 be the date on which the source is required to be in full
8 compliance with such emission limitation, emission standard,
9 or other requirement or 3 years after the approval or
10 promulgation of such emission limitation or requirement,
11 whichever is sooner.

12 NEW SECTION. Section 15. Effect of noncompliance
13 penalty on other remedies. (1) Any orders, payments,
14 sanctions, or other requirements under [sections 7 through
15 15] shall be in addition to any other permits, orders,
16 payments, sanctions, or other requirements established under
17 [Title 75, chapter 2] and shall in no way affect any civil
18 or criminal enforcement proceedings brought under 75-2-412
19 or 75-2-413.

20 (2) The noncompliance penalties collected pursuant to
21 [sections 7 through 15] are intended to be cumulative and in
22 addition to any other remedies, procedures, and requirements
23 authorized by [Title 75, chapter 2].

24 Section 16. Section 75-2-413, MCA, is amended to read:
25 "75-2-413. Civil penalties -- out-of-state litigants

1 -- effect of action. (1) Any person who violates any
 2 provision of this chapter or any rule enforced thereunder or
 3 any order made pursuant thereto AND AFTER NOTICE THEREOF HAS
 4 BEEN GIVEN BY THE DEPARTMENT shall be subject to a civil
 5 penalty not to exceed ~~\$1,000~~ ~~\$25,000~~ \$10,000. Each day of
 6 violation shall constitute a separate violation. The
 7 department may institute and maintain in the name of the
 8 state any enforcement proceedings hereunder. Upon request
 9 of the department, the attorney general or the county
 10 attorney of the county of violation shall petition the
 11 district court to impose, assess, and recover the civil
 12 penalty. The civil penalty is in lieu of the criminal
 13 penalty provided for in 75-2-412.

14 (2) (a) Action under subsection (1) of this section is
 15 not a bar to enforcement of this chapter or of rules or
 16 orders made under it by injunction or other appropriate
 17 civil remedies.

18 (b) An action under subsection (1) or to enforce this
 19 chapter or the rules or orders made under it may be brought
 20 in the district court of any county where a violation occurs
 21 or is threatened if the defendant cannot be located in
 22 Montana.

23 (3) Moneys collected hereunder shall be deposited in
 24 the state general fund."

25 Section 17. Codification. It is intended that sections

1 7 through 15 be codified as an integral part of Title 75,
 2 chapter 2, part 4, and the provisions of Title 75, chapter
 3 2, apply to sections 7 through 15.

4 Section 18. Saving clause. This act does not affect
 5 rights and duties that matured, penalties that were
 6 incurred, or proceedings that were begun before the
 7 effective date of this act.

8 Section 19. Severability. If a part of this act is
 9 invalid, all valid parts that are severable from the invalid
 10 part remain in effect. If a part of this act is invalid in
 11 one or more of its applications, the part remains in effect
 12 in all valid applications that are severable from the
 13 invalid applications.

-End-

March 21, 1979

SENATE STANDING COMMITTEE REPORT
(Natural Resources)

That House Bill No. 716, third reading bill, be amended as follows:

1. Title, lines 20 through 22.
Following: "MAIL;" on line 20
Strike: remainder of line 20 through "CONTAMINATION;" on line 22
2. Page 5, line 7.
Following: "fees"
Insert: "to the applicant"
3. Page 6, lines 15 through 17
Following: "to" on line 15
Strike: remainder of line 15 through "to" on line 16
Following: "department"
Strike: "if such local authority is not exercised"
4. Page 6, line 25.
Following: "department"
Strike: "OR SAID LOCAL GOVERNMENT"
5. Page 9, line 8.
Following: "75-2-203"
Strike: "75-2-204, 75-2-211,"
6. Page 10, line 25.
Following: "~~level~~"
Insert: "or may be more efficiently and economically performed
at the state level"
7. Page 10, line 25 through line 2 on page 11.
Following: "~~level~~"
Strike: remainder of line 25 through "source" on line 2
8. Page 11, line 18 through line 11 on page 12.
Strike: "subsection (9) in its entirety".
9. Page 14, lines 9 and 10.
Following: "(2)"
Strike: " and subject to collection by a local government pur-
suant to 75-2-301(9),"
10. Page 15, line 15.
Following: "duration"
Strike: "or"
Insert: "(b) is caused by conditions beyond the reasonable con-
trol of the source and is of no demonstrable advantage to the
source; or"
Re-number: subsequent subsection

11. Page 15.

Following: line 17

Insert: "(3) Any person who is jointly or severally adversely affected by the department's decision may request, within 15 days after the department renders its decision, upon affidavit setting forth the grounds therefor, a hearing before the board. A hearing shall be held under the provisions of the Montana Administrative Procedure Act."

12. Page 22, line 17.

Following: "thereto"

Insert: "and after notice thereof has been given by the department"

13. Page 22, line 18.

Following: "exceed"

Strike: "\$25,000"

Insert: "\$10,000"