

HOUSE BILL NO. 318

INTRODUCED BY S. RICE, HALLIGAN, FAGG, KEATING
BY REQUEST OF THE DEPARTMENT
OF HEALTH AND ENVIRONMENTAL SCIENCES

IN THE HOUSE

JANUARY 22, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
FEBRUARY 16, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 17, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 18, 1993	ENGROSSING REPORT.
FEBRUARY 19, 1993	THIRD READING, PASSED. AYES, 88; NOES, 9.
FEBRUARY 22, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 22, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
MARCH 30, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 31, 1993	SECOND READING, CONCURRED IN AS AMENDED.
APRIL 1, 1993	THIRD READING, CONCURRED IN. AYES, 35; NOES, 14.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 6, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
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APRIL 12, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 318
2 INTRODUCED BY SPRICE Kelly 15-15 Trotter
3 BY REQUEST OF THE DEPARTMENT
4 OF HEALTH AND ENVIRONMENTAL SCIENCES
5
6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
7 LAWS RELATING TO AIR QUALITY; AUTHORIZING THE DEPARTMENT OF
8 HEALTH AND ENVIRONMENTAL SCIENCES TO ADMINISTER A PROGRAM
9 FOR THE ISSUANCE AND RENEWAL OF AIR QUALITY OPERATING
10 PERMITS; AMENDING THE CONFIDENTIALITY PROVISIONS RELATING TO
11 AIR QUALITY; CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF
12 HEALTH AND ENVIRONMENTAL SCIENCES TO ADMINISTER A PROGRAM
13 FOR THE ISSUANCE OF AIR QUALITY PERMITS FOR CONSTRUCTION,
14 INSTALLATION, ALTERATION, OPERATION, OR USE; CLARIFYING THE
15 AUTHORITY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL
16 SCIENCES TO COLLECT FEES FOR OPERATING AND CONSTRUCTION
17 PERMITS; DESIGNATING FEES TO AN ACCOUNT IN THE SPECIAL
18 REVENUE FUND; PROVIDING FOR AN ADMINISTRATIVE CIVIL PENALTY
19 IN THE CLEAN AIR ACT OF MONTANA; CLARIFYING AND AMENDING THE
20 CRIMINAL PUNISHMENT APPLICABLE TO VIOLATIONS OF AIR QUALITY
21 STATUTES, RULES, ORDERS, AND PERMITS; CLARIFYING AND
22 AMENDING THE CIVIL PUNISHMENT APPLICABLE TO VIOLATIONS OF
23 AIR QUALITY STATUTES, RULES, ORDERS, AND PERMITS; AMENDING
24 THE PROVISIONS RELATING TO THE ASSESSMENT OF NONCOMPLIANCE
25 PENALTIES; CREATING THE SMALL BUSINESS COMPLIANCE ASSISTANCE

1 ADVISORY COUNCIL; CREATING THE SMALL BUSINESS STATIONARY
2 SOURCE TECHNICAL AND ENVIRONMENTAL COMPLIANCE ASSISTANCE
3 PROGRAM WITHIN THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL
4 SCIENCES; PROVIDING FOR A SMALL BUSINESS STATIONARY SOURCE
5 REPRESENTATIVE; AMENDING PROVISIONS RELATED TO LOCAL AIR
6 POLLUTION CONTROL PROGRAMS; AMENDING SECTIONS 75-2-103,
7 75-2-105, 75-2-204, 75-2-211, 75-2-301, 75-2-401, 75-2-412,
8 75-2-413, AND 75-2-421, MCA; AND PROVIDING EFFECTIVE DATES
9 AND A RETROACTIVE APPLICABILITY DATE."

11 WHEREAS, pursuant to Subchapter V of the federal Clean
12 Air Act, 42 U.S.C. 7661, et seq., the State of Montana may
13 be authorized by the U.S. Environmental Protection Agency to
14 administer an operating permit program applicable to certain
15 sources of air contaminants; and

16 WHEREAS, if the state fails to obtain authorization for
17 an operating permit program from the federal government
18 under the federal Clean Air Act, the program will be
19 administered within the state by the U.S. Environmental
20 Protection Agency and the state will be subjected to
21 sanctions, including the loss of federal air program funding
22 or highway funding; and

23 WHEREAS, the Legislature believes that it is in the best
24 interests of both the citizens and businesses of this state
25 for the Department of Health and Environmental Sciences to

1 seek and obtain authorization from the federal government to
2 administer an operating permit program pursuant to
3 Subchapter V of the federal Clean Air Act; and

4 WHEREAS, to provide the Department of Health and
5 Environmental Sciences with the statutory authority
6 necessary to obtain authorization under Subchapter V,
7 numerous amendments and additions to the Clean Air Act of
8 Montana are necessary and appropriate, including significant
9 amendments to existing permitting, fee, and enforcement
10 authority and the adoption of new provisions governing the
11 operating permit program and relating to assistance for
12 small businesses.

14 STATEMENT OF INTENT

15 A statement of intent is provided for this bill because
16 it extends current rulemaking authority of the board of
17 health and environmental sciences to adopt rules
18 implementing a program for the issuance and renewal of air
19 quality operating permits by the department of health and
20 environmental sciences and amends several sections of the
21 Clean Air Act of Montana for which the board currently has
22 rulemaking authority, including the authority to adopt air
23 quality permit fees to be collected by the department of
24 health and environmental sciences.

25 Section 75-2-204 and [section 9] provide the authority

1 to the board and department to create and administer an
2 operating permit program for those sources subject to
3 Subchapter V of the federal Clean Air Act, and it is the
4 desire of the legislature that the program be applied only
5 to those sources covered by the statutory requirements of
6 Subchapter V. These sections and the amendments contained in
7 75-2-103(2) are also intended to clarify the department's
8 existing authority to implement the provisions of the
9 federal Clean Air Act relating to hazardous air pollutants,
10 42 U.S.C. 7412, as those provisions relate to the
11 requirements of Subchapter V.

12 Section 75-2-211 contains amendments that clarify the
13 authority of the department to continue to administer the
14 air quality permitting program relating to the construction,
15 installation, alteration, or use of air contaminant sources.
16 It is the desire of the legislature that the department
17 continue this permitting program in conjunction with the
18 operating permit program under [sections 9 through 11]. This
19 authority is currently used for conducting various state air
20 quality permitting programs, as well as for operating
21 federal permitting programs relating to prevention of
22 significant deterioration and nonattainment, all of which
23 are part of the state implementation plan for protecting air
24 quality. In addition to these programs, the legislature
25 intends that 75-2-211 serve as the authority needed to meet

the requirements of the federal Clean Air Act relating to the construction, reconstruction, and modification of sources of hazardous air pollutants, 42 U.S.C. 7412.

[Section 12] contains the department's existing authority to assess application and annual fees for permits issued under the Clean Air Act of Montana, Title 75, chapter 2. The placement of this authority in a separate section of the code emphasizes its general applicability to all permitting activities under that chapter. [Section 12(1), (2), and (3)] contain amendments to the existing fee authority to ensure that the department will be able to collect fees sufficient to meet the requirements of Subchapter V of the federal Clean Air Act. [Section 12(5)] is intended to provide the department with an alternative to civil enforcement in addressing the delinquent payment of fees.

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

Section 1. Section 75-2-103, MCA, is amended to read:

"75-2-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Advisory council" means the air pollution control advisory council provided for in 2-15-2106.

(2) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or

any combination thereof, including pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(3) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in a quantity and for a duration which that are or tend to be injurious to human health or welfare, animal or plant life, or property or would unreasonably interfere with the enjoyment of life, property, or the conduct of business.

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

(5) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(6) "Emission" means a release into the outdoor atmosphere of air contaminants.

(7) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or private corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the federal government or an agency of the federal government, or any other legal entity and includes persons resident in Canada.

(8) "Small business stationary source" means a stationary source that:

(a) is owned or operated by a person who employs 100 or

fewer individuals;

(b) is a small business concern as defined in the Small Business Act, 15 U.S.C. 631, et seq.;

(c) is not a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.;

(d) emits less than 50 tons per year of a regulated air contaminant;

(e) emits less than a total of 75 tons per year of all regulated air contaminants combined; and

(f) is not excluded from this definition under [section 17(3)]."

Section 2. Section 75-2-105, MCA, is amended to read:

"75-2-105. Confidentiality of records. (1) Records or other information concerning air contaminant sources which that are furnished to or obtained by the board or department are a matter of public record and open to public use. However, any information unique to the owner or operator of an air contaminant source which that would, if disclosed, reveal methods or processes entitled to protection as trade secrets shall must be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if he the owner or operator wishes such the information to enjoy confidential

status. The department ~~shall~~ must be served in ~~any-such~~ the action and may intervene as a party ~~therein~~ in the action. Any ~~A~~ trade secrets ~~secret~~ not intended to be public when submitted to the board or department ~~shall must~~ be submitted in writing and clearly marked as confidential. However, emission data and operating permits issued by the department pursuant to [sections 9 through 11] ~~shall-never~~ may not be considered confidential for the purposes of this section.

(2) This section does not prevent the use of records or information by the board or department in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere if the analyses or summaries do not identify an owner or operator or reveal information otherwise made confidential by this section."

Section 3. Section 75-2-204, MCA, is amended to read:

"75-2-204. Rules relating to construction, installation, alteration, operation, or use. The board may by rule prohibit the construction, installation, alteration, operation, or use of a machine, equipment, device, or facility which that it finds may directly or indirectly cause or contribute to air pollution or which that is intended primarily to prevent or control the emission of air ~~pollutants~~ contaminants, unless a permit therefor has been obtained under this part."

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

1 "75-2-211. Permits for construction, installation,
2 alteration, operation, or use. (1) The department The board
3 shall by rule provide for the issuance, expiration,
4 modification, amendment, suspension, revocation, and renewal
5 of a permit issued operating permits as part of an operating
6 permit program to be administered by the department under
7 this part chapter.

8 (2) For all sources of air contaminants that are
9 subject to the provisions of Title V of the federal Clean
10 Air Act, 42 U.S.C. 7401, et seq., as amended, the provisions
11 of this section apply in addition to the other applicable
12 provisions of this chapter.

13 (a) The board shall by rule require that permits issued
14 to sources described in subsection (2) be of limited
15 duration, but it may not limit the duration of the permits
16 beyond that required by the federal Clean Air Act, 42 U.S.C.
17 7401, et seq., as amended.

18 (b) The board shall by rule provide for the renewal of
19 permits issued to the sources.

20 (c) The board shall by rule establish a transition
21 schedule for air quality permits held by sources of air
22 contaminants subject to the provisions of subsection (2).
23 The transition schedule must specify dates for the
24 expiration of the permits, absent an application for renewal
25 by the source. The transition schedule may not specify

1 expiration dates that are earlier in time than those
2 required by Title V of the federal Clean Air Act, 42 U.S.C.
3 7401, et seq., as amended. The transition schedule
4 established by the board also applies to existing sources of
5 air contaminants that are subject to the provisions of Title
6 V of the federal Clean Air Act, 42 U.S.C. 7401, et seq., as
7 amended, and that do not hold an air quality permit from the
8 department as of November 27, 1992.

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

18 (4) Concurrent with the submittal of a permit
19 application required by subsection (3) and annually for the
20 duration of the permit, the applicant shall submit to the
21 department a fee sufficient to cover the reasonable costs,
22 both direct and indirect, of developing and administering
23 the permitting requirements in this chapter, including the
24 reasonable costs of:

25 (a) reviewing and acting upon the application;

1 (b)--implementing-and-enforcing-the-terms-and-conditions
 2 of--the-permit-if-the-permit-is-issued;-However,-this-amount
 3 does-not-include-any-court-costs-or-other--costs--associated
 4 with--any--enforcement--action;-If-the-permit-is-not-issued,
 5 the-department-shall-return-this-portion-of-the-fee--to--the
 6 applicant-;

7 (c)--emissions-and-ambient-monitoring;

8 (d)--preparing---generally---applicable--regulations--or
 9 guidance;

10 (e)--modeling,-analysis,-and-demonstrations;-and

11 (f)--preparing-inventories-and-tracking-emissions-;

12 (5)--in-addition-to-the-fee--required--under--subsection
 13 (4);--the--board-may-order-the-assessment-of-additional-fees
 14 required-to-fund-specific-activities-of-the-department--that
 15 are---directed--at--a--particular--geographic--area--if--the
 16 legislature-authorizes-the-activities-and--appropriates--the
 17 funds--for--the--activities;-including-emissions-or-ambient
 18 monitoring;-modeling---analysis---or---demonstrations;-or
 19 emissions--inventories--or--tracking;-Additional-assessments
 20 may-be-levied-only-on-those-sources-that-are-within--or--are
 21 believed--by--the--department-to-be-impacting-the-geographic
 22 area;-Before-the-board-may-require-the-assessments;-it-shall
 23 first-determine;-after-opportunity--for--hearing;-that--the
 24 activities-to-be-funded-are-necessary-for-the-administration
 25 or--implementation--of--this--chapter;-that-the-assessments

1 apportion-the-required-funding-in-an-equitable--manner;-and
 2 that--the--department-has-obtained-legislative-authorization
 3 for-the-expenditure-and-the-necessary-appropriation-;

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

9 (7)--For-any-existing-source-of-air-contaminants-that-is
 10 subject-to>Title-V-of-the-federal-Clean-Air-Act;-42--U.S.C.
 11 7401;-et-seq;-as-amended;-and-that-is-not-required-to-hold
 12 an-air-quality-permit-from-the-department-as-of--October--1,
 13 1991;-the-board-may;-as-a-condition-of-continued-operation;-
 14 require-by-rule-that-the-owner-or-operator-of-the-source-pay
 15 the-annual-fee-provided-for-in-subsection--(4);--Nothing--in
 16 this--subsection-may-be-construed-as-allowing-the-department
 17 to-charge-any-source--of--air--contaminants--more--than--one
 18 annual-fee-that-is-designed-to-cover-the-costs-identified-in
 19 subsection-(4);

20 (8)--The--fees--collected--by-the-department-pursuant-to
 21 this-section-must-be-deposited-in-the-state-special--revenue
 22 fund-to-be-appropriated-by-the-legislature-to-the-department
 23 for--the--development--and--administration-of-the-permitting
 24 requirements-in-this-chapter-;

25 (9)--(a)-The-department-shall-give-written-notice-of-the

amount-of-the-fee-to-be-assessed--and--the--basis--for--the
department's--fee-assessment-under-this-section-to-the-owner
or-operator-of-the-air--contaminant--source.--The--owner--or
operator--may--appeal-the-department's-fee-assessment-to-the
board-within-20-days-after-receipt-of-the-written-notice:

(b)--An-appeal-must-be-based-upon--the--allegation--that
the--fee-assessment-is-erroneous-or-excessive.-An-appeal-may
not-be-based-only-on-the-amount-of-the-fee-schedule--adopted
by-the-board:

(c)--if--any-part-of-the-fee-assessment-is-not-appealed,
it-must-be-paid-to-the-department-upon-receipt-of-the-notice
in-subsection-(9)(a):

(d)--The--contested--case--provisions--of--the--Montana
Administrative--Procedure--Act--provided--for--in--Title--2,
chapter--4--apply-to-any-hearing-before-the-board-under-this
subsection-(9):

(3) The permit program administered by the department
pursuant to this section must include the following:

(a) requirements and procedures for permit
applications, including standard application forms;

(b) requirements and procedures for submittal of
information necessary to determine the location, quantity,
and type of emissions;

(c) procedures for public notice and opportunity for
comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity
for comment to contiguous states and federal agencies, as
appropriate;

(e) requirements for inspection, monitoring,
recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension,
modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate
emission limitations and other requirements, including
enforceable measures necessary to ensure compliance with
those limitations and requirements;

(i) requirements and procedures for permit modification
and amendment; and

(j) requirements and procedures for issuing a single
permit authorizing emissions from similar operations at
multiple temporary locations, which permit may include
conditions necessary to ensure compliance with the
requirements of this chapter at all authorized locations and
a requirement that the owner or operator notify the
department in advance of each change in location.

Nothing-in-this This section shall does not
restrict the board's authority to adopt regulations
providing for a single air quality permit system.

(5) The department may, for good cause shown, waive

or shorten the time required for filing the appropriate applications.

~~†12†~~(6) The department shall require that applications for permits be accompanied by any plans, specifications, and other information it considers necessary.

~~†13†~~(7) An application is not considered filed until the applicant has submitted all fees required under [section 12] and all information and completed ~~all~~ application forms required by pursuant to subsections (2), (3), and (6) through-(7)-and-(12). ~~However, if~~ If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

~~†14†~~(8) (a) Where If an application for a permit requires the compilation preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, Chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days of after the department's receipt of a filed application, as defined provided in subsection ~~†13†~~(7), if the department prepares the environmental impact statement; or

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

~~(b) However, where~~ If an application does not require the compilation preparation of an environmental impact statement, the department shall notify the applicant in writing within 60 days ~~of the~~ after its receipt of a filed application, as defined provided in subsection ~~†13†~~(7), of the its approval or denial of the application. Notification of approval or denial may be served personally or by ~~registered or~~ certified mail on the applicant or ~~his~~ the applicant's agent.

(c) Failure by the department to act in a timely manner does not constitute approval or denial of the application.

~~†15†~~(9) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request, a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision, upon and must include an affidavit setting forth the grounds therefor,--a--hearing before--the--board, for the request. A hearing shall be held under the provisions of the Montana Administrative Procedure

1 Act. The contested case provisions of the Montana
 2 Administrative Procedure Act, Title 2, chapter 4, part 6,
 3 apply to a hearing before the board under this subsection.

4 ~~(16)~~(10) The department's decision on the application is
 5 not final unless 15 days have elapsed from the date of the
 6 decision and there is no request for a hearing under this
 7 section. The filing of a request for a hearing postpones the
 8 effective date of the department's decision until the
 9 conclusion of the hearing and issuance of a final decision
 10 by the board."

11 **Section 5.** Section 75-2-401, MCA, is amended to read:

12 "75-2-401. Enforcement -- notice -- order for
 13 corrective action -- administrative penalty. (1) When the
 14 department believes that a violation of this chapter, a rule
 15 made adopted under this chapter, or a condition or
 16 limitation imposed by a permit issued pursuant to this
 17 chapter 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~~ the violator's agent. The notice
 20 ~~shall~~ must specify the provision of this chapter, or the
 21 rule, or the permit condition or limitation alleged to be
 22 violated and the facts alleged to constitute a violation.
 23 The notice and may include an order to take necessary
 24 corrective action within a reasonable period of time stated
 25 in the order or an order to pay an administrative penalty,

1 or both. The order becomes final unless, within 30 days
 2 after the notice is received, the person named requests in
 3 writing a hearing before the board. On receipt of the
 4 request, the board shall schedule a hearing.

5 (2) If, after a hearing held under subsection (1) of
 6 ~~this-section,~~ the board finds that violations have occurred,
 7 it shall ~~either-affirm-or-modify-an-order-previously-issued~~
 8 or issue an appropriate order for the prevention, abatement,
 9 or control of the emissions involved or for the taking of
 10 other corrective action ~~it-considers-appropriate or assess~~
 11 an administrative penalty, or both. An As appropriate, an
 12 order issued as part of a notice or after a hearing may
 13 prescribe the date by which the violation shall must cease;
 14 ~~and--may--prescribe~~ time limits for particular action in
 15 preventing, abating, or controlling the emissions; or the
 16 date by which the administrative penalty must be paid. If,
 17 after a hearing on an order contained in a notice, the board
 18 finds that ~~no~~ a violation has not occurred or is not
 19 occurring, it shall rescind the order.

20 (3) (a) An action initiated under this section may
 21 include an administrative civil penalty of not more than
 22 \$10,000 for each day of each violation, not to exceed a
 23 total of \$80,000. If an order issued by the board under this
 24 section requires the payment of an administrative civil
 25 penalty, the board shall state findings and conclusions

describing the basis for its penalty assessment.

(b) Administrative penalties collected under this section must be deposited in the state general fund.

(c) Penalties imposed by an administrative order under this section may not be assessed for any day of violation that occurred more than 12 months prior to the issuance of the initial notice and order by the department under subsection (1).

(d) In determining the amount of penalty to be assessed for an alleged violation under this section, the department or board, as appropriate, shall consider:

(i) the gravity of the violation;

(ii) whether the amount of the penalty serves as a deterrent relative to the alleged violator's ability to pay;

(iii) the economic benefit or savings, if any, to the alleged violator as a result of noncompliance; and

(iv) other matters as justice may require.

(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing conducted under this section.

{3}{5} Instead of issuing the order provided for in subsection (1), the department may either:

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

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

~~{4}{6}~~ This chapter does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

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

Section 6. Section 75-2-412, MCA, is amended to read:

"75-2-412. Criminal penalties -- injunction preserved.

~~{1}-A-person-who-violates-this-chapter-or-a-rule,-order,-or-permit-made-or-issued-under-it,-other-than-75-2-105,-is-guilty-of-an-offense-and-subject-to-a-fine-not-to-exceed-\$1,000-Each-day-of-violation-constitutes-a-separate-offense-~~

~~{2}-A-person-who-willfully-violates-75-2-105-is-guilty-of-an-offense-and-subject-to-a-fine-not-to-exceed-\$1,000-~~ (1) A person is guilty of an offense under this section if that person knowingly:

(a) violates a provision of this chapter or a rule, order, or permit made or issued under this chapter;

(b) makes a false statement, representation, or certification on a form required under this chapter or in a notice or report required by a permit under this chapter; or

1 (c) renders inaccurate a monitoring device or method
2 required under this chapter.

3 (2) A person guilty of an offense under subsection (1)
4 is subject to a fine of not more than \$10,000 per violation
5 or imprisonment for a period not to exceed 3 years, or both.
6 Each day of each violation constitutes a separate violation.

7 (3) Fines collected under this section, except those
8 finer collected in-a-justice's-court, by an approved local
9 air pollution control program, shall must be deposited to in
10 the state general fund.

11 (4) Action under this section is not a bar to
12 enforcement of this chapter or of a rule, order, or permit
13 made or issued under it by injunction or other appropriate
14 civil or administrative remedy. The department may institute
15 and maintain in the name of the state any enforcement
16 proceedings."

17 **Section 7.** Section 75-2-413, MCA, is amended to read:

18 "75-2-413. Civil penalties -- out-of-state litigants --
19 effect of action -- presumption of continuing violation. (1)
20 Any A person who violates any provision of this chapter, a
21 or-any rule enforced-thereunder adopted under this chapter,
22 or any order or permit made or issued pursuant-thereto-and
23 after-notice-thereof-has-been-given-by-the-department--shall
24 be under this chapter is subject to a civil penalty not to
25 exceed \$10,000 per violation. Each day of each violation

1 ~~shall--constitute~~ constitutes a separate violation. The
2 department may institute and maintain in the name of the
3 state any enforcement proceedings hereunder under this
4 section. Upon request of the department, the attorney
5 general or the county attorney of the county of violation
6 shall petition the district court to impose, assess, and
7 recover the civil penalty. The civil penalty is in lieu of
8 the criminal penalty provided for in 75-2-412.

9 (2) (a) Action under subsection (1) of-this-section is
10 not a bar to enforcement of this chapter or of a rule,
11 order, or permit made or issued under it by injunction or
12 other appropriate civil remedies.

13 (b) An action under subsection (1) or to enforce this
14 chapter or a rule, order, or permit made or issued under it
15 may be brought in the district court of any county where a
16 violation occurs or is threatened if the defendant cannot be
17 located in Montana.

18 (3) If the department has notified a person of a
19 violation under 75-2-401 and if the department makes a prima
20 facie showing that the conduct or events giving rise to the
21 violation are likely to have continued or recurred past the
22 date of notice, the days of violation are presumed to
23 include the date of the notice and every day after the
24 notice until the person establishes that continuous
25 compliance has been achieved. This presumption may be

1 overcome to the extent the person can prove by a
 2 preponderance of evidence that there were intervening days
 3 when a violation did not occur or that the violation was not
 4 continuing in nature.

5 (4) Moneys Money collected hereunder-shall under this
 6 section must be deposited in the state general fund. This
 7 subsection does not apply to money collected by an approved
 8 local air pollution control program."

9 **Section 8.** Section 75-2-421, MCA, is amended to read:

10 "75-2-421. Persons subject to noncompliance penalties
 11 -- exemptions. (1) Except as provided in subsection (2), the
 12 department shall may assess and collect a noncompliance
 13 penalty from any person who owns or operates:

14 (a) a stationary source (other than a primary
 15 nonferrous smelter which that has received a nonferrous
 16 smelter order under 42 U.S.C. 7419) which that is not in
 17 compliance with any emission limitation specified in an
 18 order of the board, emission standard, or compliance
 19 schedule under the state implementation plan approved by the
 20 federal environmental protection agency;

21 (b) a stationary source which that is not in compliance
 22 with an emission limitation, emission standard, standard of
 23 performance, or other requirement under this chapter or 42
 24 U.S.C. 7411, or-42-U-S-C- 7412, 7477, or 7603; or

25 (c) a stationary source that is not in compliance with

1 any other requirement under this chapter or any requirement
 2 of Subchapter V of the federal Clean Air Act, 42 U.S.C.
 3 7661, et seq.; or

4 (c)(d) any source referred to in subsections (1)(a), or
 5 (1)(b), or (1)(c) which that has been granted an exemption,
 6 extension, or suspension under subsection (2) or which that
 7 is covered by a compliance order, or a primary nonferrous
 8 smelter which that has received a primary nonferrous smelter
 9 order under 42 U.S.C. 7419, if such that source is not in
 10 compliance with any interim emission control requirement or
 11 schedule of compliance under such the extension, order, or
 12 suspension.

13 (2) Notwithstanding the requirements of subsection (1),
 14 the department may, after notice and opportunity for a
 15 public hearing, exempt any source from the requirements of
 16 75-2-421 through 75-2-429 with respect to a particular
 17 instance of noncompliance which that:

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

20 (b) is caused by conditions beyond the reasonable
 21 control of the source and is of no demonstrable advantage to
 22 the source; or

23 (c) is exempt under 42 U.S.C. 7420(a)(2)(B) of the
 24 federal Clean Air Act.

25 (3) Any person who is jointly or severally adversely

1 affected by the department's decision may request, within 15
 2 days after the department renders its decision, upon
 3 affidavit setting forth the grounds therefor for it, a
 4 hearing before the board. A hearing shall must be held under
 5 the provisions of the Montana Administrative Procedure Act,
 6 Title 2, chapter 4, part 6."

7 NEW SECTION. Section 9. Operating permit program --
 8 exemptions -- general requirements -- duration. (1) The
 9 board shall provide by rule for the issuance, expiration,
 10 modification, amendment, suspension, revocation, and renewal
 11 of operating permits as part of an operating permit program
 12 to be administered by the department under this chapter.

13 (2) This section applies to all sources of air
 14 contaminants that are subject to the provisions of
 15 Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661,
 16 et seq.

17 (3) A person may not violate any requirement of an
 18 operating permit issued under [section 10] and this section
 19 or operate any source required to have a permit under this
 20 section without having complied with the requirements of the
 21 operating permit program administered by the department
 22 pursuant to [sections 10 and 11] and this section.

23 (4) The board may by rule provide for the exemption of
 24 one or more source categories, in whole or in part, from all
 25 or part of the requirements of this section if the board

1 determines that compliance with the requirements of this
 2 section is impracticable, infeasible, or unnecessarily
 3 burdensome for the sources. The board may premise this
 4 determination upon a similar determination by the
 5 appropriate federal agency acting pursuant to the federal
 6 Clean Air Act, 42 U.S.C. 7401, et seq.

7 (5) The board may by rule provide for general operating
 8 permits covering numerous similar sources.

9 (6) An operating permit issued by the department under
 10 [section 10] and this section is effective for a period not
 11 to exceed 5 years and may be renewed.

12 (7) The operating permit program administered by the
 13 department pursuant to this section must include the
 14 following:

15 (a) requirements and procedures for permit and renewal
 16 applications, including standard application forms and
 17 criteria for evaluating application completeness and the
 18 need for additional information after a completeness
 19 determination has been made;

20 (b) requirements and procedures for submittal of
 21 information necessary to determine the location, quantity,
 22 and type of emissions;

23 (c) procedures for public notice and opportunity for
 24 comment or public hearing, as appropriate;

25 (d) procedures for providing notice and an opportunity

1 for comment to contiguous states and federal agencies, as
2 appropriate;

3 (e) requirements for inspection, monitoring,
4 recordkeeping, compliance certification, and reporting;

5 (f) deadlines for submitting permit applications and
6 compliance plans that are not later than 12 months after the
7 source becomes subject to the operating permit requirement;

8 (g) deadlines for submitting permit renewal
9 applications that are not later than 6 months before
10 expiration of the existing operating permit;

11 (h) requirements for compliance plans that must be
12 submitted with permit and renewal applications, including
13 schedules of compliance and progress reports;

14 (i) requirements and procedures for periodic
15 certification of source compliance with permit requirements,
16 including the prompt reporting of any deviations from permit
17 requirements;

18 (j) requirements for submission of any plans,
19 specifications, or other information that the department
20 considers necessary under this section;

21 (k) conditions and procedures for the transfer of
22 operating permits;

23 (l) requirements and procedures for suspension,
24 modification, amendment, and revocation of permits by the
25 department for cause, including the modification or

1 amendment of permits before renewal or termination to
2 incorporate applicable limitations or requirements effective
3 after permit issuance;

4 (m) requirements and procedures for incorporating into
5 permits and permit renewals all applicable emission
6 limitations and other requirements, including enforceable
7 measures necessary to ensure compliance with those
8 limitations and requirements;

9 (n) requirements and procedures for permit modification
10 and amendment;

11 (o) procedures for tracking activities conducted under
12 general permits;

13 (p) requirements and procedures for issuing a single
14 operating permit authorizing emissions from similar
15 operations at multiple temporary locations, which permit may
16 include conditions necessary to ensure compliance with the
17 requirements of this chapter at all authorized locations and
18 a requirement that the owner or operator notify the
19 department in advance of each change in location;

20 (q) requirements and procedures for allowing changes
21 within a permitted facility without requiring a permit
22 amendment if the changes are not prohibited under this
23 chapter and do not exceed the emissions allowable under the
24 permit; and

25 (r) other requirements necessary for the department to

1 obtain the authorization to administer an operating permit
2 program under the provisions of Subchapter V of the federal
3 Clean Air Act.

4 NEW SECTION. **Section 10.** Permits for operation --
5 application completeness -- action by department --
6 application shield -- review by board. (1) An application
7 for an operating permit or renewal is not considered filed
8 until the department has determined that it is complete. An
9 application is complete if all fees required under [section
10 12] and all information and completed application forms
11 required under [section 9] have been submitted. A complete
12 application must contain all of the information required for
13 the department to begin processing the application. If the
14 department fails to notify the applicant in writing within
15 60 days after submittal of an application that the
16 application is incomplete and fails to list the reasons why
17 the application is considered incomplete, the application is
18 considered filed on the date of the department's receipt of
19 the application. The department may request additional
20 information after a completeness determination has been
21 made.

22 (2) Except as provided in subsection (3), the
23 department shall, consistent with the procedures established
24 under [section 9], approve or disapprove a complete
25 application for an operating permit or renewal and shall

1 issue or deny the permit or renewal within 18 months after
2 the date of filing. Failure of the department to act in a
3 timely manner does not constitute approval or denial of the
4 application.

5 (3) The board may by rule provide for a transition
6 schedule for both the submittal to the department of initial
7 applications for operating permits by existing sources and
8 action by the department on these initial permit
9 applications. The board may require that one-third of all
10 operating permit applications required for existing sources
11 be submitted within the first calendar year after the
12 adoption of rules implementing an operating permit program
13 under [section 9]. Any transition schedule for action by the
14 department must ensure that all permit applications required
15 under [section 9] and this subsection for existing sources
16 will be acted upon by the department before November 15,
17 1997.

18 (4) If an applicant submits a timely and complete
19 application for an operating permit, the applicant's failure
20 to hold a valid operating permit is not a violation of
21 [section 9]. If an applicant submits a timely and complete
22 application for an operating permit renewal, the expiration
23 of the applicant's existing operating permit is not a
24 violation of [section 9]. The applicant is not entitled to
25 the protection of this subsection if the delay in final

1 action by the department on the application results from the
2 applicant's failure to submit in a timely manner information
3 requested by the department to process the application.

4 (5) Except as provided in subsection (8), if the
5 department approves or denies an application for an
6 operating permit or the renewal, modification, or amendment
7 of a permit under [section 9] and this section, any person
8 that participated in the public comment process required
9 under [section 9 (7)] may request a hearing before the
10 board. The request for hearing must be filed within 30 days
11 after the department renders its decision and must include
12 an affidavit setting forth the grounds for the request. The
13 contested case provisions of the Montana Administrative
14 Procedure Act, Title 2, chapter 4, part 6, apply to a
15 hearing before the board under this subsection.

16 (6) Except as provided in subsection (8), the
17 department's decision on any application is not final until
18 30 days have elapsed from the date of the decision and there
19 is no request for a hearing under this section. The filing
20 of a request for hearing postpones the effective date of the
21 department's decision until the conclusion of the hearing
22 and issuance of a final decision by the board.

23 (7) The requirements of subsections (5) and (6) apply
24 to any action initiated by the department to suspend,
25 revoke, modify, or amend an operating permit issued under

1 this section.

2 (8) The denial by the department of an application
3 under [section 9] and this section is not subject to review
4 by the board or judicial review if the basis for denial is
5 the written objection of the appropriate federal agency
6 acting pursuant to the federal Clean Air Act, 42 U.S.C.
7 7401, et seq.

8 (9) Compliance with an operating permit granted or
9 renewed under [section 9] and this section is considered to
10 be in compliance with the requirements of this chapter only
11 if the permit expressly includes those requirements or an
12 express determination that those requirements are not
13 applicable. This subsection does not apply to general
14 permits provided for under [section 9].

15 **NEW SECTION. Section 11. Permits for operation --**
16 **limitations.** [Sections 9 and 10] may not be construed to:

17 (1) affect the department's issuance of a permit for
18 the construction, installation, alteration, or use of a
19 source of air contaminants pursuant to 75-2-211 or 75-2-215;

20 (2) restrict the board's authority to adopt regulations
21 providing for a single air quality permit system; or

22 (3) affect permits, allowances, phase II compliance
23 schedules, or other acid rain provisions under Subchapter IV
24 of the federal Clean Air Act, 42 U.S.C. 7651, et seq.

25 **NEW SECTION. Section 12. Fees -- special assessments**

1 -- late payment assessments. (1) Concurrent with the
 2 submittal of a permit application required under this
 3 chapter and annually for the duration of the permit, the
 4 applicant shall submit to the department a fee sufficient to
 5 cover the reasonable costs, direct and indirect, of
 6 developing and administering the permitting requirements in
 7 this chapter, including:

- 8 (a) reviewing and acting upon the application;
- 9 (b) implementing and enforcing the terms and conditions
 10 of the permit. This amount does not include any court costs
 11 or other costs associated with an enforcement action. If the
 12 permit is not issued, the department shall return this
 13 portion of the fee to the applicant.
- 14 (c) emissions and ambient monitoring;
- 15 (d) preparing generally applicable regulations or
 16 guidance;
- 17 (e) modeling, analysis, and demonstrations;
- 18 (f) preparing inventories and tracking emissions;
- 19 (g) providing support to sources under the small
 20 business stationary source technical and environmental
 21 compliance assistance program; and
- 22 (h) all other costs required to be recovered pursuant
 23 to Subchapter V of the federal Clean Air Act, 42 U.S.C.
 24 7661, et seq.
- 25 (2) In recovering the costs described in subsection

1 (1), the department may assess fees for emissions of air
 2 contaminants regulated under this chapter, including but not
 3 limited to volatile organic compounds, each air contaminant
 4 regulated under section 7411 or 7412 of the federal Clean
 5 Air Act, 42 U.S.C. 7401, et seq., and each air contaminant
 6 subject to a national primary ambient air quality standard.

7 (3) The board shall by rule provide for the annual
 8 adjustment of all fees assessed for operating permit
 9 applications under [sections 9 and 10] to account for
 10 changes to the consumer price index, as required by
 11 Subchapter V of the federal Clean Air Act.

12 (4) In addition to the fee required under subsection
 13 (1), the board may order the assessment of additional fees
 14 required to fund specific activities of the department that
 15 are directed at a particular geographic area if the
 16 legislature authorizes the activities and appropriates funds
 17 for the activities, including emissions or ambient
 18 monitoring, modeling analysis or demonstrations, or
 19 emissions inventories or tracking. Additional assessments
 20 may be levied only on those sources that are within or are
 21 believed by the department to be impacting the geographic
 22 area. Before the board may require the fees, it shall first
 23 determine, after opportunity for hearing, that the
 24 activities to be funded are necessary for the administration
 25 or implementation of this chapter, that the assessments

1 apportion the required funding in an equitable manner, and
 2 that the department has obtained the necessary
 3 appropriation. The contested case provisions of the Montana
 4 Administrative Procedure Act, Title 2, chapter 4, part 6,
 5 apply to a hearing before the board under this subsection.

6 (5) (a) If the applicant or permitholder fails to pay
 7 in a timely manner a fee required under subsection (1), in
 8 addition to the fee, the department may:

9 (i) impose a penalty of not more than 50% of the fee,
 10 plus interest on the required fee computed at the rate
 11 contained in 15-31-510(3); or

12 (ii) revoke the permit consistent with those procedures
 13 established under this chapter for permit revocation.

14 (b) Within 1 year of revocation, the department may
 15 reissue the revoked permit after the applicant or
 16 permitholder has paid all outstanding fees required under
 17 subsections (1) and (4), including all penalties and
 18 interest provided for under this subsection (5). In
 19 reissuing the revoked permit, the department may modify the
 20 terms and conditions of the permit as necessary to account
 21 for changes in air quality occurring since revocation.

22 (6) The board may by rule allow the reduction of a fee
 23 required under this section for an operating permit or
 24 permit renewal to account for the financial resources of a
 25 category of small business stationary sources.

1 (7) As a condition of the continuing validity of an
 2 operating permit issued by the department under this chapter
 3 prior to October 1, 1993, the board may by rule require the
 4 permitholder to pay the fees under subsections (1) and (4).

5 (8) For an existing source of air contaminants that is
 6 subject to Subchapter V of the federal Clean Air Act and
 7 that is not required to hold an air quality permit from the
 8 department as of October 1, 1993, the board may, as a
 9 condition of continued operation, require by rule that the
 10 owner or operator of the source pay the fees under
 11 subsections (1) and (4).

12 (9) (a) The department shall give written notice of the
 13 fee to be assessed and the basis for the department's fee
 14 assessment under this section to the owner or operator of
 15 the air contaminant source. The owner or operator may appeal
 16 the department's fee assessment to the board within 20 days
 17 after receipt of the written notice.

18 (b) An appeal must be based upon the allegation that
 19 the fee assessment is erroneous or excessive. An appeal may
 20 not be based on the amount of the fee contained in the
 21 schedule adopted by the board.

22 (c) If any part of the fee assessment is not appealed,
 23 it must be paid to the department upon receipt of the notice
 24 required in subsection (9)(a).

25 (d) The contested case provisions of the Montana

1 Administrative Procedure Act, Title 2, chapter 4, part 6,
2 apply to a hearing before the board under this subsection
3 (9).

4 (10) The department may not charge more than one fee
5 annually to a source of air contaminants for the costs
6 identified in subsection.(1).

7 NEW SECTION. Section 13. Deposit of air quality
8 permitting fees. All money collected by the department
9 pursuant to [section 12] must be deposited in an account in
10 the state special revenue fund to be appropriated by the
11 legislature to the department for the development and
12 administration of the permitting requirements of this
13 chapter.

14 NEW SECTION. Section 14. Small business compliance
15 assistance advisory council. (1) There is a small business
16 compliance assistance advisory council.

17 (2) The council consists of seven members, as follows:

18 (a) two members that are not owners or representatives
19 of owners of small business stationary sources, appointed by
20 the governor to represent the general public;

21 (b) four members that are owners of small business
22 stationary sources and who are not legislators, one to be
23 appointed by the majority and minority leadership of the
24 house of representatives and one to be appointed by the
25 majority and minority leadership of the senate; and

1 (c) one member that is a representative of the
2 department of health and environmental sciences, appointed
3 by the director of that department.

4 (3) Appointed members shall serve for terms of 3 years.

5 (4) The provisions of 2-15-122(5) through (8) apply to
6 the council and its members.

7 NEW SECTION. Section 15. Small business compliance
8 assistance advisory council -- duties -- secretary --
9 meetings. (1) The small business compliance assistance
10 advisory council, established in [section 14], shall:

11 (a) render advisory opinions concerning the
12 effectiveness of the small business stationary source
13 technical and environmental compliance assistance program
14 administered by the department;

15 (b) make periodic reports to the appropriate federal
16 agency concerning the compliance of the small business
17 stationary source technical and environmental compliance
18 assistance program with the requirements of the federal
19 Clean Air Act, 42 U.S.C. 7401, et seq.;

20 (c) review information for small business stationary
21 sources to ensure that the information is understandable by
22 the lay person and recommend changes to make the information
23 understandable;

24 (d) consult with the small business stationary source
25 representative provided for in [section 18] regarding

1 problems faced by small business stationary sources
2 concerning the implementation and application of the
3 requirements of this chapter; and

4 (e) perform other duties necessary to meet the
5 requirements of the federal Clean Air Act.

6 (2) The council shall elect a presiding officer from
7 among its membership.

8 (3) The secretary of the council must be an employee of
9 the department assigned to the small business stationary
10 source technical and environmental compliance assistance
11 program. The secretary shall keep all records of meetings
12 and actions taken by the council and is responsible for the
13 development and dissemination of any reports and advisory
14 opinions of the council.

15 (4) The council shall hold at least one regular meeting
16 each calendar year and keep a summary record of its
17 proceedings that is open to the public for inspection.
18 Special meetings may be called by the presiding officer or a
19 majority of the council members. The secretary shall provide
20 advance notice of the time and place for meetings to each
21 member of the council.

22 NEW SECTION. Section 16. Small business stationary
23 source technical and environmental compliance assistance
24 program -- duties. (1) The department shall establish a
25 small business stationary source technical and environmental

1 compliance assistance program.

2 (2) The program shall:

3 (a) provide information to small business stationary
4 sources on compliance methods and technologies, pollution
5 prevention, and accidental release detection and prevention;

6 (b) assist small business stationary sources in
7 determining applicable requirements under this chapter and
8 in receiving permits in a timely and efficient manner;

9 (c) provide small business stationary sources timely
10 notice of their rights and obligations under this chapter;

11 (d) provide information to small business stationary
12 sources regarding the availability of audit services that
13 are useful for determining compliance status with the
14 requirements of this chapter; and

15 (e) perform other duties as may be necessary to meet
16 the requirements of the federal Clean Air Act, 42 U.S.C.
17 7401, et seq.

18 NEW SECTION. Section 17. Small business stationary
19 sources -- exceptions -- waivers. (1) Upon petition, the
20 department may designate a source to be a small business
21 stationary source for purposes of receiving assistance from
22 the small business stationary source technical and
23 environmental compliance assistance program if the
24 stationary source does not emit more than 100 tons per year
25 of all regulated air contaminants and:

(a) is a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.;

(b) emits 50 tons or more per year of a regulated air contaminant; or

(c) emits more than 75 tons per year of all regulated air contaminants.

(2) After notice and an opportunity for public comment, the department may grant a petition submitted under subsection (1) upon finding that the source of air contaminants does not have sufficient technical and financial capabilities to meet the requirements of this chapter without the assistance of the small business stationary source technical and environmental compliance assistance program.

(3) After notice and opportunity for public comment, the department may exclude from the definition of small business stationary source in 75-2-103 a category or subcategory of sources that the department determines to have sufficient technical and financial capabilities to meet the requirements of this chapter without the assistance of the small business stationary source technical and environmental compliance assistance program. The department may make this determination only after consulting with the appropriate federal agencies under Subchapter V of the

federal Clean Air Act.

NEW SECTION. Section 18. Small business stationary source representative -- duties. (1) The department shall establish a small business stationary source representative position that is not located in the department or subject to the direct supervision of the department.

(2) The small business stationary source representative shall represent the interests of small business stationary sources before the department and other appropriate local, state, and federal agencies concerning the implementation and application of the requirements of this chapter. In addition, the representative shall provide assistance to small business stationary sources in meeting the requirements of this chapter. In carrying out these activities, the representative shall:

(a) monitor the activities of the small business stationary source technical and environmental compliance assistance program;

(b) review and provide comments and recommendations to the department, local air pollution control programs, and the appropriate federal agencies regarding the development and implementation of regulations pertaining to air quality that impact small business stationary sources;

(c) facilitate and promote the participation of small business stationary sources in the development of new

1 regulations pertaining to air quality that impact small
2 business stationary sources;

3 (d) assist in the preparation and dissemination of
4 reports and other information regarding the applicability of
5 the requirements of this chapter to small business
6 stationary sources;

7 (e) assist in the preparation of guideline documents by
8 the small business stationary source technical and
9 environmental compliance assistance program to ensure that
10 these documents are readily understandable by the lay
11 person;

12 (f) assist small business stationary sources and their
13 trade associations to encourage voluntary compliance with
14 the requirements of this chapter;

15 (g) cooperate with appropriate local, state, and
16 federal agencies and private sector financial institutions
17 to assist small business stationary sources in locating
18 financial assistance necessary for compliance with the
19 requirements of this chapter;

20 (h) consult with the small business compliance
21 assistance advisory council regarding problems faced by
22 small business stationary sources concerning the
23 implementation and application of the requirements of this
24 chapter; and

25 (i) perform other duties as may be necessary to meet

1 the requirements of the federal Clean Air Act, 42 U.S.C.
2 7401, et seq.

3 **Section 19.** Section 75-2-301, MCA, is amended to read:

4 "75-2-301. Local air pollution control programs. (1)
5 After public hearing, a municipality or county may establish
6 and administer a local air pollution control program if the
7 program is consistent with this chapter and is approved by
8 the board.

9 (2) If a local air pollution control program
10 established by a county encompasses all or part of a
11 municipality, the county and each municipality shall approve
12 the program in accordance with subsection (1).

13 (3) Except as provided in subsection (4), the board by
14 order may approve a local air pollution control program
15 that:

16 (a) provides by ordinance or local law for requirements
17 compatible with, more stringent than, or more extensive than
18 those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212,
19 75-2-215, sections 9 through 11, and 75-2-402, and rules
20 adopted under these sections;

21 (b) provides for the enforcement of requirements
22 established under subsection (3)(a) by appropriate
23 administrative and judicial processes; and

24 (c) provides for administrative organization, staff,
25 financial resources, and other resources necessary to

effectively and efficiently carry out the program. As part of meeting these requirements, a local air pollution control program may administer the permit fee provisions of 75-2-211 [section 12]. The permit fees collected by a local air pollution control program must be deposited in a county special revenue fund to be used by the local air pollution control program for administration of permitting activities.

(4) Except for those emergency powers provided for in 75-2-402, the board may not delegate to a local air pollution control program the authority to control any air contaminant source that:

(a) requires the preparation of an environmental impact statement in accordance with Title 75, chapter 1, part 2;

(b) is subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75, chapter 20; or

(c) has the potential to emit 250 tons per year or more of any pollutant subject to regulation under this chapter, including fugitive emissions, unless the authority to control the source was delegated to a local air pollution control program prior to January 1, 1991.

(5) If the board finds that the location, character, or extent of particular concentrations of population, air contaminant sources, or geographic, topographic, or meteorological considerations or any combination of these are such as to make impracticable the maintenance of

appropriate levels of air quality without an areawide air pollution control program, the board may determine the boundaries within which the program is necessary and require it as the only acceptable alternative to direct state administration.

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

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

(8) If the jurisdiction fails to take these measures within the time required, the department shall administer within that jurisdiction all of the provisions of this chapter, including the terms contained in any applicable board order, that are necessary to correct the deficiencies found by the board. The department's control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements in the affected

1 jurisdiction. The cost of the department's action is a
2 charge on the jurisdiction.

3 (9) If the board finds that the control of a particular
4 air contaminant source because of its complexity or
5 magnitude is beyond the reasonable capability of the local
6 jurisdiction or may be more efficiently and economically
7 performed at the state level, it may direct the department
8 to assume and retain control over that air contaminant
9 source. No A charge may not be assessed against the
10 jurisdiction therefor. Findings made under this subsection
11 may be either on the basis of the nature of the sources
12 involved or on the basis of their relationship to the size
13 of the communities in which they are located.

14 (10) A jurisdiction in which the department administers
15 all or part of its air pollution control program under
16 subsection (8) may, with the approval of the board,
17 establish or resume an air pollution control program that
18 meets the requirements of subsection (3).

19 (11) A municipality or county may administer all or part
20 of its air pollution control program in cooperation with one
21 or more municipalities or counties of this state or of other
22 states."

23 NEW SECTION. Section 20. Codification instruction. (1)
24 [Sections 9 through 13] are intended to be codified as an
25 integral part of Title 75, chapter 2, part 2, and the

1 provisions of Title 75, chapter 2, part 2, apply to
2 [sections 9 through 13].

3 (2) [Section 14] is intended to be codified as an
4 integral part of Title 2, chapter 15, part 21, and the
5 provisions of Title 2, chapter 15, part 21, apply to
6 [section 14].

7 (3) [Sections 15 through 18] are intended to be
8 codified as an integral part of Title 75, chapter 2, part 1,
9 and the provisions of Title 75, chapter 2, part 1, apply to
10 [sections 15 through 18].

11 NEW SECTION. Section 21. Saving clause. [Sections 5
12 through 8] do not affect rights and duties that matured,
13 penalties that were incurred, or proceedings that were begun
14 before [the effective date of sections 5 through 8].

15 NEW SECTION. Section 22. Severability. If a part of
16 [this act] is invalid, all valid parts that are severable
17 from the invalid part remain in effect. If a part of [this
18 act] is invalid in one or more of its applications, the part
19 remains in effect in all valid applications that are
20 severable from the invalid applications.

21 NEW SECTION. Section 23. Retroactive applicability.
22 (1) [Section 12(7)] applies retroactively, within the
23 meaning of 1-2-109, to all permits issued by the department
24 of health and environmental sciences pursuant to Title 75,
25 chapter 2, prior to [the effective date of section 12].

1 (2) [Sections 4(2), 9(2) and (3), and 12(8)] apply
2 retroactively, within the meaning of 1-2-109, to all
3 activities identified in those subsections that are not
4 subject to a permit issued by the department of health and
5 environmental sciences pursuant to Title 75, chapter 2, as
6 of [the effective date of sections 4, 9, and 12].

7 NEW SECTION. Section 24. Effective dates. (1)
8 [Sections 1, 14 through 18, 20 through 23, and this section]
9 are effective on passage and approval.

10 (2) [Sections 2 through 13 and 19] are effective
11 October 1, 1993, but the board and department may proceed
12 with the rulemaking authorized under [sections 2 through 13
13 and 19] upon passage and approval. The effective date of any
14 rules adopted to implement [sections 2 through 13 and 19]
15 may not be effective before October 1, 1993.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0318, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act generally revising the laws relating to air quality; authorizing the Department of Health and Environmental Sciences to administer a program for the issuance and renewal of air quality operating permits.

ASSUMPTIONS:

1. This fiscal note was prepared from the Montana Air Permit Fee Analysis, which provides a detailed review and analysis of the required fee program for implementation of the federal Clean Air Act Amendments (CAAA).
2. The state currently has a pre-construction air quality permit and primacy for this program.
3. The federal amendments require industry also have an operating air quality permit and mandate the program be entirely fee-funded.
4. The proposed law complies with the federal amendments and results in the increased air quality fees of \$518,236 in FY94 and \$745,602 in FY95.
5. General fund is maintained at the reduced special session level for non-industry pollution control, e.g., woodstoves, sand on streets and for the grants to seven county programs which can not be fee-funded in accordance with federal law.

FISCAL IMPACT:**Expenditures:**

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
FTE	29.03	38.03	9.00	29.03	43.03	14.00
Personal Services	1,079,942	1,382,358	302,416	1,081,242	1,550,076	468,834
Operating Expenses	556,036	757,456	201,420	564,643	833,411	268,768
Capital Outlay	39,346	53,746	14,400	37,388	45,388	8,000
Local Assistance/Grants	230,645	230,645	0	221,415	221,415	0
Total	1,905,969	2,424,205	518,236	1,904,688	2,650,290	745,602

Funding:

General Fund	193,312	193,312	0	193,312	193,312	0
Federal Special Revenue (Grant)	1,151,619	1,151,619	0	1,042,064	1,042,064	0
State Special Revenue (Fees)	561,038	1,079,274	518,236	669,312	1,414,914	745,602
Total	1,905,969	2,424,205	518,236	1,904,688	2,650,290	745,602

(Continued)

David Lewis 1-29-93
 DAVID LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

SHEILA RICE, PRIMARY SPONSOR DATE

Fiscal Note for HB0318, as introduced

HB 318

<u>Revenues:</u>	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
General Fund	193,312	193,312	0	193,312	193,312	0
Federal Special Revenue (Grant)	1,151,619	1,151,619	0	1,042,064	1,042,064	0
State Special Revenue (Fees)	<u>561,038</u>	<u>1,079,274</u>	<u>518,236</u>	<u>669,312</u>	<u>1,414,914</u>	<u>745,602</u>
Total	1,905,969	2,424,205	518,236	1,904,688	2,650,290	745,602

<u>Net Impact:</u>						
State Special Revenue (Fees)	0	0	0	0	0	0

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES: There is no direct impact of this bill on counties or communities. Under the Montana Clean Air Act, local or county air quality programs can be delegated authority to implement portions of the state act providing they meet certain eligibility criteria. If the operating permit program was delegated to a local or county air quality program, then that program would collect fees from the industrial sources it regulates.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION: Additional growth in Montana's Air Quality Program is projected for the next two bienniums to fully implement the CAAA. Because of the delayed schedule for many CAAA requirements, it is difficult to estimate resource needs with precision beyond this biennium. Full implementation of the CAAA in Montana will better assure our citizens of healthful air quality.

TECHNICAL NOTES: Actual fees for air pollution sources are set by the Board of Health and Environmental Sciences on an emissions basis (\$ per ton) within the Legislature's appropriation. Projected fees are as follows:

FY94 - \$9.00/ton of particulate, lead, SO ₂	FY95 - \$11.75/ton
- \$2.25/ton of NOx, VOC	- \$2.94/ton

APPROVED BY COMM. ON
NATURAL RESOURCES

HOUSE BILL NO. 318

INTRODUCED BY S. RICE, HALLIGAN, FAGG, KEATING

BY REQUEST OF THE DEPARTMENT
OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO AIR QUALITY; AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADMINISTER A PROGRAM FOR THE ISSUANCE AND RENEWAL OF AIR QUALITY OPERATING PERMITS; AMENDING THE CONFIDENTIALITY PROVISIONS RELATING TO AIR QUALITY; CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADMINISTER A PROGRAM FOR THE ISSUANCE OF AIR QUALITY PERMITS FOR CONSTRUCTION, INSTALLATION, ALTERATION, OPERATION, OR USE; CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO COLLECT FEES FOR OPERATING AND CONSTRUCTION PERMITS; DESIGNATING FEES TO AN ACCOUNT IN THE SPECIAL REVENUE FUND; PROVIDING FOR AN ADMINISTRATIVE CIVIL PENALTY IN THE CLEAN AIR ACT OF MONTANA; CLARIFYING AND AMENDING THE CRIMINAL PUNISHMENT APPLICABLE TO VIOLATIONS OF AIR QUALITY STATUTES, RULES, ORDERS, AND PERMITS; CLARIFYING AND AMENDING THE CIVIL PUNISHMENT APPLICABLE TO VIOLATIONS OF AIR QUALITY STATUTES, RULES, ORDERS, AND PERMITS; AMENDING THE PROVISIONS RELATING TO THE ASSESSMENT OF NONCOMPLIANCE PENALTIES; CREATING THE SMALL BUSINESS COMPLIANCE ASSISTANCE

ADVISORY COUNCIL; CREATING THE SMALL BUSINESS STATIONARY SOURCE TECHNICAL AND ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM WITHIN THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; PROVIDING FOR A SMALL BUSINESS STATIONARY SOURCE REPRESENTATIVE; AMENDING PROVISIONS RELATED TO LOCAL AIR POLLUTION CONTROL PROGRAMS; AMENDING SECTIONS 75-2-103, 75-2-105, 75-2-204, 75-2-211, 75-2-301, 75-2-401, 75-2-412, 75-2-413, AND 75-2-421, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE."

WHEREAS, pursuant to Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq., the State of Montana may be authorized by the U.S. Environmental Protection Agency to administer an operating permit program applicable to certain sources of air contaminants POLLUTANTS; and

WHEREAS, if the state fails to obtain authorization for an operating permit program from the federal government under the federal Clean Air Act, the program will be administered within the state by the U.S. Environmental Protection Agency and the state will be subjected to sanctions, including the loss of federal air program funding or highway funding; and

WHEREAS, the Legislature believes that it is in the best interests of both the citizens and businesses of this state for the Department of Health and Environmental Sciences to

1 seek and obtain authorization from the federal government to
2 administer an operating permit program pursuant to
3 Subchapter V of the federal Clean Air Act; and

4 WHEREAS, to provide the Department of Health and
5 Environmental Sciences with the statutory authority
6 necessary to obtain authorization under Subchapter V,
7 numerous amendments and additions to the Clean Air Act of
8 Montana are necessary and appropriate, including significant
9 amendments to existing permitting, fee, and enforcement
10 authority and the adoption of new provisions governing the
11 operating permit program and relating to assistance for
12 small businesses.

13 14 STATEMENT OF INTENT

15 A statement of intent is provided for this bill because
16 it extends current rulemaking authority of the board of
17 health and environmental sciences to adopt rules
18 implementing a program for the issuance and renewal of air
19 quality operating permits by the department of health and
20 environmental sciences and amends several sections of the
21 Clean Air Act of Montana for which the board currently has
22 rulemaking authority, including the authority to adopt air
23 quality permit fees to be collected by the department of
24 health and environmental sciences.

25 Section 75-2-204 and [section 9] provide the authority

1 to the board and department to create and administer an
2 operating permit program for those sources subject to
3 Subchapter V of the federal Clean Air Act~~y-and-it~~. IT is the
4 desire of the legislature that the program be applied only
5 to those sources covered by the statutory requirements of
6 Subchapter V: AND THAT THE DEPARTMENT ALLOW FOR OPERATIONAL
7 FLEXIBILITY AT THOSE SOURCES, INCLUDING PROVISIONS FOR MINOR
8 PERMIT MODIFICATIONS AND OFF-PERMIT CHANGES. THE LEGISLATURE
9 DOES NOT INTEND THAT THE OPERATING PERMIT PROGRAM
10 ADMINISTERED BY THE DEPARTMENT SERVE AS A BASIS FOR IMPOSING
11 ADDITIONAL EMISSION LIMITATIONS UPON SOURCES WITHIN THE
12 STATE, EXCEPT AS REQUIRED BY SUBCHAPTER V. IT IS ALSO THE
13 DESIRE OF THE LEGISLATURE THAT THE OPERATING PERMIT PROGRAM
14 FOR THOSE SOURCES SUBJECT TO SUBCHAPTER V OF THE FEDERAL
15 CLEAN AIR ACT BE NO MORE STRINGENT THAN REQUIRED BY
16 SUBCHAPTER V. These sections and the amendments contained in
17 75-2-103(2) are also intended to clarify the department's
18 existing authority to implement the provisions of the
19 federal Clean Air Act relating to hazardous air pollutants,
20 42 U.S.C. 7412, as those provisions relate to the
21 requirements of Subchapter V.

22 Section 75-2-211 contains amendments that clarify the
23 authority of the department to continue to administer the
24 air quality permitting program relating to the construction,
25 installation, alteration, or use of air contaminant

1 POLLUTANT sources. It is the desire of the legislature that
 2 the department continue this permitting program in
 3 conjunction with the operating permit program under
 4 [sections 9 through 11]. THE CLARIFYING AMENDMENTS CONTAINED
 5 IN THIS BILL ARE NOT INTENDED TO EXPAND THE CURRENT
 6 AUTHORITY OF THE DEPARTMENT TO ADMINISTER AN AIR QUALITY
 7 PERMITTING PROGRAM RELATING TO CONSTRUCTION, INSTALLATION,
 8 ALTERATION, OR USE. This authority is currently used for
 9 conducting various state air quality permitting programs, as
 10 well as for operating federal permitting programs relating
 11 to prevention of significant deterioration and
 12 nonattainment, all of which are part of the state
 13 implementation plan for protecting air quality. In addition
 14 to these programs, the legislature intends that 75-2-211
 15 serve as the authority needed to meet the requirements of
 16 the federal Clean Air Act relating to the construction,
 17 reconstruction, and modification of sources of hazardous air
 18 pollutants, 42 U.S.C. 7412.

19 [Section 12] contains the department's existing
 20 authority to assess application and annual fees for permits
 21 issued under the Clean Air Act of Montana, Title 75, chapter
 22 2. The placement of this authority in a separate section of
 23 the code emphasizes its general applicability to all
 24 permitting activities under that chapter. [Section 12(1),
 25 (2), and (3)] contain amendments to the existing fee

1 authority to ensure that the department will be able to
 2 collect fees sufficient to meet the requirements of
 3 Subchapter V of the federal Clean Air Act. [Section 12(5)]
 4 is intended to provide the department with an alternative to
 5 civil enforcement in addressing the delinquent payment of
 6 fees.

7
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 **Section 1.** Section 75-2-103, MCA, is amended to read:

10 "75-2-103. Definitions. Unless the context requires
 11 otherwise, in this chapter the following definitions apply:

12 (1) "Advisory council" means the air pollution control
 13 advisory council provided for in 2-15-2106.

14 (2) "Air contaminant" means dust, fumes, mist, smoke,
 15 other particulate matter, vapor, gas, odorous substances, or
 16 any combination thereof, ~~including pollutants regulated~~
 17 ~~pursuant to section 7412 and Subchapter V of the federal~~
 18 ~~Clean Air Act, 42 U.S.C. 7401, et seq.~~

19 (3) "AIR POLLUTANTS" MEANS ONE OR MORE AIR CONTAMINANTS
 20 THAT ARE PRESENT IN THE OUTDOOR ATMOSPHERE, INCLUDING THOSE
 21 POLLUTANTS REGULATED PURSUANT TO SECTION 7412 AND SUBCHAPTER
 22 V OF THE FEDERAL CLEAN AIR ACT, 42 U.S.C. 7401, ET SEQ.

23 (3)(4) "Air pollution" means the presence in the
 24 outdoor atmosphere of one or more air contaminants OF AIR
 25 POLLUTANTS in a quantity and for a duration which that are

or tend to be injurious to human health or welfare, animal or plant life, or property or would unreasonably interfere with the enjoyment of life, property, or the conduct of business.

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

(5)(6) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(6)(7) "Emission" means a release into the outdoor atmosphere of air contaminants.

(7)(8) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or private corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the federal government or an agency of the federal government, or any other legal entity and includes persons resident in Canada.

(8)(9) "Small business stationary source" means a stationary source that:

(a) is owned or operated by a person who employs 100 or fewer individuals;

(b) is a small business concern as defined in the Small Business Act, 15 U.S.C. 631, et seq.;

(c) is not a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661,

et seq.;

(d) emits less than 50 tons per year of a-regulated AN air contaminant POLLUTANT;

(e) emits less than a total of 75 tons per year of all regulated air contaminants POLLUTANTS combined; and

(f) is not excluded from this definition under [section 17(3)]."

Section 2. Section 75-2-105, MCA, is amended to read:

"75-2-105. Confidentiality of records. (1) Records or other information concerning air contaminant POLLUTANT sources which that are furnished to or obtained by the board or department are a matter of public record and open to public use. However, any information unique to the owner or operator of an air contaminant POLLUTANT source which that would, if disclosed, reveal methods or processes entitled to protection as trade secrets shall must be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if he the owner or operator wishes such the information to enjoy confidential status. The department shall must be served in any-such the action and may intervene as a party therein in the action. Any A trade secrets secret not intended to be public when submitted to the board or department shall must be submitted in writing and clearly

marked as confidential. However, emission data and operating permits issued by the department pursuant to [sections 9 through 11] shall never may not be considered confidential for the purposes of this section.

(2) This section does not prevent the use of records or information by the board or department in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere if the analyses or summaries do not identify an owner or operator or reveal information otherwise made confidential by this section."

Section 3. Section 75-2-204, MCA, is amended to read:

"75-2-204. Rules relating to construction, installation, alteration, operation, or use. The board may by rule prohibit the construction, installation, alteration, operation, or use of a machine, equipment, device, or facility which that it finds may directly or indirectly cause or contribute to air pollution or which that is intended primarily to prevent or control the emission of air pollutants contaminants POLLUTANTS, unless a permit therefor has been obtained under this part."

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

"75-2-211. Permits for construction, installation, alteration, operation, or use. (1) ~~The department~~ The board shall by rule provide for the issuance, expiration, modification, amendment, suspension, revocation, and renewal

of a permit issued operating permits as part of an operating permit program to be administered by the department A PERMIT ISSUED under this part chapter PART.

{2}--For--all--sources--of--air--contaminants--that--are subject to the provisions of Title V of the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended, the provisions of this section apply in addition to the other applicable provisions of this chapter.

{a}--The board shall by rule require that permits issued to sources described in subsection {2} be of limited duration, but it may not limit the duration of the permits beyond that required by the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended.

{b}--The board shall by rule provide for the renewal of permits issued to the sources.

{c}--The board shall by rule establish a transition schedule for air quality permits held by sources of air contaminants subject to the provisions of subsection {2}. The transition schedule must specify dates for the expiration of the permits, absent an application for renewal by the source. The transition schedule may not specify expiration dates that are earlier in time than those required by Title V of the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended. The transition schedule established by the board also applies to existing sources of

1 air-contaminants-that-are-subject-to-the-provisions-of-Title
 2 V--of-the-federal-Clean-Air-Act, 42-U.S.C. 7401 et seq., as
 3 amended, and that do not hold an air quality permit from the
 4 department as of November 2, 1992.

5 {3}(2) Not later than 180 days before construction,
 6 installation, or alteration begins or as a condition of use
 7 of any machine, equipment, device, or facility which that
 8 the board finds may directly or indirectly cause or
 9 contribute to air pollution or which that is intended
 10 primarily to prevent or control the emission of air
 11 pollutants contaminants POLLUTANTS, the owner or operator
 12 shall file with the department the appropriate permit
 13 application on forms available from the department.

14 {4}--Concurrent---with---the---submittal---of---a---permit
 15 application-required-by-subsection-{3}-and-annually-for--the
 16 duration--of--the--permit, the applicant shall submit to the
 17 department a fee sufficient to cover the--reasonable--costs,
 18 both--direct--and--indirect, of developing and administering
 19 the-permitting-requirements-in-this-chapter,--including--the
 20 reasonable-costs-of:

21 {a}--reviewing-and-acting-upon-the-application;
 22 {b}--implementing-and-enforcing-the-terms-and-conditions
 23 of--the--permit-if-the-permit-is-issued. However, this amount
 24 does-not-include-any-court-costs-or-other--costs--associated
 25 with--any--enforcement--action, if the permit is not issued,

1 the-department-shall-return-this-portion-of-the-fee--to--the
 2 applicant;

3 {c}--emissions-and-ambient-monitoring;

4 {d}--preparing---generally---applicable--regulations--or
 5 guidance;

6 {e}--modeling, analysis, and demonstrations; and

7 {f}--preparing-inventories-and-tracking-emissions;

8 {5}--in-addition-to-the-fee--required--under--subsection

9 {4},--the--board-may-order-the-assessment-of-additional-fees
 10 required-to-fund-specific-activities-of-the-department--that
 11 are---directed--at--a--particular--geographic--area--if--the
 12 legislature-authorizes-the-activities-and--appropriates--the
 13 funds--for--the--activities,--including-emissions-or-ambient
 14 monitoring,--modeling---analysis---or---demonstrations,--or
 15 emissions--inventories--or--tracking. Additional assessments
 16 may-be-levied-only-on-those-sources-that-are-within--or--are
 17 believed--by--the--department-to-be-impacting-the-geographic
 18 area. Before-the-board-may-require-the-assessments, it shall
 19 first-determine, after-opportunity--for--hearing,--that--the
 20 activities-to-be-funded-are-necessary-for-the-administration
 21 or--implementation--of--this--chapter,--that-the-assessments
 22 apportion-the-required-funding-in-an-equitable--manner,--and
 23 that--the--department-has-obtained-legislative-authorization
 24 for-the-expenditure-and-the-necessary-appropriation;

25 {6}--As--a--condition--of--the--continuing-validity--of

permits issued by the department under this part prior to October 17, 1991, the department may require the permit holder to pay an annual fee sufficient to cover the costs identified in subsection (4):

(7) For any existing source of air contaminants that is subject to Title V of the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended, and that is not required to hold an air quality permit from the department as of October 17, 1991, the board may, as a condition of continued operation, require by rule that the owner or operator of the source pay the annual fee provided for in subsection (4). Nothing in this subsection may be construed as allowing the department to charge any source of air contaminants more than one annual fee that is designed to cover the costs identified in subsection (4):

(8) The fees collected by the department pursuant to this section must be deposited in the state special revenue fund to be appropriated by the legislature to the department for the development and administration of the permitting requirements in this chapter:

(9) (a) The department shall give written notice of the amount of the fee to be assessed and the basis for the department's fee assessment under this section to the owner or operator of the air contaminant source. The owner or operator may appeal the department's fee assessment to the

board within 20 days after receipt of the written notice:

(b) An appeal must be based upon the allegation that the fee assessment is erroneous or excessive. An appeal may not be based only on the amount of the fee schedule adopted by the board:

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice in subsection (9)(a):

(d) The contested case provisions of the Montana Administrative Procedure Act provided for in Title 2, chapter 4, apply to any hearing before the board under this subsection (9):

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring,

recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

~~Nothing-in-this~~ This section ~~shall~~ does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

~~The~~ department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

The department shall require that applications for permits be accompanied by any plans, specifications, and

other information it considers necessary.

~~(13)~~(7) An application is not considered filed until the applicant has submitted all fees required under [section 12] and all information and completed all application forms required by pursuant to subsections (2), (3), and (6) through-~~(7)~~-and-~~(12)~~. However, if If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

~~(14)~~(8) (a) Where If an application for a permit requires the compilation preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days of after the department's receipt of a filed application, as defined provided in subsection ~~(13)~~(7), if the department prepares the environmental impact statement; or

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

1 impact statement.

2 (b) ~~However, where~~ If an application does not require
3 the compilation preparation of an environmental impact
4 statement, the department shall notify the applicant in
5 writing within 60 days ~~of the~~ after its receipt of a filed
6 application, as defined provided in subsection ~~(13)(7)~~, of
7 the its approval or denial of the application. Notification
8 of approval or denial may be served personally or by
9 ~~registered or~~ certified mail on the applicant or ~~his~~ the
10 applicant's agent.

11 (c) Failure by the department to act in a timely manner
12 does not constitute approval or denial of the application.
13 THIS DOES NOT LIMIT OR ABRIDGE THE RIGHT OF ANY PERSON TO
14 SEEK AVAILABLE JUDICIAL REMEDIES TO REQUIRE THE DEPARTMENT
15 TO ACT IN A TIMELY MANNER.

16 ~~(15)(9)~~ When the department approves or denies the
17 application for a permit under this section, a person who is
18 jointly or severally adversely affected by the department's
19 decision may request, a hearing before the board. The
20 request for hearing must be filed within 15 days after the
21 department renders its decision, ~~upon and~~ must include an
22 affidavit setting forth the grounds therefor, ~~a hearing~~
23 ~~before the board, for the request. A hearing shall be held~~
24 ~~under the provisions of the Montana Administrative Procedure~~
25 ~~Act.~~ The contested case provisions of the Montana

1 Administrative Procedure Act, Title 2, chapter 4, part 6,
2 apply to a hearing before the board under this subsection.

3 ~~(16)(10)~~ The department's decision on the application is
4 not final unless 15 days have elapsed from the date of the
5 decision and there is no request for a hearing under this
6 section. The filing of a request for a hearing postpones the
7 effective date of the department's decision until the
8 conclusion of the hearing and issuance of a final decision
9 by the board."

10 **Section 5.** Section 75-2-401, MCA, is amended to read:

11 "75-2-401. Enforcement -- notice -- order for
12 corrective action -- administrative penalty. (1) When the
13 department believes that a violation of this chapter, a rule
14 made adopted under this chapter, or a condition or
15 limitation imposed by a permit issued pursuant to this
16 chapter has occurred, it may cause written notice to be
17 served personally or by ~~registered or~~ certified mail on the
18 alleged violator or ~~his~~ the violator's agent. The notice
19 ~~shall~~ must specify the provision of this chapter, or the
20 rule, or the permit condition or limitation alleged to be
21 violated and the facts alleged to constitute a violation.
22 The notice and may include an order to take necessary
23 corrective action within a reasonable period of time stated
24 in the order or an order to pay an administrative penalty,
25 or both. The order becomes final unless, within 30 days

after the notice is received, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing.

(2) If, after a hearing held under subsection (1) of this section, the board finds that violations have occurred, it shall ~~either affirm or modify an order previously issued~~ or issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action ~~it considers appropriate~~ or assess an administrative penalty, or both. An As appropriate, an order issued as part of a notice or after a hearing may prescribe the date by which the violation shall must cease; ~~and may prescribe~~ time limits for particular action in preventing, abating, or controlling the emissions; ~~or the date by which the administrative penalty must be paid.~~ If, after a hearing on an order contained in a notice, the board finds that no a violation has not occurred or is not occurring, it shall rescind the order.

(3) (a) An action initiated under this section may include an administrative civil penalty of not more than \$10,000 for each day of each violation, not to exceed a total of \$80,000. If an order issued by the board under this section requires the payment of an administrative civil penalty, the board shall state findings and conclusions describing the basis for its penalty assessment.

(b) Administrative penalties collected under this section must be deposited in the state general fund.

(c) Penalties imposed by an administrative order under this section may not be assessed for any day of violation that occurred more than 12 months prior to the issuance of the initial notice and order by the department under subsection (1).

(d) In determining the amount of penalty to be assessed for an alleged violation under this section, the department or board, as appropriate, shall consider:

(i) the gravity of the violation;
(ii) whether the amount of the penalty serves as a deterrent relative to the alleged violator's ability to pay;
(iii) the economic benefit or savings, if any, to the alleged violator as a result of noncompliance; and

(I) THE ALLEGED VIOLATOR'S ABILITY TO PAY AND THE ECONOMIC IMPACT OF THE PENALTY ON THE ALLEGED VIOLATOR;

(II) THE ALLEGED VIOLATOR'S FULL COMPLIANCE HISTORY AND GOOD FAITH EFFORTS TO COMPLY;

(III) THE DURATION OF THE VIOLATION AS ESTABLISHED BY ANY CREDIBLE EVIDENCE, INCLUDING EVIDENCE OTHER THAN THE APPLICABLE TEST METHOD;

(IV) PAYMENT BY THE VIOLATOR OF PENALTIES PREVIOUSLY ASSESSED FOR THE SAME VIOLATION;

(V) THE ECONOMIC BENEFIT OF NONCOMPLIANCE;

(VI) THE SERIOUSNESS OF THE VIOLATION; AND

(iv)(VII) other matters as justice may require.

(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing conducted under this section.

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

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

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

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

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

Section 6. Section 75-2-412, MCA, is amended to read:

"75-2-412. Criminal penalties -- injunction preserved.

~~(1) A person who violates this chapter or a rule, order, or permit made or issued under it, other than 75-2-105, is guilty of an offense and subject to a fine not to exceed \$1,000. Each day of violation constitutes a separate~~

offense:

~~(2) A person who willfully violates 75-2-105 is guilty of an offense and subject to a fine not to exceed \$1,000.~~

(1) A person is guilty of an offense under this section if that person knowingly:

(a) violates a provision of this chapter or a rule, order, or permit made or issued under this chapter;

(b) makes a false MATERIAL statement, representation, or certification on a form required under this chapter or in a notice or report required by a permit under this chapter; or

(c) renders inaccurate a monitoring device or method required under this chapter.

(2) A person guilty of an offense under subsection (1) is subject to a fine of not more than \$10,000 per violation or imprisonment for a period not to exceed 3 2 years, or both. THIS OFFENSE MUST BE CLASSIFIED AS A MISDEMEANOR. Each day of each violation constitutes a separate violation.

(3) Fines collected under this section, except those fines collected in a justice's court, by an approved local air pollution control program, shall must be deposited to in the state general fund.

(4) Action under this section is not a bar to enforcement of this chapter or of a rule, order, or permit made or issued under it by injunction or other appropriate

civil or administrative remedy. The department may institute and maintain in the name of the state any enforcement proceedings."

Section 7. Section 75-2-413, MCA, is amended to read:

"75-2-413. Civil penalties -- out-of-state litigants -- effect of action ~~---presumption-of-continuing-violation.~~ (1) Any A person who violates any provision of this chapter, a or ~~any rule enforced thereunder adopted under this chapter,~~ or any order or permit made or issued pursuant ~~thereto~~ and after ~~notice thereof has been given by the department shall~~ be under this chapter is subject to a civil penalty not to exceed \$10,000 per violation. Each day of each violation shall ~~constitute~~ constitutes a separate violation. The department may institute and maintain in the name of the state any enforcement proceedings hereunder under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided for in 75-2-412.

(2) (a) Action under subsection (1) ~~of this section~~ is not a bar to enforcement of this chapter or of a rule, order, or permit made or issued under it by injunction or other appropriate civil remedies.

(b) An action under subsection (1) or to enforce this

chapter or a rule, order, or permit made or issued under it may be brought in the district court of any county where a violation occurs or is threatened if the defendant cannot be located in Montana.

~~(3) If the department has notified a person of a violation under 75-2-401 and if the department makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation are presumed to include the date of the notice and every day after the notice until the person establishes that continuous compliance has been achieved. This presumption may be overcome to the extent the person can prove by a preponderance of evidence that there were intervening days when a violation did not occur or that the violation was not continuing in nature.~~

~~(4)(3)~~ Moneys Money collected hereunder ~~shall~~ under this section must be deposited in the state general fund. This subsection does not apply to money collected by an approved local air pollution control program.

Section 8. Section 75-2-421, MCA, is amended to read:

"75-2-421. Persons subject to noncompliance penalties -- exemptions. (1) Except as provided in subsection (2), the department shall may assess and collect a noncompliance penalty from any person who owns or operates:

(a) a stationary source (other than a primary nonferrous smelter which that has received a nonferrous smelter order under 42 U.S.C. 7419) which that is not in compliance with any emission limitation specified in an order of the board, emission standard, or compliance schedule under the state implementation plan approved by the federal environmental protection agency;

(b) a stationary source which that is not in compliance with an emission limitation, emission standard, standard of performance, or other requirement under this chapter or 42 U.S.C. 7411, or 42-U.S.C. 7412, 7477, or 7603; or

(c) a stationary source that is not in compliance with any other requirement under this chapter or any requirement of Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.; or

~~(c)(d)~~ any source referred to in subsections (1)(a), or (1)(b), or (1)(c) which that has been granted an exemption, extension, or suspension under subsection (2) or which that is covered by a compliance order, or a primary nonferrous smelter which that has received a primary nonferrous smelter order under 42 U.S.C. 7419, if such that source is not in compliance with any interim emission control requirement or schedule of compliance under such the extension, order, or suspension.

(2) Notwithstanding the requirements of subsection (1),

the department may, after notice and opportunity for a public hearing, exempt any source from the requirements of 75-2-421 through 75-2-429 with respect to a particular instance of noncompliance which that:

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

(b) is caused by conditions beyond the reasonable control of the source and is of no demonstrable advantage to the source; or

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

(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 for it, a hearing before the board. A hearing shall must be held under the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6."

NEW SECTION. Section 9. Operating permit program -- exemptions -- general requirements -- duration. (1) The board shall provide by rule for the issuance, expiration, modification, amendment, suspension, revocation, and renewal of operating permits as part of an operating permit program to be administered by the department under this chapter. THE BOARD SHALL PROMULGATE RULES THAT ARE NO MORE STRINGENT THAN

1 THE REQUIREMENTS OF SUBCHAPTER V OF THE FEDERAL CLEAN AIR
 2 ACT.

3 (2) This section applies to all sources of air
 4 contaminants POLLUTANTS that are subject to the provisions
 5 of Subchapter V of the federal Clean Air Act, 42 U.S.C.
 6 7661, et seq.

7 (3) A person may not violate any requirement of an
 8 operating permit issued under [section 10] and this section
 9 or operate any source required to have a permit under this
 10 section without having complied with the requirements of the
 11 operating permit program administered by the department
 12 pursuant to [sections 10 and 11] and this section.

13 (4) The board may by rule provide for the exemption of
 14 one or more source categories, in whole or in part, from all
 15 or part of the requirements of this section if the board
 16 determines that compliance with the requirements of this
 17 section is impracticable, infeasible, or unnecessarily
 18 burdensome for the sources. The board may premise this
 19 determination upon a similar determination by the
 20 appropriate federal agency acting pursuant to the federal
 21 Clean Air Act, 42 U.S.C. 7401, et seq.

22 (5) The board may by rule provide for general operating
 23 permits covering numerous similar sources.

24 (6) An operating permit issued by the department under
 25 [section 10] and this section is effective for a period not

1 to exceed 5 years and may be renewed.

2 (7) The operating permit program administered by the
 3 department pursuant to this section must include the
 4 following:

5 (a) ~~requirements--and-procedures-for-permit-and-renewal~~
 6 ~~applications,--including--standard--application--forms---and~~
 7 ~~criteria--for--evaluating--application--completeness-and-the~~
 8 ~~need--for--additional--information--after---a---completeness~~
 9 ~~determination--has--been--made;~~ ADEQUATE PROCEDURES THAT ARE
 10 STREAMLINED AND REASONABLE FOR:

11 (I) EXPEDITIOUSLY DETERMINING WHEN APPLICATIONS ARE
 12 COMPLETE;

13 (II) PROCESSING APPLICATIONS; AND

14 (III) EXPEDITIOUSLY REVIEWING PERMIT ACTIONS, INCLUDING
 15 APPLICATION RENEWALS OR REVISIONS;

16 (b) requirements and procedures for submittal of
 17 information necessary to determine the location, quantity,
 18 and type of emissions;

19 (c) procedures for public notice and opportunity for
 20 comment or public hearing, as appropriate;

21 (d) procedures for providing notice and an opportunity
 22 for comment to contiguous states and federal agencies, as
 23 appropriate;

24 (e) requirements for inspection, monitoring,
 25 recordkeeping, compliance certification, and reporting;

1 (f) deadlines for submitting permit applications and
 2 compliance plans that are not later than 12 months after the
 3 source becomes subject to the operating permit requirement;
 4 (g) deadlines for submitting permit renewal
 5 applications that are not later than 6 months before
 6 expiration of the existing operating permit;
 7 (h) requirements for compliance plans that must be
 8 submitted with permit and renewal applications, including
 9 schedules of compliance and progress reports;
 10 (i) requirements and procedures for periodic
 11 certification of source compliance with permit requirements,
 12 including the prompt reporting of any deviations from permit
 13 requirements;
 14 (j) requirements for submission of any plans,
 15 specifications, or other information that the department
 16 considers necessary under this section;
 17 (k) conditions and procedures for the transfer of
 18 operating permits;
 19 (l) requirements and procedures for suspension,
 20 modification, amendment, and revocation of permits by the
 21 department for cause, including the modification or
 22 amendment of permits before renewal or termination to
 23 incorporate applicable limitations or requirements effective
 24 after permit issuance;
 25 (m) requirements and procedures for incorporating into

1 permits and permit renewals all applicable emission
 2 limitations and other requirements, including enforceable
 3 measures necessary to ensure compliance with those
 4 limitations and requirements;
 5 (n) requirements and procedures for permit modification
 6 and amendment;
 7 (o) procedures for tracking activities conducted under
 8 general permits;
 9 (p) requirements and procedures for issuing a single
 10 operating permit authorizing emissions from similar
 11 operations at multiple temporary locations, which permit may
 12 include conditions necessary to ensure compliance with the
 13 requirements of this chapter at all authorized locations and
 14 a requirement that the owner or operator notify the
 15 department in advance of each change in location;
 16 (q) requirements and procedures for allowing changes
 17 within a permitted facility without requiring a permit
 18 amendment if the changes are not prohibited under this
 19 chapter and do not exceed the emissions allowable under the
 20 permit; and
 21 (r) other requirements necessary for the department to
 22 obtain the authorization to administer an operating permit
 23 program under the provisions of Subchapter V of the federal
 24 Clean Air Act.
 25 NEW SECTION. Section 10. Permits for operation --

1 application completeness -- action by department --
 2 application shield -- review by board. (1) An application
 3 for an operating permit or renewal is not considered filed
 4 until the department has determined that it is complete. An
 5 application is complete if all fees required under [section
 6 12] and all information and completed application forms
 7 required under [section 9] have been submitted. A complete
 8 application must contain all of the information required for
 9 the department to begin processing the application. If the
 10 department fails to notify the applicant in writing within
 11 60 days after submittal of an application that the
 12 application is incomplete and fails to list the reasons why
 13 the application is considered incomplete, the application is
 14 considered filed on the date of the department's receipt of
 15 the application. The department may request additional
 16 information after a completeness determination has been
 17 made. THE DEPARTMENT SHALL ADOPT RULES THAT CONTAIN CRITERIA
 18 FOR USE IN DETERMINING BOTH WHEN AN APPLICATION IS COMPLETE
 19 AND WHEN ADDITIONAL INFORMATION IS REQUIRED AFTER A
 20 COMPLETENESS DETERMINATION HAS BEEN MADE.

21 (2) Except as provided in subsection (3), the
 22 department shall, consistent with the procedures established
 23 under [section 9], approve or disapprove a complete
 24 application for an operating permit or renewal and shall
 25 issue or deny the permit or renewal within 18 months after

1 the date of filing. Failure of the department to act in a
 2 timely manner does not constitute approval or denial of the
 3 application. THIS DOES NOT LIMIT OR ABRIDGE THE RIGHT OF ANY
 4 PERSON TO SEEK AVAILABLE JUDICIAL REMEDIES TO REQUIRE THE
 5 DEPARTMENT TO ACT IN A TIMELY MANNER.

6 (3) The board may by rule provide for a transition
 7 schedule for both the submittal to the department of initial
 8 applications for operating permits by existing sources and
 9 action by the department on these initial permit
 10 applications. The board may require that one-third of all
 11 operating permit applications required for existing sources
 12 be submitted within the first calendar year after the
 13 adoption of rules implementing an operating permit program
 14 under [section 9]. Any transition schedule for action by the
 15 department must ensure that all permit applications required
 16 under [section 9] and this subsection for existing sources
 17 will be acted upon by the department before November 15,
 18 1997.

19 (4) If an applicant submits a timely and complete
 20 application for an operating permit, the applicant's failure
 21 to hold a valid operating permit is not a violation of
 22 [section 9]. If an applicant submits a timely and complete
 23 application for an operating permit renewal, the expiration
 24 of the applicant's existing operating permit is not a
 25 violation of [section 9]. THE APPLICANT SHALL CONTINUE TO BE

SUBJECT TO THE TERMS AND CONDITIONS OF THE EXPIRED OPERATING PERMIT UNTIL THE OPERATING PERMIT IS RENEWED AND IS SUBJECT TO THE APPLICATION OF [SECTION 9]. The applicant is not entitled to the protection of this subsection if the delay in final action by the department on the application results from the applicant's failure to submit in a timely manner information requested by the department to process the application.

(5) Except as provided in subsection (8), if the department approves or denies an application for an operating permit or the renewal, modification, or amendment of a permit under [section 9] and this section, any person that participated in the public comment process required under [section 9 (7)] may request a hearing before the board. The request for hearing must be filed within 30 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(6) Except as provided in subsection (8), the department's decision on any application is not final until 30 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for hearing postpones the effective date of the

department's decision until the conclusion of the hearing and issuance of a final decision by the board.

(7) The requirements of subsections (5) and (6) apply to any action initiated by the department to suspend, revoke, modify, or amend an operating permit issued under this section.

(8) The denial by the department of an application under [section 9] and this section is not subject to review by the board or judicial review if the basis for denial is the written objection of the appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(9) Compliance with an operating permit granted or renewed under [section 9] and this section is considered to be in compliance with the requirements of this chapter only if the permit expressly includes those requirements or an express determination that those requirements are not applicable. This subsection does not apply to general permits provided for under [section 9].

NEW SECTION. Section 11. Permits for operation --
limitations. [Sections 9 and 10] may not be construed to:

(1) affect the department's issuance of a permit for the construction, installation, alteration, or use of a source of air contaminants POLLUTANTS pursuant to 75-2-211 or 75-2-215;

(2) restrict the board's authority to adopt regulations providing for a single air quality permit system; or

(3) affect permits, allowances, phase II compliance schedules, or other acid rain provisions under Subchapter IV of the federal Clean Air Act, 42 U.S.C. 7651, et seq.

NEW SECTION. **Section 12. Fees -- special assessments**
-- late payment assessments. (1) Concurrent with the submittal of a permit application required under this chapter and annually for the duration of the permit, the applicant shall submit to the department a fee sufficient to cover the reasonable costs, direct and indirect, of developing and administering the permitting requirements in this chapter, including:

- (a) reviewing and acting upon the application;
- (b) implementing and enforcing the terms and conditions of the permit. This amount does not include any court costs or other costs associated with an enforcement action. If the permit is not issued, the department shall return this portion of the fee to the applicant.
- (c) emissions and ambient monitoring;
- (d) preparing generally applicable regulations or guidance;
- (e) modeling, analysis, and demonstrations;
- (f) preparing inventories and tracking emissions;
- (g) providing support to sources under the small

business stationary source technical and environmental compliance assistance program; and

(h) all other costs required to be recovered pursuant to Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.

(2) In recovering the costs described in subsection (1), the department may assess fees for ACTUAL emissions of air contaminants POLLUTANTS regulated under this chapter, including but not limited to volatile organic compounds, each air contaminant POLLUTANT regulated under section 7411 or 7412 of the federal Clean Air Act, 42 U.S.C. 7401, et seq., and each air contaminant POLLUTANT subject to a national primary ambient air quality standard.

(3) The board shall by rule provide for the annual adjustment of all fees assessed for operating permit applications under [sections 9 and 10] to account for changes to the consumer price index, as required by Subchapter V of the federal Clean Air Act.

(4) In addition to the fee required under subsection (1), the board may order the assessment of additional fees required to fund specific activities of the department that are directed at a particular geographic area if the legislature authorizes the activities and appropriates funds for the activities, including emissions or ambient monitoring, modeling analysis or demonstrations, or

1 emissions inventories or tracking. Additional assessments
 2 may be levied only on those sources that are within or are
 3 believed by the department to be impacting the geographic
 4 area. Before the board may require the fees, it shall first
 5 determine, after opportunity for hearing, that the
 6 activities to be funded are necessary for the administration
 7 or implementation of this chapter, THAT THE AMOUNT OF THE
 8 REQUESTED FEES IS APPROPRIATE, that the assessments
 9 apportion the required funding in an equitable manner, and
 10 that the department has obtained the necessary
 11 appropriation. The contested case provisions of the Montana
 12 Administrative Procedure Act, Title 2, chapter 4, part 6,
 13 apply to a hearing before the board under this subsection.

14 (5) (a) If the applicant or permitholder fails to pay
 15 in a timely manner a fee required under subsection (1), in
 16 addition to the fee, the department may:

17 (i) impose a penalty of-not-more-than NOT TO EXCEED 50%
 18 of the fee, plus interest on the required fee computed at
 19 the rate contained in 15-31-510(3); or

20 (ii) revoke the permit consistent with those procedures
 21 established under this chapter for permit revocation.

22 (b) Within 1 year of revocation, the department may
 23 reissue the revoked permit after the applicant or
 24 permitholder has paid all outstanding fees required under
 25 subsections (1) and (4), including all penalties and

1 interest provided for under this subsection (5). In
 2 reissuing the revoked permit, the department may modify the
 3 terms and conditions of the permit as necessary to account
 4 for changes in air quality occurring since revocation.

5 (C) THE BOARD SHALL BY RULE PROVIDE FOR THE
 6 IMPLEMENTATION OF THIS SUBSECTION (5), INCLUDING CRITERIA
 7 FOR IMPOSITION OF THE SANCTIONS DESCRIBED IN THIS SUBSECTION
 8 (5).

9 (6) The board may by rule allow the reduction of a fee
 10 required under this section for an operating permit or
 11 permit renewal to account for the financial resources of a
 12 category of small business stationary sources.

13 (7) As a condition of the continuing validity of an
 14 operating A permit issued by the department under this
 15 chapter prior to October 1, 1993, the board may by rule
 16 require the permitholder to pay the fees under subsections
 17 (1) and (4).

18 (8) For an existing source of air contaminants
 19 POLLUTANTS that is subject to Subchapter V of the federal
 20 Clean Air Act and that is not required to hold an air
 21 quality permit from the department as of October 1, 1993,
 22 the board may, as a condition of continued operation,
 23 require by rule that the owner or operator of the source pay
 24 the fees under subsections (1) and (4).

25 (9) (a) The department shall give written notice of the

fee to be assessed and the basis for the department's fee assessment under this section to the owner or operator of the air contaminant POLLUTANT source. The owner or operator may appeal the department's fee assessment to the board within 20 days after receipt of the written notice.

(b) An appeal must be based upon the allegation that the fee assessment is erroneous or excessive. An appeal may not be based on the amount of the fee contained in the schedule adopted by the board.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice required in subsection (9)(a).

(d) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection (9).

(10) The department may not charge more than one fee annually to a source of air contaminants POLLUTANTS for the costs identified in subsection (1).

NEW SECTION. Section 13. Deposit of air quality permitting fees. All money collected by the department pursuant to [section 12] must be deposited in an account in the state special revenue fund to be appropriated by the legislature to the department for the development and administration of the permitting requirements of this

chapter. THE OPERATING PERMIT FEES AND THE CONSTRUCTION PERMIT FEES MUST BE MAINTAINED IN SEPARATE SUBACCOUNTS. A PERSON PAYING FEES UNDER THE OPERATING PERMIT PROGRAM IS AUTHORIZED TO AUDIT THE OPERATING PERMIT PROGRAM QUARTERLY.

NEW SECTION. Section 14. Small business compliance assistance advisory council. (1) There is a small business compliance assistance advisory council.

(2) The council consists of seven members, as follows:

(a) two members that are not owners or representatives of owners of small business stationary sources, appointed by the governor to represent the general public;

(b) four members that are owners OR REPRESENTATIVES OF OWNERS of small business stationary sources and who are not legislators, one to be appointed by the majority and minority leadership of the house of representatives and one to be appointed by the majority and minority leadership of the senate; and

(c) one member that is a representative of the department of health and environmental sciences, appointed by the director of that department.

(3) Appointed members shall serve for terms of 3 years.

(4) The provisions of 2-15-122(5) through (8) apply to the council and its members.

NEW SECTION. Section 15. Small business compliance assistance advisory council -- duties -- secretary --

1 meetings. (1) The small business compliance assistance
2 advisory council, established in [section 14], shall:

3 (a) render advisory opinions concerning the
4 effectiveness of the small business stationary source
5 technical and environmental compliance assistance program
6 administered by the department;

7 (b) make periodic reports to the appropriate federal
8 agency concerning the compliance of the small business
9 stationary source technical and environmental compliance
10 assistance program with the requirements of the federal
11 Clean Air Act, 42 U.S.C. 7401, et seq.;

12 (c) review information for small business stationary
13 sources to ensure that the information is understandable by
14 the lay person and recommend changes to make the information
15 understandable;

16 (d) consult with the small business stationary source
17 representative provided for in [section 18] regarding
18 problems faced by small business stationary sources
19 concerning the implementation and application of the
20 requirements of this chapter; and

21 (e) perform other duties necessary to meet the
22 requirements of the federal Clean Air Act.

23 (2) The council shall elect a presiding officer from
24 among its membership.

25 (3) The secretary of the council must be an employee of

1 the department assigned to the small business stationary
2 source technical and environmental compliance assistance
3 program. The secretary shall keep all records of meetings
4 and actions taken by the council and is responsible for the
5 development and dissemination of any reports and advisory
6 opinions of the council.

7 (4) The council shall hold at least one regular meeting
8 each calendar year and keep a summary record of its
9 proceedings that is open to the public for inspection.
10 Special meetings may be called by the presiding officer or a
11 majority of the council members. The secretary shall provide
12 advance notice of the time and place for meetings to each
13 member of the council.

14 NEW SECTION. **Section 16. Small business stationary**
15 **source technical and environmental compliance assistance**
16 **program -- duties.** (1) The department shall establish a
17 small business stationary source technical and environmental
18 compliance assistance program.

19 (2) The program shall:

20 (a) provide information to small business stationary
21 sources on compliance methods and technologies, pollution
22 prevention, and accidental release detection and prevention;

23 (b) assist small business stationary sources in
24 determining applicable requirements under this chapter and
25 in receiving permits in a timely and efficient manner;

(c) provide small business stationary sources timely notice of their rights and obligations under this chapter;

(d) provide information to small business stationary sources regarding the availability of audit services that are useful for determining compliance status with the requirements of this chapter; and

(e) perform other duties as may be necessary to meet the requirements of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

NEW SECTION. Section 17. Small business stationary sources -- exceptions -- waivers. (1) Upon petition, the department may designate a source to be a small business stationary source for purposes of receiving assistance from the small business stationary source technical and environmental compliance assistance program if the stationary source does not emit more than 100 tons per year of all regulated air contaminants POLLUTANTS and:

(a) is a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.;

(b) emits 50 tons or more per year of a--regulated AN air contaminant POLLUTANT; or

(c) emits more than 75 tons per year of all regulated air contaminants POLLUTANTS.

(2) After notice and an opportunity for public comment,

the department may grant a petition submitted under subsection (1) upon finding that the source of air contaminants POLLUTANTS does not have sufficient technical and financial capabilities to meet the requirements of this chapter without the assistance of the small business stationary source technical and environmental compliance assistance program.

(3) After notice and opportunity for public comment, the department may exclude from the definition of small business stationary source in 75-2-103 a category or subcategory of sources that the department determines to have sufficient technical and financial capabilities to meet the requirements of this chapter without the assistance of the small business stationary source technical and environmental compliance assistance program. The department may make this determination only after consulting with the appropriate federal agencies under Subchapter V of the federal Clean Air Act.

NEW SECTION. Section 18. Small business stationary source representative -- duties. (1) The department shall establish a small business stationary source representative position that is not located in the department or subject to the direct supervision of the department.

(2) The small business stationary source representative shall represent the interests of small business stationary

1 sources before the department and other appropriate local,
 2 state, and federal agencies concerning the implementation
 3 and application of the requirements of this chapter. In
 4 addition, the representative shall provide assistance to
 5 small business stationary sources in meeting the
 6 requirements of this chapter. In carrying out these
 7 activities, the representative shall:

8 (a) monitor the activities of the small business
 9 stationary source technical and environmental compliance
 10 assistance program;

11 (b) review and provide comments and recommendations to
 12 the department, local air pollution control programs, and
 13 the appropriate federal agencies regarding the development
 14 and implementation of regulations pertaining to air quality
 15 that impact small business stationary sources;

16 (c) facilitate and promote the participation of small
 17 business stationary sources in the development of new
 18 regulations pertaining to air quality that impact small
 19 business stationary sources;

20 (d) assist in the preparation and dissemination of
 21 reports and other information regarding the applicability of
 22 the requirements of this chapter to small business
 23 stationary sources;

24 (e) assist in the preparation of guideline documents by
 25 the small business stationary source technical and

1 environmental compliance assistance program to ensure that
 2 these documents are readily understandable by the lay
 3 person;

4 (f) assist small business stationary sources and their
 5 trade associations to encourage voluntary compliance with
 6 the requirements of this chapter;

7 (g) cooperate with appropriate local, state, and
 8 federal agencies and private sector financial institutions
 9 to assist small business stationary sources in locating
 10 financial assistance necessary for compliance with the
 11 requirements of this chapter;

12 (h) consult with the small business compliance
 13 assistance advisory council regarding problems faced by
 14 small business stationary sources concerning the
 15 implementation and application of the requirements of this
 16 chapter; and

17 (i) perform other duties as may be necessary to meet
 18 the requirements of the federal Clean Air Act, 42 U.S.C.
 19 7401, et seq.

20 **Section 19.** Section 75-2-301, MCA, is amended to read:

21 "75-2-301. Local air pollution control programs. (1)
 22 After public hearing, a municipality or county may establish
 23 and administer a local air pollution control program if the
 24 program is consistent with this chapter and is approved by
 25 the board.

(2) If a local air pollution control program established by a county encompasses all or part of a municipality, the county and each municipality shall approve the program in accordance with subsection (1).

(3) Except as provided in subsection (4), the board by order may approve a local air pollution control program that:

(a) provides by ordinance or local law for requirements compatible with, more stringent than, or more extensive than those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212, 75-2-215, [sections 9 through 11], and 75-2-402, and rules adopted under these sections;

(b) provides for the enforcement of requirements established under subsection (3)(a) by appropriate administrative and judicial processes; and

(c) provides for administrative organization, staff, financial resources, and other resources necessary to effectively and efficiently carry out the program. As part of meeting these requirements, a local air pollution control program may administer the permit fee provisions of 75-2-211 [section 12]. The permit fees collected by a local air pollution control program must be deposited in a county special revenue fund to be used by the local air pollution control program for administration of permitting activities.

(4) Except for those emergency powers provided for in

75-2-402, the board may not delegate to a local air pollution control program the authority to control any air contaminant POLLUTANT source that:

(a) requires the preparation of an environmental impact statement in accordance with Title 75, chapter 1, part 2;

(b) is subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75, chapter 20; or

(c) has the potential to emit 250 tons per year or more of any pollutant subject to regulation under this chapter, including fugitive emissions, unless the authority to control the source was delegated to a local air pollution control program prior to January 1, 1991.

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

(6) If the board has reason to believe that any part of an air pollution control program in force under this section is either inadequate to prevent and control air pollution in

the jurisdiction to which the program relates or is being administered in a manner inconsistent with this chapter, the board shall, on notice, conduct a hearing on the matter.

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

(8) If the jurisdiction fails to take these measures within the time required, the department shall administer within that jurisdiction all of the provisions of this chapter, including the terms contained in any applicable board order, that are necessary to correct the deficiencies found by the board. The department's control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements in the affected jurisdiction. The cost of the department's action is a charge on the jurisdiction.

(9) If the board finds that the control of a particular air contaminant POLLUTANT source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and economically performed at the state level, it may direct the department to assume and retain control over that air

contaminant POLLUTANT source. No A charge may not be assessed against the jurisdiction therefor. Findings made under this subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(10) A jurisdiction in which the department administers all or part of its air pollution control program under subsection (8) may, with the approval of the board, establish or resume an air pollution control program that meets the requirements of subsection (3).

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

NEW SECTION. Section 20. Codification instruction. (1) [Sections 9 through 13] are intended to be codified as an integral part of Title 75, chapter 2, part 2, and the provisions of Title 75, chapter 2, part 2, apply to [sections 9 through 13].

(2) [Section 14] is intended to be codified as an integral part of Title 2, chapter 15, part 21, and the provisions of Title 2, chapter 15, part 21, apply to [section 14].

(3) [Sections 15 through 18] are intended to be

codified as an integral part of Title 75, chapter 2, part 1, and the provisions of Title 75, chapter 2, part 1, apply to [sections 15 through 18].

NEW SECTION. Section 21. Saving clause. [Sections 5 through 8] do not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of sections 5 through 8].

NEW SECTION. Section 22. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 23. Retroactive applicability. (1) [Section 12(7)] applies retroactively, within the meaning of 1-2-109, to all permits issued by the department of health and environmental sciences pursuant to Title 75, chapter 2, prior to [the effective date of section 12].

(2) [Sections 4(2), 9(2) and (3), and 12(8)] apply retroactively, within the meaning of 1-2-109, to all activities identified in those subsections that are not subject to a permit issued by the department of health and environmental sciences pursuant to Title 75, chapter 2, as of [the effective date of sections 4, 9, and 12].

NEW SECTION. Section 24. Effective dates. (1)

[Sections 1, 14 through 18, 20 through 23, and this section] are effective on passage and approval.

(2) [Sections 2 through 13 and 19] are effective October 1, 1993, but the board and department may proceed with the rulemaking authorized under [sections 2 through 13 and 19] upon passage and approval. The effective date of any rules adopted to implement [sections 2 through 13 and 19] may not be effective before October 1, 1993.

-End-

1 HOUSE BILL NO. 318

2 INTRODUCED BY S. RICE, HALLIGAN, FAGG, KEATING

3 BY REQUEST OF THE DEPARTMENT

4 OF HEALTH AND ENVIRONMENTAL SCIENCES

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
7 LAWS RELATING TO AIR QUALITY; AUTHORIZING THE DEPARTMENT OF
8 HEALTH AND ENVIRONMENTAL SCIENCES TO ADMINISTER A PROGRAM
9 FOR THE ISSUANCE AND RENEWAL OF AIR QUALITY OPERATING
10 PERMITS; AMENDING THE CONFIDENTIALITY PROVISIONS RELATING TO
11 AIR QUALITY; CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF
12 HEALTH AND ENVIRONMENTAL SCIENCES TO ADMINISTER A PROGRAM
13 FOR THE ISSUANCE OF AIR QUALITY PERMITS FOR CONSTRUCTION,
14 INSTALLATION, ALTERATION, OPERATION, OR USE; CLARIFYING THE
15 AUTHORITY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL
16 SCIENCES TO COLLECT FEES FOR OPERATING AND CONSTRUCTION
17 PERMITS; DESIGNATING FEES TO AN ACCOUNT IN THE SPECIAL
18 REVENUE FUND; PROVIDING FOR AN ADMINISTRATIVE CIVIL PENALTY
19 IN THE CLEAN AIR ACT OF MONTANA; CLARIFYING AND AMENDING THE
20 CRIMINAL PUNISHMENT APPLICABLE TO VIOLATIONS OF AIR QUALITY
21 STATUTES, RULES, ORDERS, AND PERMITS; CLARIFYING AND
22 AMENDING THE CIVIL PUNISHMENT APPLICABLE TO VIOLATIONS OF
23 AIR QUALITY STATUTES, RULES, ORDERS, AND PERMITS; AMENDING
24 THE PROVISIONS RELATING TO THE ASSESSMENT OF NONCOMPLIANCE
25 PENALTIES; CREATING THE SMALL BUSINESS COMPLIANCE ASSISTANCE

1 ADVISORY COUNCIL; CREATING THE SMALL BUSINESS STATIONARY
2 SOURCE TECHNICAL AND ENVIRONMENTAL COMPLIANCE ASSISTANCE
3 PROGRAM WITHIN THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL
4 SCIENCES; PROVIDING FOR A SMALL BUSINESS STATIONARY SOURCE
5 REPRESENTATIVE; AMENDING PROVISIONS RELATED TO LOCAL AIR
6 POLLUTION CONTROL PROGRAMS; AMENDING SECTIONS 75-2-103,
7 75-2-105, 75-2-204, 75-2-211, 75-2-301, 75-2-401, 75-2-412,
8 75-2-413, AND 75-2-421, MCA; AND PROVIDING EFFECTIVE DATES
9 AND A RETROACTIVE APPLICABILITY DATE."

10
11 WHEREAS, pursuant to Subchapter V of the federal Clean
12 Air Act, 42 U.S.C. 7661, et seq., the State of Montana may
13 be authorized by the U.S. Environmental Protection Agency to
14 administer an operating permit program applicable to certain
15 sources of air contaminants POLLUTANTS; and

16 WHEREAS, if the state fails to obtain authorization for
17 an operating permit program from the federal government
18 under the federal Clean Air Act, the program will be

THERE ARE NO CHANGES IN THIS BILL
AND WILL NOT BE REPRINTED. PLEASE
REFER TO YELLOW COPY FOR COMPLETE TEXT.

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 29, 1993

Page 2 of 2
March 29, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 318 (third reading copy -- blue), respectfully report that House Bill No. 318 be amended as follows and as so amended be concurred in.

Signed: Don Bianchi
Senator Don Bianchi, Chair

That such amendments read:

1. Page 4, line 9.
Strike: "THAT"

2. Page 4, line 10.
Following: "DEPARTMENT"
Insert: "to"
Following: "FOR"
Strike: "IMPOSING"
Insert: "Imposition of any"

3. Page 4, line 11.
Following: "LIMITATIONS"
Insert: ", monitoring or reporting requirements, or other substantive requirements"

4. Page 4, line 12.
Following: "SUBCHAPTER V"
Insert: "and implementing regulations"

5. Page 4, line 13.
Strike: "DESIRE"
Insert: "intent"
Following: "PROGRAM"
Insert: "administered by the department"

6. Page 4, line 15.
Strike: "NO MORE STRINGENT THAN REQUIRED BY"
Insert: "consistent with the operating permit framework and guidelines outlined in"

7. Page 4, line 16.
Following: "SUBCHAPTER V"
Insert: "and implementing regulations. The legislature further intends that the operating permit program authorized by this bill, when viewed as a whole, should not invariably be limited to the minimum federal requirements but also should not invariably impose the strictest optional alternatives allowable under Subchapter V and implementing regulations"

8. Page 26, line 25 through page 27, line 2.
Strike: "NO" on page 26, line 25 through "OF" on page 27, line 2
Insert: "consistent with the operating permit framework and guidelines outlined in"

9. Page 27, line 2.
Following: "ACT"
Insert: "and implementing regulations"

10. Page 36, line 7.
Following: "assess"
Strike: "fees for"
Insert: "an application fee based on estimated actual emissions or an annual fee based on"

11. Page 39, line 21.
Following: "fees."
Insert: "(1)"

12. Page 40, lines 1 through 4.
Strike: "THE" on line 1 through "." on line 4
Insert: "(2) The operating permit fees and the construction permit fees must be maintained in separate accounts within the state special revenue fund.
(3) Upon request, the expenditure by the department of funds in these accounts may be audited by a qualified auditor at the end of each fiscal year. The cost of the audit must be borne by the person requesting the audit."

13. Page 52, lines 3, 5, and 7.
Strike: "13"
Insert: "12, 13(1) and (3),"

14. Page 52.
Following: line 8
Insert: "(3) [Section 13(2)] is effective July 1, 1994."

-END-

Amd. Coord.
Sec. of Senate

Halligan
Senator Carrying Bill

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SENATE
HB 318
701220SC.San

SENATE COMMITTEE OF THE WHOLE AMENDMENT

March 31, 1993 11:56 am

Mr. Chairman: I move to amend House Bill No. 318 (third reading copy -- blue).

ADOPT

REJECT

Signed:



Senator Kenneth Mesaros

That such amendments read:

Amend the Senate standing committee report of the committee on Natural Resources dated March 29, 1993, as follows:

Amendment No. 7 Insert, following "implementing"
Insert: "federal"

-END-

SENATE

HB 318

r721156CW.Sma

1 HOUSE BILL NO. 318

2 INTRODUCED BY S. RICE, HALLIGAN, FAGG, KEATING

3 BY REQUEST OF THE DEPARTMENT

4 OF HEALTH AND ENVIRONMENTAL SCIENCES

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
7 LAWS RELATING TO AIR QUALITY; AUTHORIZING THE DEPARTMENT OF
8 HEALTH AND ENVIRONMENTAL SCIENCES TO ADMINISTER A PROGRAM
9 FOR THE ISSUANCE AND RENEWAL OF AIR QUALITY OPERATING
10 PERMITS; AMENDING THE CONFIDENTIALITY PROVISIONS RELATING TO
11 AIR QUALITY; CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF
12 HEALTH AND ENVIRONMENTAL SCIENCES TO ADMINISTER A PROGRAM
13 FOR THE ISSUANCE OF AIR QUALITY PERMITS FOR CONSTRUCTION,
14 INSTALLATION, ALTERATION, OPERATION, OR USE; CLARIFYING THE
15 AUTHORITY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL
16 SCIENCES TO COLLECT FEES FOR OPERATING AND CONSTRUCTION
17 PERMITS; DESIGNATING FEES TO AN ACCOUNT IN THE SPECIAL
18 REVENUE FUND; PROVIDING FOR AN ADMINISTRATIVE CIVIL PENALTY
19 IN THE CLEAN AIR ACT OF MONTANA; CLARIFYING AND AMENDING THE
20 CRIMINAL PUNISHMENT APPLICABLE TO VIOLATIONS OF AIR QUALITY
21 STATUTES, RULES, ORDERS, AND PERMITS; CLARIFYING AND
22 AMENDING THE CIVIL PUNISHMENT APPLICABLE TO VIOLATIONS OF
23 AIR QUALITY STATUTES, RULES, ORDERS, AND PERMITS; AMENDING
24 THE PROVISIONS RELATING TO THE ASSESSMENT OF NONCOMPLIANCE
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7 75-2-105, 75-2-204, 75-2-211, 75-2-301, 75-2-401, 75-2-412,
8 75-2-413, AND 75-2-421, MCA; AND PROVIDING EFFECTIVE DATES
9 AND A RETROACTIVE APPLICABILITY DATE."

10
11 WHEREAS, pursuant to Subchapter V of the federal Clean
12 Air Act, 42 U.S.C. 7661, et seq., the State of Montana may
13 be authorized by the U.S. Environmental Protection Agency to
14 administer an operating permit program applicable to certain
15 sources of air contaminants POLLUTANTS; and

16 WHEREAS, if the state fails to obtain authorization for
17 an operating permit program from the federal government
18 under the federal Clean Air Act, the program will be
19 administered within the state by the U.S. Environmental
20 Protection Agency and the state will be subjected to
21 sanctions, including the loss of federal air program funding
22 or highway funding; and

23 WHEREAS, the Legislature believes that it is in the best
24 interests of both the citizens and businesses of this state
25 for the Department of Health and Environmental Sciences to

1 seek and obtain authorization from the federal government to
2 administer an operating permit program pursuant to
3 Subchapter V of the federal Clean Air Act; and

4 WHEREAS, to provide the Department of Health and
5 Environmental Sciences with the statutory authority
6 necessary to obtain authorization under Subchapter V,
7 numerous amendments and additions to the Clean Air Act of
8 Montana are necessary and appropriate, including significant
9 amendments to existing permitting, fee, and enforcement
10 authority and the adoption of new provisions governing the
11 operating permit program and relating to assistance for
12 small businesses.

14 STATEMENT OF INTENT

15 A statement of intent is provided for this bill because
16 it extends current rulemaking authority of the board of
17 health and environmental sciences to adopt rules
18 implementing a program for the issuance and renewal of air
19 quality operating permits by the department of health and
20 environmental sciences and amends several sections of the
21 Clean Air Act of Montana for which the board currently has
22 rulemaking authority, including the authority to adopt air
23 quality permit fees to be collected by the department of
24 health and environmental sciences.

25 Section 75-2-204 and [section 9] provide the authority

1 to the board and department to create and administer an
2 operating permit program for those sources subject to
3 Subchapter V of the federal Clean Air Act, ~~and it~~. IT is the
4 desire of the legislature that the program be applied only
5 to those sources covered by the statutory requirements of
6 Subchapter V; AND THAT THE DEPARTMENT ALLOW FOR OPERATIONAL
7 FLEXIBILITY AT THOSE SOURCES, INCLUDING PROVISIONS FOR MINOR
8 PERMIT MODIFICATIONS AND OFF-PERMIT CHANGES. THE LEGISLATURE
9 DOES NOT INTEND THAT THE OPERATING PERMIT PROGRAM
10 ADMINISTERED BY THE DEPARTMENT TO SERVE AS A BASIS FOR
11 IMPOSING IMPOSITION OF ANY ADDITIONAL EMISSION LIMITATIONS,
12 MONITORING OR REPORTING REQUIREMENTS, OR OTHER SUBSTANTIVE
13 REQUIREMENTS UPON SOURCES WITHIN THE STATE, EXCEPT AS
14 REQUIRED BY SUBCHAPTER V AND IMPLEMENTING REGULATIONS. IT IS
15 ALSO THE DESIRE INTENT OF THE LEGISLATURE THAT THE OPERATING
16 PERMIT PROGRAM ADMINISTERED BY THE DEPARTMENT FOR THOSE
17 SOURCES SUBJECT TO SUBCHAPTER V OF THE FEDERAL CLEAN AIR ACT
18 BE NO MORE STRINGENT THAN REQUIRED BY CONSISTENT WITH THE
19 OPERATING PERMIT FRAMEWORK AND GUIDELINES OUTLINED IN
20 SUBCHAPTER V AND IMPLEMENTING FEDERAL REGULATIONS. THE
21 LEGISLATURE FURTHER INTENDS THAT THE OPERATING PERMIT
22 PROGRAM AUTHORIZED BY THIS BILL, WHEN VIEWED AS A WHOLE,
23 SHOULD NOT INVARIABLY BE LIMITED TO THE MINIMUM FEDERAL
24 REQUIREMENTS BUT ALSO SHOULD NOT INVARIABLY IMPOSE THE
25 STRICTEST OPTIONAL ALTERNATIVES ALLOWABLE UNDER SUBCHAPTER V

AND IMPLEMENTING FEDERAL REGULATIONS. These sections and the amendments contained in 75-2-103(2) are also intended to clarify the department's existing authority to implement the provisions of the federal Clean Air Act relating to hazardous air pollutants, 42 U.S.C. 7412, as those provisions relate to the requirements of Subchapter V.

Section 75-2-211 contains amendments that clarify the authority of the department to continue to administer the air quality permitting program relating to the construction, installation, alteration, or use of air contaminant POLLUTANT sources. It is the desire of the legislature that the department continue this permitting program in conjunction with the operating permit program under [sections 9 through 11]. THE CLARIFYING AMENDMENTS CONTAINED IN THIS BILL ARE NOT INTENDED TO EXPAND THE CURRENT AUTHORITY OF THE DEPARTMENT TO ADMINISTER AN AIR QUALITY PERMITTING PROGRAM RELATING TO CONSTRUCTION, INSTALLATION, ALTERATION, OR USE. This authority is currently used for conducting various state air quality permitting programs, as well as for operating federal permitting programs relating to prevention of significant deterioration and nonattainment, all of which are part of the state implementation plan for protecting air quality. In addition to these programs, the legislature intends that 75-2-211 serve as the authority needed to meet the requirements of

the federal Clean Air Act relating to the construction, reconstruction, and modification of sources of hazardous air pollutants, 42 U.S.C. 7412.

[Section 12] contains the department's existing authority to assess application and annual fees for permits issued under the Clean Air Act of Montana, Title 75, chapter 2. The placement of this authority in a separate section of the code emphasizes its general applicability to all permitting activities under that chapter. [Section 12(1), (2), and (3)] contain amendments to the existing fee authority to ensure that the department will be able to collect fees sufficient to meet the requirements of Subchapter V of the federal Clean Air Act. [Section 12(5)] is intended to provide the department with an alternative to civil enforcement in addressing the delinquent payment of fees.

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

Section 1. Section 75-2-103, MCA, is amended to read:

"75-2-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Advisory council" means the air pollution control advisory council provided for in 2-15-2106.

(2) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or

1 any combination thereof~~including pollutants regulated~~
 2 ~~pursuant to section 7412 and Subchapter V of the federal~~
 3 ~~Clean Air Act, 42 U.S.C. 7401, et seq.~~

4 (3) "AIR POLLUTANTS" MEANS ONE OR MORE AIR CONTAMINANTS
 5 THAT ARE PRESENT IN THE OUTDOOR ATMOSPHERE, INCLUDING THOSE
 6 POLLUTANTS REGULATED PURSUANT TO SECTION 7412 AND SUBCHAPTER
 7 V OF THE FEDERAL CLEAN AIR ACT, 42 U.S.C. 7401, ET SEQ.

8 (4) "Air pollution" means the presence in~~the~~
 9 ~~outdoor atmosphere of one or more air contaminants~~ OF AIR
 10 POLLUTANTS in a quantity and for a duration which ~~that~~ are
 11 or tend to be injurious to human health or welfare, animal
 12 or plant life, or property or would unreasonably interfere
 13 with the enjoyment of life, property, or the conduct of
 14 business.

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

17 (6) "Department" means the department of health and
 18 environmental sciences provided for in Title 2, chapter 15,
 19 part 21.

20 (7) "Emission" means a release into the outdoor
 21 atmosphere of air contaminants.

22 (8) "Person" means an individual, a partnership, a
 23 firm, an association, a municipality, a public or private
 24 corporation, the state or a subdivision or agency of the
 25 state, a trust, an estate, an interstate body, the federal

1 government or an agency of the federal government, or any
 2 other legal entity and includes persons resident in Canada.

3 (9) "Small business stationary source" means a
 4 stationary source that:

5 (a) is owned or operated by a person who employs 100 or
 6 fewer individuals;

7 (b) is a small business concern as defined in the Small
 8 Business Act, 15 U.S.C. 631, et seq.;

9 (c) is not a major stationary source as defined in
 10 Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661,
 11 et seq.;

12 (d) emits less than 50 tons per year of a regulated AN
 13 air contaminant POLLUTANT;

14 (e) emits less than a total of 75 tons per year of all
 15 regulated air contaminants POLLUTANTS combined; and

16 (f) is not excluded from this definition under [section
 17 17(3)]."

18 **Section 2.** Section 75-2-105, MCA, is amended to read:

19 "75-2-105. Confidentiality of records. (1) Records or
 20 other information concerning air contaminant POLLUTANT
 21 sources which ~~that~~ are furnished to or obtained by the board
 22 or department are a matter of public record and open to
 23 public use. However, any information unique to the owner or
 24 operator of an air contaminant POLLUTANT source which ~~that~~
 25 would, if disclosed, reveal methods or processes entitled to

1 protection as trade secrets ~~shall~~ must be maintained as
 2 confidential if so determined by a court of competent
 3 jurisdiction. The owner or operator shall file a declaratory
 4 judgment action to establish the existence of a trade secret
 5 if ~~he~~ the owner or operator wishes ~~such~~ the information to
 6 enjoy confidential status. The department ~~shall~~ must be
 7 served in ~~any-such~~ the action and may intervene as a party
 8 ~~therein in the action~~. Any ~~A~~ trade secrets ~~secret~~ not
 9 intended to be public when submitted to the board or
 10 department ~~shall~~ must be submitted in writing and clearly
 11 marked as confidential. However, emission data and operating
 12 permits issued by the department pursuant to [sections 9
 13 through 11] ~~shall never~~ may not be considered confidential
 14 for the purposes of this section.

15 (2) This section does not prevent the use of records or
 16 information by the board or department in compiling or
 17 publishing analyses or summaries relating to the general
 18 condition of the outdoor atmosphere if the analyses or
 19 summaries do not identify an owner or operator or reveal
 20 information otherwise made confidential by this section."

21 **Section 3.** Section 75-2-204, MCA, is amended to read:

22 "75-2-204. Rules relating to construction,
 23 installation, alteration, operation, or use. The board may
 24 by rule prohibit the construction, installation, alteration,
 25 operation, or use of a machine, equipment, device, or

1 facility ~~which~~ that it finds may directly or indirectly
 2 cause or contribute to air pollution or ~~which~~ that is
 3 intended primarily to prevent or control the emission of air
 4 pollutants ~~contaminants~~ POLLUTANTS, unless a permit therefor
 5 has been obtained under this part."

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

7 "75-2-211. Permits for construction, installation,
 8 alteration, operation, or use. (1) ~~The department~~ The board
 9 shall by rule provide for the issuance, expiration,
 10 modification, amendment, suspension, revocation, and renewal
 11 of a permit issued operating permits as part of an operating
 12 permit program to be administered by the department A PERMIT
 13 ISSUED under this part chapter PART.

14 ~~{2}--For--all--sources--of--air--contaminants--that--are~~
 15 ~~subject--to--the--provisions--of--Title--V--of--the--federal--Clean~~
 16 ~~Air--Act--42-U.S.C.--7401--et--seq--as--amended--the--provisions~~
 17 ~~of--this--section--apply--in--addition--to--the--other--applicable~~
 18 ~~provisions--of--this--chapter--~~

19 ~~{a}--The--board--shall--by--rule--require--that--permits--issued~~
 20 ~~to--sources--described--in--subsection--{2}--be--of--limited~~
 21 ~~duration--but--it--may--not--limit--the--duration--of--the--permits~~
 22 ~~beyond--that--required--by--the--federal--Clean--Air--Act--42-U.S.C.~~
 23 ~~7401--et--seq--as--amended--~~

24 ~~{b}--The--board--shall--by--rule--provide--for--the--renewal--of~~
 25 ~~permits--issued--to--the--sources--~~

1 (c)--The--board--shall--by--rule--establish--a--transition
 2 schedule--for--air--quality--permits--held--by--sources--of--air
 3 contaminants--subject--to--the--provisions--of--subsection--(2).
 4 The--transition--schedule--must--specify--dates--for--the
 5 expiration--of--the--permits,--absent--an--application--for--renewal
 6 by--the--source. The--transition--schedule--may--not--specify
 7 expiration--dates--that--are--earlier--in--time--than--those
 8 required--by--Title--V--of--the--federal--Clean--Air--Act,--42--U.S.C.
 9 7401,--et--seq.,--as--amended. The--transition--schedule
 10 established--by--the--board--also--applies--to--existing--sources--of
 11 air--contaminants--that--are--subject--to--the--provisions--of--Title
 12 V--of--the--federal--Clean--Air--Act,--42--U.S.C.--7401,--et--seq.,--as
 13 amended,--and--that--do--not--hold--an--air--quality--permit--from--the
 14 department--as--of--November--27--1992.

15 (3)(2) Not later than 180 days before construction,
 16 installation, or alteration begins or as a condition of use
 17 of any machine, equipment, device, or facility which that
 18 the board finds may directly or indirectly cause or
 19 contribute to air pollution or which that is intended
 20 primarily to prevent or control the emission of air
 21 pollutants contaminants POLLUTANTS, the owner or operator
 22 shall file with the department the appropriate permit
 23 application on forms available from the department.

24 (4)--Concurrent--with--the--submission--of--a--permit
 25 application--required--by--subsection--(3)--and--annually--for--the

1 duration--of--the--permit,--the--applicant--shall--submit--to--the
 2 department--a--fee--sufficient--to--cover--the--reasonable--costs,
 3 both--direct--and--indirect,--of--developing--and--administering
 4 the--permitting--requirements--in--this--chapter,--including--the
 5 reasonable--costs--of:

6 (a)--reviewing--and--acting--upon--the--application;

7 (b)--implementing--and--enforcing--the--terms--and--conditions
 8 of--the--permit--if--the--permit--is--issued. However, this--amount
 9 does--not--include--any--court--costs--or--other--costs--associated
 10 with--any--enforcement--action. If--the--permit--is--not--issued,
 11 the--department--shall--return--this--portion--of--the--fee--to--the
 12 applicant;

13 (c)--emissions--and--ambient--monitoring;

14 (d)--preparing--generally--applicable--regulations--or
 15 guidance;

16 (e)--modeling,--analysis,--and--demonstrations; and

17 (f)--preparing--inventories--and--tracking--emissions;

18 (5)--In--addition--to--the--fee--required--under--subsection
 19 (4),--the--board--may--order--the--assessment--of--additional--fees
 20 required--to--fund--specific--activities--of--the--department--that
 21 are--directed--at--a--particular--geographic--area--if--the
 22 legislature--authorizes--the--activities--and--appropriates--the
 23 funds--for--the--activities,--including--emissions--or--ambient
 24 monitoring,--modeling--analysis--or--demonstrations,--or
 25 emissions--inventories--or--tracking. Additional--assessments

may be levied only on those sources that are within or are believed by the department to be impacting the geographic area. Before the board may require the assessments, it shall first determine, after opportunity for hearing, that the activities to be funded are necessary for the administration or implementation of this chapter, that the assessments apportion the required funding in an equitable manner, and that the department has obtained legislative authorization for the expenditure and the necessary appropriation.

(6) As a condition of the continuing validity of permits issued by the department under this part prior to October 17, 1991, the department may require the permit holder to pay an annual fee sufficient to cover the costs identified in subsection (4).

(7) For any existing source of air contaminants that is subject to Title V of the federal Clean Air Act, 42 U.S.C. 7401 et seq., as amended, and that is not required to hold an air quality permit from the department as of October 17, 1991, the board may, as a condition of continued operation, require by rule that the owner or operator of the source pay the annual fee provided for in subsection (4). Nothing in this subsection may be construed as allowing the department to charge any source of air contaminants more than one annual fee that is designed to cover the costs identified in subsection (4).

(8) The fees collected by the department pursuant to this section must be deposited in the state special revenue fund to be appropriated by the legislature to the department for the development and administration of the permitting requirements in this chapter.

(9) (a) The department shall give written notice of the amount of the fee to be assessed and the basis for the department's fee assessment under this section to the owner or operator of the air contaminant source. The owner or operator may appeal the department's fee assessment to the board within 20 days after receipt of the written notice.

(b) An appeal must be based upon the allegation that the fee assessment is erroneous or excessive. An appeal may not be based only on the amount of the fee schedule adopted by the board.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice in subsection (9)(a).

(d) The contested case provisions of the Montana Administrative Procedure Act provided for in Title 2, chapter 4, apply to any hearing before the board under this subsection (9).

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit

1 applications, including standard application forms;
 2 (b) requirements and procedures for submittal of
 3 information necessary to determine the location, quantity,
 4 and type of emissions;
 5 (c) procedures for public notice and opportunity for
 6 comment or public hearing, as appropriate;
 7 (d) procedures for providing notice and an opportunity
 8 for comment to contiguous states and federal agencies, as
 9 appropriate;
 10 (e) requirements for inspection, monitoring,
 11 recordkeeping, and reporting;
 12 (f) procedures for the transfer of permits;
 13 (g) requirements and procedures for suspension,
 14 modification, and revocation of permits by the department;
 15 (h) requirements and procedures for appropriate
 16 emission limitations and other requirements, including
 17 enforceable measures necessary to ensure compliance with
 18 those limitations and requirements;
 19 (i) requirements and procedures for permit modification
 20 and amendment; and
 21 (j) requirements and procedures for issuing a single
 22 permit authorizing emissions from similar operations at
 23 multiple temporary locations, which permit may include
 24 conditions necessary to ensure compliance with the
 25 requirements of this chapter at all authorized locations and

1 a requirement that the owner or operator notify the
 2 department in advance of each change in location.
 3 ~~(10)(4)~~ Nothing--in--this This section shall does not
 4 restrict the board's authority to adopt regulations
 5 providing for a single air quality permit system.
 6 ~~(11)(5)~~ The department may, for good cause shown, waive
 7 or shorten the time required for filing the appropriate
 8 applications.
 9 ~~(12)(6)~~ The department shall require that applications
 10 for permits be accompanied by any plans, specifications, and
 11 other information it considers necessary.
 12 ~~(13)(7)~~ An application is not considered filed until
 13 the applicant has submitted all fees required under [section
 14 12] and all information and completed all application forms
 15 required by pursuant to subsections (2), (3), and (6)
 16 through-(7)-and-(12). However,-if If the department fails to
 17 notify the applicant in writing within 30 days after the
 18 purported filing of an application that the application is
 19 incomplete and fails to list the reasons why the application
 20 is considered incomplete, the application is considered
 21 filed as of the date of the purported filing.
 22 ~~(14)(8)~~ (a) Where If an application for a permit
 23 requires the compilation preparation of an environmental
 24 impact statement under the Montana Environmental Policy Act,
 25 Title 75, chapter 1, parts 1 through 3, the department shall

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

3 (i) 180 days of after the department's receipt of a
4 filed application, as defined provided in subsection
5 ~~{13}(7)~~, if the department prepares the environmental impact
6 statement; or

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

12 (b) ~~However--where~~ If an application does not require
13 the ~~compilation preparation~~ of an environmental impact
14 statement, the department shall notify the applicant in
15 writing within 60 days ~~of-the~~ after its receipt of a filed
16 application, as defined provided in subsection ~~{13}(7)~~, of
17 the its approval or denial of the application. Notification
18 of approval or denial may be served personally or by
19 ~~registered--or~~ certified mail on the applicant or his the
20 applicant's agent.

21 (c) Failure by the department to act in a timely manner
22 does not constitute approval or denial of the application.
23 THIS DOES NOT LIMIT OR ABRIDGE THE RIGHT OF ANY PERSON TO
24 SEEK AVAILABLE JUDICIAL REMEDIES TO REQUIRE THE DEPARTMENT
25 TO ACT IN A TIMELY MANNER.

1 ~~{15}(9)~~ When the department approves or denies the
2 application for a permit under this section, a person who is
3 jointly or severally adversely affected by the department's
4 decision may request, a hearing before the board. The
5 request for hearing must be filed within 15 days after the
6 department renders its decision, ~~upon~~ and must include an
7 affidavit setting forth the grounds ~~therefor--a--hearing~~
8 ~~before--the--board,~~ for the request. A hearing shall be held
9 ~~under the provisions of the Montana Administrative Procedure~~
10 ~~Act. The contested case provisions of the Montana~~
11 ~~Administrative Procedure Act, Title 2, chapter 4, part 6,~~
12 apply to a hearing before the board under this subsection.

13 ~~{16}(10)~~ The department's decision on the application is
14 not final unless 15 days have elapsed from the date of the
15 decision and there is no request for a hearing under this
16 section. The filing of a request for a hearing postpones the
17 effective date of the department's decision until the
18 conclusion of the hearing and issuance of a final decision
19 by the board."

20 **Section 5.** Section 75-2-401, MCA, is amended to read:

21 "75-2-401. Enforcement -- notice -- order for
22 corrective action -- administrative penalty. (1) When the
23 department believes that a violation of this chapter, a rule
24 made adopted under this chapter, or a condition or
25 limitation imposed by a permit issued pursuant to this

1 chapter has occurred, it may cause written notice to be
 2 served personally or by ~~registered or~~ certified mail on the
 3 alleged violator or ~~his~~ the violator's agent. The notice
 4 ~~shall~~ must specify the provision of this chapter, or the
 5 rule, or the permit condition or limitation alleged to be
 6 violated and the facts alleged to constitute a violation.
 7 The notice and may include an order to take necessary
 8 corrective action within a reasonable period of time stated
 9 in the order or an order to pay an administrative penalty,
 10 or both. The order becomes final unless, within 30 days
 11 after the notice is received, the person named requests in
 12 writing a hearing before the board. On receipt of the
 13 request, the board shall schedule a 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 or assess~~
 20 an administrative penalty, or both. An As appropriate, an
 21 order issued as part of a notice or after a hearing may
 22 prescribe the date by which the violation ~~shall~~ must cease;
 23 ~~and may prescribe~~ time limits for particular action in
 24 preventing, abating, or controlling the emissions; or the
 25 date by which the administrative penalty must be paid. If,

1 after a hearing on an order contained in a notice, the board
 2 finds that no a violation has not occurred or is not
 3 occurring, it shall rescind the order.

4 (3) (a) An action initiated under this section may
 5 include an administrative civil penalty of not more than
 6 \$10,000 for each day of each violation, not to exceed a
 7 total of \$80,000. If an order issued by the board under this
 8 section requires the payment of an administrative civil
 9 penalty, the board shall state findings and conclusions
 10 describing the basis for its penalty assessment.

11 (b) Administrative penalties collected under this
 12 section must be deposited in the state general fund.

13 (c) Penalties imposed by an administrative order under
 14 this section may not be assessed for any day of violation
 15 that occurred more than 12 months prior to the issuance of
 16 the initial notice and order by the department under
 17 subsection (1).

18 (d) In determining the amount of penalty to be assessed
 19 for an alleged violation under this section, the department
 20 or board, as appropriate, shall consider:

21 (i) the gravity of the violation;
 22 (ii) whether the amount of the penalty serves as a
 23 deterrent relative to the alleged violator's ability to pay;
 24 (iii) the economic benefit or savings, if any, to the
 25 alleged violator as a result of noncompliance; and

1 (I) THE ALLEGED VIOLATOR'S ABILITY TO PAY AND THE
 2 ECONOMIC IMPACT OF THE PENALTY ON THE ALLEGED VIOLATOR;
 3 (II) THE ALLEGED VIOLATOR'S FULL COMPLIANCE HISTORY AND
 4 GOOD FAITH EFFORTS TO COMPLY;
 5 (III) THE DURATION OF THE VIOLATION AS ESTABLISHED BY
 6 ANY CREDIBLE EVIDENCE, INCLUDING EVIDENCE OTHER THAN THE
 7 APPLICABLE TEST METHOD;
 8 (IV) PAYMENT BY THE VIOLATOR OF PENALTIES PREVIOUSLY
 9 ASSESSED FOR THE SAME VIOLATION;
 10 (V) THE ECONOMIC BENEFIT OF NONCOMPLIANCE;
 11 (VI) THE SERIOUSNESS OF THE VIOLATION; AND
 12 ~~(iv)~~(VII) other matters as justice may require.
 13 (4) The contested case provisions of the Montana
 14 Administrative Procedure Act, Title 2, chapter 4, part 6,
 15 apply to a hearing conducted under this section.
 16 ~~(3)~~(5) Instead of issuing the order provided for in
 17 subsection (1), the department may either:
 18 (a) require that the alleged violators appear before
 19 the board for a hearing at a time and place specified in the
 20 notice and answer the charges complained of; or
 21 (b) initiate action under 75-2-412 or 75-2-413.
 22 ~~(4)~~(6) This chapter does not prevent the board or
 23 department from making efforts to obtain voluntary
 24 compliance through warning, conference, or any other
 25 appropriate means.

1 ~~(5)~~(7) In connection with a hearing held under this
 2 section, the board may and on application by a party shall
 3 compel the attendance of witnesses and the production of
 4 evidence on behalf of the parties."

5 **Section 6.** Section 75-2-412, MCA, is amended to read:

6 "75-2-412. Criminal penalties — injunction preserved.
 7 ~~(1) -- A person who violates this chapter or a rule, order, or~~
 8 ~~permit made or issued under it, other than 75-2-105, is~~
 9 ~~guilty of an offense and subject to a fine not to exceed~~
 10 ~~\$1,000. Each day of violation constitutes a separate~~
 11 ~~offense.~~

12 ~~(2) -- A person who willfully violates 75-2-105 is guilty~~
 13 ~~of an offense and subject to a fine not to exceed \$1,000.~~

14 (1) A person is guilty of an offense under this section if
 15 that person knowingly:

16 (a) violates a provision of this chapter or a rule,
 17 order, or permit made or issued under this chapter;

18 (b) makes a false MATERIAL statement, representation,
 19 or certification on a form required under this chapter or in
 20 a notice or report required by a permit under this chapter;
 21 or

22 (c) renders inaccurate a monitoring device or method
 23 required under this chapter.

24 (2) A person guilty of an offense under subsection (1)
 25 is subject to a fine of not more than \$10,000 per violation.

1 or imprisonment for a period not to exceed 3 2 years, or
 2 both. THIS OFFENSE MUST BE CLASSIFIED AS A MISDEMEANOR. Each
 3 day of each violation constitutes a separate violation.

4 (3) Fines collected under this section, except those
 5 finest collected in-a-justice's-court, by an approved local
 6 air pollution control program, shall must be deposited to in
 7 the state general fund.

8 (4) Action under this section is not a bar to
 9 enforcement of this chapter or of a rule, order, or permit
 10 made or issued under it by injunction or other appropriate
 11 civil or administrative remedy. The department may institute
 12 and maintain in the name of the state any enforcement
 13 proceedings."

14 **Section 7.** Section 75-2-413, MCA, is amended to read:

15 "75-2-413. Civil penalties -- out-of-state litigants --
 16 effect of action ---presumption-of-continuing-violation. (1)
 17 Any A person who violates any provision of this chapter, a
 18 or-any rule enforced-thereunder adopted under this chapter,
 19 or any order or permit made or issued pursuant-thereto-and
 20 after-notice-thereof-has-been-given-by-the-department--shall
 21 be under this chapter is subject to a civil penalty not to
 22 exceed \$10,000 per violation. Each day of each violation
 23 shall--constitute constitutes a separate violation. The
 24 department may institute and maintain in the name of the
 25 state any enforcement proceedings hereunder under this

1 section. Upon request of the department, the attorney
 2 general or the county attorney of the county of violation
 3 shall petition the district court to impose, assess, and
 4 recover the civil penalty. The civil penalty is in lieu of
 5 the criminal penalty provided for in 75-2-412.

6 (2) (a) Action under subsection (1) of-this-section is
 7 not a bar to enforcement of this chapter or of a rule,
 8 order, or permit made or issued under it by injunction or
 9 other appropriate civil remedies.

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

15 {3}--if--the--department--has--notified--a--person--of--a
 16 violation-under-75-2-401-and-if-the-department-makes-a-prima
 17 facie-showing-that-the-conduct-or-events-giving-rise-to--the
 18 violation--are-likely-to-have-continued-or-recurred-past-the
 19 date-of-notice,--the--days--of--violation--are--presumed--to
 20 include--the--date--of--the--notice--and-every-day-after-the
 21 notice--until--the--person--establishes--that--continuous
 22 compliance--has--been--achieved,--This--presumption--may--be
 23 overcome--to--the--extent--the--person--can--prove--by--a
 24 preponderance-of-evidence-that-there-were--intervening--days
 25 when-a-violation-did-not-occur-or-that-the-violation-was-not

~~continuing-in-nature~~

~~(4)(3) Moneys Money~~ collected hereunder--~~shall~~ under this section must be deposited in the state general fund. This subsection does not apply to money collected by an approved local air pollution control program."

Section 8. Section 75-2-421, MCA, is amended to read:

"75-2-421. Persons subject to noncompliance penalties -- exemptions. (1) Except as provided in subsection (2), the department ~~shall~~ may assess and collect a noncompliance penalty from any person who owns or operates:

(a) a stationary source (other than a primary nonferrous smelter which that has received a nonferrous smelter order under 42 U.S.C. 7419) which that is not in compliance with any emission limitation specified in an order of the board, emission standard, or compliance schedule under the state implementation plan approved by the federal environmental protection agency;

(b) a stationary source which that is not in compliance with an emission limitation, emission standard, standard of performance, or other requirement under this chapter or 42 U.S.C. 7411, or 42-U.S.C. 7412, 7477, or 7603; or

(c) a stationary source that is not in compliance with any other requirement under this chapter or any requirement of Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.; or

~~(c)(d)~~ any source referred to in subsections (1)(a), or (1)(b), or (1)(c) which that has been granted an exemption, extension, or suspension under subsection (2) or which that is covered by a compliance order, or a primary nonferrous smelter which that has received a primary nonferrous smelter order under 42 U.S.C. 7419, if such that source is not in compliance with any interim emission control requirement or schedule of compliance under such the extension, order, or suspension.

(2) Notwithstanding the requirements of subsection (1), the department may, after notice and opportunity for a public hearing, exempt any source from the requirements of 75-2-421 through 75-2-429 with respect to a particular instance of noncompliance which that:

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

(b) is caused by conditions beyond the reasonable control of the source and is of no demonstrable advantage to the source; or

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

(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 for it, a

1 hearing before the board. A hearing shall must be held under
 2 the provisions of the Montana Administrative Procedure Act,
 3 Title 2, chapter 4, part 6."

4 NEW SECTION. Section 9. Operating permit program --
 5 exemptions -- general requirements -- duration. (1) The
 6 board shall provide by rule for the issuance, expiration,
 7 modification, amendment, suspension, revocation, and renewal
 8 of operating permits as part of an operating permit program
 9 to be administered by the department under this chapter. THE
 10 BOARD SHALL PROMULGATE RULES THAT ARE NO-MORE-STRINGENT-THAN
 11 THE--REQUIREMENTS--OF CONSISTENT WITH THE OPERATING PERMIT
 12 FRAMEWORK AND GUIDELINES OUTLINED IN SUBCHAPTER V OF THE
 13 FEDERAL CLEAN AIR ACT AND IMPLEMENTING REGULATIONS.

14 (2) This section applies to all sources of air
 15 contaminants POLLUTANTS that are subject to the provisions
 16 of Subchapter V of the federal Clean Air Act, 42 U.S.C.
 17 7661, et seq.

18 (3) A person may not violate any requirement of an
 19 operating permit issued under [section 10] and this section
 20 or operate any source required to have a permit under this
 21 section without having complied with the requirements of the
 22 operating permit program administered by the department
 23 pursuant to [sections 10 and 11] and this section.

24 (4) The board may by rule provide for the exemption of
 25 one or more source categories, in whole or in part, from all

1 or part of the requirements of this section if the board
 2 determines that compliance with the requirements of this
 3 section is impracticable, infeasible, or unnecessarily
 4 burdensome for the sources. The board may premise this
 5 determination upon a similar determination by the
 6 appropriate federal agency acting pursuant to the federal
 7 Clean Air Act, 42 U.S.C. 7401, et seq.

8 (5) The board may by rule provide for general operating
 9 permits covering numerous similar sources.

10 (6) An operating permit issued by the department under
 11 [section 10] and this section is effective for a period not
 12 to exceed 5 years and may be renewed.

13 (7) The operating permit program administered by the
 14 department pursuant to this section must include the
 15 following:

16 (a) requirements--and-procedures-for-permit-and-renewal
 17 applications--including--standard--application--forms--and
 18 criteria--for--evaluating--application--completeness-and-the
 19 need--for--additional--information--after--a--completeness
 20 determination--has--been--made; ADEQUATE PROCEDURES THAT ARE
 21 STREAMLINED AND REASONABLE FOR:

22 (I) EXPEDITIOUSLY DETERMINING WHEN APPLICATIONS ARE
 23 COMPLETE;

24 (II) PROCESSING APPLICATIONS; AND

25 (III) EXPEDITIOUSLY REVIEWING PERMIT ACTIONS, INCLUDING

1 APPLICATION RENEWALS OR REVISIONS:

2 (b) requirements and procedures for submittal of
3 information necessary to determine the location, quantity,
4 and type of emissions;

5 (c) procedures for public notice and opportunity for
6 comment or public hearing, as appropriate;

7 (d) procedures for providing notice and an opportunity
8 for comment to contiguous states and federal agencies, as
9 appropriate;

10 (e) requirements for inspection, monitoring,
11 recordkeeping, compliance certification, and reporting;

12 (f) deadlines for submitting permit applications and
13 compliance plans that are not later than 12 months after the
14 source becomes subject to the operating permit requirement;

15 (g) deadlines for submitting permit renewal
16 applications that are not later than 6 months before
17 expiration of the existing operating permit;

18 (h) requirements for compliance plans that must be
19 submitted with permit and renewal applications, including
20 schedules of compliance and progress reports;

21 (i) requirements and procedures for periodic
22 certification of source compliance with permit requirements,
23 including the prompt reporting of any deviations from permit
24 requirements;

25 (j) requirements for submission of any plans,

1 specifications, or other information that the department
2 considers necessary under this section;

3 (k) conditions and procedures for the transfer of
4 operating permits;

5 (l) requirements and procedures for suspension,
6 modification, amendment, and revocation of permits by the
7 department for cause, including the modification or
8 amendment of permits before renewal or termination to
9 incorporate applicable limitations or requirements effective
10 after permit issuance;

11 (m) requirements and procedures for incorporating into
12 permits and permit renewals all applicable emission
13 limitations and other requirements, including enforceable
14 measures necessary to ensure compliance with those
15 limitations and requirements;

16 (n) requirements and procedures for permit modification
17 and amendment;

18 (o) procedures for tracking activities conducted under
19 general permits;

20 (p) requirements and procedures for issuing a single
21 operating permit authorizing emissions from similar
22 operations at multiple temporary locations, which permit may
23 include conditions necessary to ensure compliance with the
24 requirements of this chapter at all authorized locations and
25 a requirement that the owner or operator notify the

department in advance of each change in location;

(q) requirements and procedures for allowing changes within a permitted facility without requiring a permit amendment if the changes are not prohibited under this chapter and do not exceed the emissions allowable under the permit; and

(r) other requirements necessary for the department to obtain the authorization to administer an operating permit program under the provisions of Subchapter V of the federal Clean Air Act.

NEW SECTION. Section 10. Permits for operation -- application completeness -- action by department -- application shield -- review by board. (1) An application for an operating permit or renewal is not considered filed until the department has determined that it is complete. An application is complete if all fees required under [section 12] and all information and completed application forms required under [section 9] have been submitted. A complete application must contain all of the information required for the department to begin processing the application. If the department fails to notify the applicant in writing within 60 days after submittal of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed on the date of the department's receipt of

the application. The department may request additional information after a completeness determination has been made. THE DEPARTMENT SHALL ADOPT RULES THAT CONTAIN CRITERIA FOR USE IN DETERMINING BOTH WHEN AN APPLICATION IS COMPLETE AND WHEN ADDITIONAL INFORMATION IS REQUIRED AFTER A COMPLETENESS DETERMINATION HAS BEEN MADE.

(2) Except as provided in subsection (3), the department shall, consistent with the procedures established under [section 9], approve or disapprove a complete application for an operating permit or renewal and shall issue or deny the permit or renewal within 18 months after the date of filing. Failure of the department to act in a timely manner does not constitute approval or denial of the application. THIS DOES NOT LIMIT OR ABRIDGE THE RIGHT OF ANY PERSON TO SEEK AVAILABLE JUDICIAL REMEDIES TO REQUIRE THE DEPARTMENT TO ACT IN A TIMELY MANNER.

(3) The board may by rule provide for a transition schedule for both the submittal to the department of initial applications for operating permits by existing sources and action by the department on these initial permit applications. The board may require that one-third of all operating permit applications required for existing sources be submitted within the first calendar year after the adoption of rules implementing an operating permit program under [section 9]. Any transition schedule for action by the

department must ensure that all permit applications required under [section 9] and this subsection for existing sources will be acted upon by the department before November 15, 1997.

(4) If an applicant submits a timely and complete application for an operating permit, the applicant's failure to hold a valid operating permit is not a violation of [section 9]. If an applicant submits a timely and complete application for an operating permit renewal, the expiration of the applicant's existing operating permit is not a violation of [section 9]. THE APPLICANT SHALL CONTINUE TO BE SUBJECT TO THE TERMS AND CONDITIONS OF THE EXPIRED OPERATING PERMIT UNTIL THE OPERATING PERMIT IS RENEWED AND IS SUBJECT TO THE APPLICATION OF [SECTION 9]. The applicant is not entitled to the protection of this subsection if the delay in final action by the department on the application results from the applicant's failure to submit in a timely manner information requested by the department to process the application.

(5) Except as provided in subsection (8), if the department approves or denies an application for an operating permit or the renewal, modification, or amendment of a permit under [section 9] and this section, any person that participated in the public comment process required under [section 9 (7)] may request a hearing before the

board. The request for hearing must be filed within 30 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(6) Except as provided in subsection (8), the department's decision on any application is not final until 30 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.

(7) The requirements of subsections (5) and (6) apply to any action initiated by the department to suspend, revoke, modify, or amend an operating permit issued under this section.

(8) The denial by the department of an application under [section 9] and this section is not subject to review by the board or judicial review if the basis for denial is the written objection of the appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(9) Compliance with an operating permit granted or renewed under [section 9] and this section is considered to

1 be in compliance with the requirements of this chapter only
 2 if the permit expressly includes those requirements or an
 3 express determination that those requirements are not
 4 applicable. This subsection does not apply to general
 5 permits provided for under [section 9].

6 NEW SECTION. Section 11. Permits for operation --
 7 limitations. [Sections 9 and 10] may not be construed to:

8 (1) affect the department's issuance of a permit for
 9 the construction, installation, alteration, or use of a
 10 source of air contaminants POLLUTANTS pursuant to 75-2-211
 11 or 75-2-215;

12 (2) restrict the board's authority to adopt regulations
 13 providing for a single air quality permit system; or

14 (3) affect permits, allowances, phase II compliance
 15 schedules, or other acid rain provisions under Subchapter IV
 16 of the federal Clean Air Act, 42 U.S.C. 7651, et seq.

17 NEW SECTION. Section 12. Fees -- special assessments
 18 -- late payment assessments. (1) Concurrent with the
 19 submittal of a permit application required under this
 20 chapter and annually for the duration of the permit, the
 21 applicant shall submit to the department a fee sufficient to
 22 cover the reasonable costs, direct and indirect, of
 23 developing and administering the permitting requirements in
 24 this chapter, including:

25 (a) reviewing and acting upon the application;

1 (b) implementing and enforcing the terms and conditions
 2 of the permit. This amount does not include any court costs
 3 or other costs associated with an enforcement action. If the
 4 permit is not issued, the department shall return this
 5 portion of the fee to the applicant.

6 (c) emissions and ambient monitoring;

7 (d) preparing generally applicable regulations or
 8 guidance;

9 (e) modeling, analysis, and demonstrations;

10 (f) preparing inventories and tracking emissions;

11 (g) providing support to sources under the small
 12 business stationary source technical and environmental
 13 compliance assistance program; and

14 (h) all other costs required to be recovered pursuant
 15 to Subchapter V of the federal Clean Air Act, 42 U.S.C.
 16 7661, et seq.

17 (2) In recovering the costs described in subsection
 18 (1), the department may assess fees-for AN APPLICATION FEE
 19 BASED ON ESTIMATED ACTUAL EMISSIONS OR AN ANNUAL FEE BASED
 20 ON ACTUAL emissions of air contaminants POLLUTANTS regulated
 21 under this chapter, including but not limited to volatile
 22 organic compounds, each air contaminant POLLUTANT regulated
 23 under section 7411 or 7412 of the federal Clean Air Act, 42
 24 U.S.C. 7401, et seq., and each air contaminant POLLUTANT
 25 subject to a national primary ambient air quality standard.

1 (3) The board shall by rule provide for the annual
2 adjustment of all fees assessed for operating permit
3 applications under [sections 9 and 10] to account for
4 changes to the consumer price index, as required by
5 Subchapter V of the federal Clean Air Act.

6 (4) In addition to the fee required under subsection
7 (1), the board may order the assessment of additional fees
8 required to fund specific activities of the department that
9 are directed at a particular geographic area if the
10 legislature authorizes the activities and appropriates funds
11 for the activities, including emissions or ambient
12 monitoring, modeling analysis or demonstrations, or
13 emissions inventories or tracking. Additional assessments
14 may be levied only on those sources that are within or are
15 believed by the department to be impacting the geographic
16 area. Before the board may require the fees, it shall first
17 determine, after opportunity for hearing, that the
18 activities to be funded are necessary for the administration
19 or implementation of this chapter, THAT THE AMOUNT OF THE
20 REQUESTED FEES IS APPROPRIATE, that the assessments
21 apportion the required funding in an equitable manner, and
22 that the department has obtained the necessary
23 appropriation. The contested case provisions of the Montana
24 Administrative Procedure Act, Title 2, chapter 4, part 6,
25 apply to a hearing before the board under this subsection.

1 (5) (a) If the applicant or permit holder fails to pay
2 in a timely manner a fee required under subsection (1), in
3 addition to the fee, the department may:

4 (i) impose a penalty of ~~not more than~~ NOT TO EXCEED 50%
5 of the fee, plus interest on the required fee computed at
6 the rate contained in 15-31-510(3); or

7 (ii) revoke the permit consistent with those procedures
8 established under this chapter for permit revocation.

9 (b) Within 1 year of revocation, the department may
10 reissue the revoked permit after the applicant or
11 permit holder has paid all outstanding fees required under
12 subsections (1) and (4), including all penalties and
13 interest provided for under this subsection (5). In
14 reissuing the revoked permit, the department may modify the
15 terms and conditions of the permit as necessary to account
16 for changes in air quality occurring since revocation.

17 (C) THE BOARD SHALL BY RULE PROVIDE FOR THE
18 IMPLEMENTATION OF THIS SUBSECTION (5), INCLUDING CRITERIA
19 FOR IMPOSITION OF THE SANCTIONS DESCRIBED IN THIS SUBSECTION
20 (5).

21 (6) The board may by rule allow the reduction of a fee
22 required under this section for an operating permit or
23 permit renewal to account for the financial resources of a
24 category of small business stationary sources.

25 (7) As a condition of the continuing validity of an

operating A permit issued by the department under this chapter prior to October 1, 1993, the board may by rule require the permitholder to pay the fees under subsections (1) and (4).

(8) For an existing source of air contaminants POLLUTANTS that is subject to Subchapter V of the federal Clean Air Act and that is not required to hold an air quality permit from the department as of October 1, 1993, the board may, as a condition of continued operation, require by rule that the owner or operator of the source pay the fees under subsections (1) and (4).

(9) (a) The department shall give written notice of the fee to be assessed and the basis for the department's fee assessment under this section to the owner or operator of the air contaminant POLLUTANT source. The owner or operator may appeal the department's fee assessment to the board within 20 days after receipt of the written notice.

(b) An appeal must be based upon the allegation that the fee assessment is erroneous or excessive. An appeal may not be based on the amount of the fee contained in the schedule adopted by the board.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice required in subsection (9)(a).

(d) The contested case provisions of the Montana

Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection (9).

(10) The department may not charge more than one fee annually to a source of air contaminants POLLUTANTS for the costs identified in subsection (1).

NEW SECTION. Section 13. Deposit of air quality permitting fees. (1) All money collected by the department pursuant to [section 12] must be deposited in an account in the state special revenue fund to be appropriated by the legislature to the department for the development and administration of the permitting requirements of this chapter. ~~THE--OPERATING--PERMIT--FEES--AND--THE--CONSTRUCTION~~
~~PERMIT--FEES--MUST--BE--MAINTAINED--IN--SEPARATE--SUBACCOUNTS--A~~
~~PERSON--PAYING--FEES--UNDER--THE--OPERATING--PERMIT--PROGRAM--IS~~
~~AUTHORIZED--TO--AUDIT--THE--OPERATING--PERMIT--PROGRAM--QUARTERLY.~~

(2) THE OPERATING PERMIT FEES AND THE CONSTRUCTION PERMIT FEES MUST BE MAINTAINED IN SEPARATE ACCOUNTS WITHIN THE STATE SPECIAL REVENUE FUND.

(3) UPON REQUEST, THE EXPENDITURE BY THE DEPARTMENT OF FUNDS IN THESE ACCOUNTS MAY BE AUDITED BY A QUALIFIED AUDITOR AT THE END OF EACH FISCAL YEAR. THE COST OF THE AUDIT MUST BE BORNE BY THE PERSON REQUESTING THE AUDIT.

NEW SECTION. Section 14. Small business compliance assistance advisory council. (1) There is a small business

1 compliance assistance advisory council.

2 (2) The council consists of seven members, as follows:

3 (a) two members that are not owners or representatives
4 of owners of small business stationary sources, appointed by
5 the governor to represent the general public;

6 (b) four members that are owners OR REPRESENTATIVES OF
7 OWNERS of small business stationary sources and who are not
8 legislators, one to be appointed by the majority and
9 minority leadership of the house of representatives and one
10 to be appointed by the majority and minority leadership of
11 the senate; and

12 (c) one member that is a representative of the
13 department of health and environmental sciences, appointed
14 by the director of that department.

15 (3) Appointed members shall serve for terms of 3 years.

16 (4) The provisions of 2-15-122(5) through (8) apply to
17 the council and its members.

18 NEW SECTION. Section 15. Small business compliance
19 assistance advisory council -- duties -- secretary --
20 meetings. (1) The small business compliance assistance
21 advisory council, established in [section 14], shall:

22 (a) render advisory opinions concerning the
23 effectiveness of the small business stationary source
24 technical and environmental compliance assistance program
25 administered by the department;

1 (b) make periodic reports to the appropriate federal
2 agency concerning the compliance of the small business
3 stationary source technical and environmental compliance
4 assistance program with the requirements of the federal
5 Clean Air Act, 42 U.S.C. 7401, et seq.;

6 (c) review information for small business stationary
7 sources to ensure that the information is understandable by
8 the lay person and recommend changes to make the information
9 understandable;

10 (d) consult with the small business stationary source
11 representative provided for in [section 18] regarding
12 problems faced by small business stationary sources
13 concerning the implementation and application of the
14 requirements of this chapter; and

15 (e) perform other duties necessary to meet the
16 requirements of the federal Clean Air Act.

17 (2) The council shall elect a presiding officer from
18 among its membership.

19 (3) The secretary of the council must be an employee of
20 the department assigned to the small business stationary
21 source technical and environmental compliance assistance
22 program. The secretary shall keep all records of meetings
23 and actions taken by the council and is responsible for the
24 development and dissemination of any reports and advisory
25 opinions of the council.

(4) The council shall hold at least one regular meeting each calendar year and keep a summary record of its proceedings that is open to the public for inspection. Special meetings may be called by the presiding officer or a majority of the council members. The secretary shall provide advance notice of the time and place for meetings to each member of the council.

NEW SECTION. Section 16. Small business stationary source technical and environmental compliance assistance program -- duties. (1) The department shall establish a small business stationary source technical and environmental compliance assistance program.

(2) The program shall:

(a) provide information to small business stationary sources on compliance methods and technologies, pollution prevention, and accidental release detection and prevention;

(b) assist small business stationary sources in determining applicable requirements under this chapter and in receiving permits in a timely and efficient manner;

(c) provide small business stationary sources timely notice of their rights and obligations under this chapter;

(d) provide information to small business stationary sources regarding the availability of audit services that are useful for determining compliance status with the requirements of this chapter; and

(e) perform other duties as may be necessary to meet the requirements of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

NEW SECTION. Section 17. Small business stationary sources -- exceptions -- waivers. (1) Upon petition, the department may designate a source to be a small business stationary source for purposes of receiving assistance from the small business stationary source technical and environmental compliance assistance program if the stationary source does not emit more than 100 tons per year of all regulated air contaminants POLLUTANTS and:

(a) is a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.;

(b) emits 50 tons or more per year of a-regulated AN air contaminant POLLUTANT; or

(c) emits more than 75 tons per year of all regulated air contaminants POLLUTANTS.

(2) After notice and an opportunity for public comment, the department may grant a petition submitted under subsection (1) upon finding that the source of air contaminants POLLUTANTS does not have sufficient technical and financial capabilities to meet the requirements of this chapter without the assistance of the small business stationary source technical and environmental compliance

1 assistance program.

2 (3) After notice and opportunity for public comment,
3 the department may exclude from the definition of small
4 business stationary source in 75-2-103 a category or
5 subcategory of sources that the department determines to
6 have sufficient technical and financial capabilities to meet
7 the requirements of this chapter without the assistance of
8 the small business stationary source technical and
9 environmental compliance assistance program. The department
10 may make this determination only after consulting with the
11 appropriate federal agencies under Subchapter V of the
12 federal Clean Air Act.

13 NEW SECTION. Section 18. Small business stationary
14 source representative — duties. (1) The department shall
15 establish a small business stationary source representative
16 position that is not located in the department or subject to
17 the direct supervision of the department.

18 (2) The small business stationary source representative
19 shall represent the interests of small business stationary
20 sources before the department and other appropriate local,
21 state, and federal agencies concerning the implementation
22 and application of the requirements of this chapter. In
23 addition, the representative shall provide assistance to
24 small business stationary sources in meeting the
25 requirements of this chapter. In carrying out these

1 activities, the representative shall:

2 (a) monitor the activities of the small business
3 stationary source technical and environmental compliance
4 assistance program;

5 (b) review and provide comments and recommendations to
6 the department, local air pollution control programs, and
7 the appropriate federal agencies regarding the development
8 and implementation of regulations pertaining to air quality
9 that impact small business stationary sources;

10 (c) facilitate and promote the participation of small
11 business stationary sources in the development of new
12 regulations pertaining to air quality that impact small
13 business stationary sources;

14 (d) assist in the preparation and dissemination of
15 reports and other information regarding the applicability of
16 the requirements of this chapter to small business
17 stationary sources;

18 (e) assist in the preparation of guideline documents by
19 the small business stationary source technical and
20 environmental compliance assistance program to ensure that
21 these documents are readily understandable by the lay
22 person;

23 (f) assist small business stationary sources and their
24 trade associations to encourage voluntary compliance with
25 the requirements of this chapter;

(g) cooperate with appropriate local, state, and federal agencies and private sector financial institutions to assist small business stationary sources in locating financial assistance necessary for compliance with the requirements of this chapter;

(h) consult with the small business compliance assistance advisory council regarding problems faced by small business stationary sources concerning the implementation and application of the requirements of this chapter; and

(i) perform other duties as may be necessary to meet the requirements of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

Section 19. Section 75-2-301, MCA, is amended to read:

"75-2-301. Local air pollution control programs. (1) After public hearing, a municipality or county may establish and administer a local air pollution control program if the program is consistent with this chapter and is approved by the board.

(2) If a local air pollution control program established by a county encompasses all or part of a municipality, the county and each municipality shall approve the program in accordance with subsection (1).

(3) Except as provided in subsection (4), the board by order may approve a local air pollution control program

that:

(a) provides by ordinance or local law for requirements compatible with, more stringent than, or more extensive than those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212, 75-2-215, [sections 9 through 11], and 75-2-402, and rules adopted under these sections;

(b) provides for the enforcement of requirements established under subsection (3)(a) by appropriate administrative and judicial processes; and

(c) provides for administrative organization, staff, financial resources, and other resources necessary to effectively and efficiently carry out the program. As part of meeting these requirements, a local air pollution control program may administer the permit fee provisions of 75-2-211 [section 12]. The permit fees collected by a local air pollution control program must be deposited in a county special revenue fund to be used by the local air pollution control program for administration of permitting activities.

(4) Except for those emergency powers provided for in 75-2-402, the board may not delegate to a local air pollution control program the authority to control any air contaminant POLLUTANT source that:

(a) requires the preparation of an environmental impact statement in accordance with Title 75, chapter 1, part 2;

(b) is subject to regulation under the Montana Major

1 Facility Siting Act, as provided in Title 75, chapter 20; or
 2 (c) has the potential to emit 250 tons per year or more
 3 of any pollutant subject to regulation under this chapter,
 4 including fugitive emissions, unless the authority to
 5 control the source was delegated to a local air pollution
 6 control program prior to January 1, 1991.

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

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

23 (7) If, after the hearing, the board determines that
 24 any part of the program is inadequate to prevent and control
 25 air pollution in the jurisdiction to which it relates or

1 that it is not accomplishing the purposes of this chapter,
 2 it shall require that necessary corrective measures be taken
 3 within a reasonable time, not to exceed 60 days.

4 (8) If the jurisdiction fails to take these measures
 5 within the time required, the department shall administer
 6 within that jurisdiction all of the provisions of this
 7 chapter, including the terms contained in any applicable
 8 board order, that are necessary to correct the deficiencies
 9 found by the board. The department's control program
 10 supersedes all municipal or county air pollution laws,
 11 rules, ordinances, and requirements in the affected
 12 jurisdiction. The cost of the department's action is a
 13 charge on the jurisdiction.

14 (9) If the board finds that the control of a particular
 15 air contaminant POLLUTANT source because of its complexity
 16 or magnitude is beyond the reasonable capability of the
 17 local jurisdiction or may be more efficiently and
 18 economically performed at the state level, it may direct the
 19 department to assume and retain control over that air
 20 contaminant POLLUTANT source. No A charge may not be
 21 assessed against the jurisdiction therefor. Findings made
 22 under this subsection may be either on the basis of the
 23 nature of the sources involved or on the basis of their
 24 relationship to the size of the communities in which they
 25 are located.

(10) A jurisdiction in which the department administers all or part of its air pollution control program under subsection (8) may, with the approval of the board, establish or resume an air pollution control program that meets the requirements of subsection (3).

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

NEW SECTION. Section 20. Codification instruction. (1) [Sections 9 through 13] are intended to be codified as an integral part of Title 75, chapter 2, part 2, and the provisions of Title 75, chapter 2, part 2, apply to [sections 9 through 13].

(2) [Section 14] is intended to be codified as an integral part of Title 2, chapter 15, part 21, and the provisions of Title 2, chapter 15, part 21, apply to [section 14].

(3) [Sections 15 through 18] are intended to be codified as an integral part of Title 75, chapter 2, part 1, and the provisions of Title 75, chapter 2, part 1, apply to [sections 15 through 18].

NEW SECTION. Section 21. Saving clause. [Sections 5 through 8] do not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun

before [the effective date of sections 5 through 8].

NEW SECTION. Section 22. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 23. Retroactive applicability.

(1) [Section 12(7)] applies retroactively, within the meaning of 1-2-109, to all permits issued by the department of health and environmental sciences pursuant to Title 75, chapter 2, prior to [the effective date of section 12].

(2) [Sections 4(2), 9(2) and (3), and 12(8)] apply retroactively, within the meaning of 1-2-109, to all activities identified in those subsections that are not subject to a permit issued by the department of health and environmental sciences pursuant to Title 75, chapter 2, as of [the effective date of sections 4, 9, and 12].

NEW SECTION. Section 24. Effective dates. (1) [Sections 1, 14 through 18, 20 through 23, and this section] are effective on passage and approval.

(2) [Sections 2 through ~~13~~ 12, 13(1) AND (3), and 19] are effective October 1, 1993, but the board and department may proceed with the rulemaking authorized under [sections 2 through ~~13~~ 12, 13(1) AND (3), and 19] upon passage and

1 approval. The effective date of any rules adopted to
2 implement [sections 2 through ~~13~~ 12, 13(1) AND (3), and 19]
3 may not be effective before October 1, 1993.
4 (3) [SECTION 13(2)] IS EFFECTIVE JULY 1, 1994.

-End-