

HOUSE BILL NO. 380

INTRODUCED BY EWER, FOSTER, GRIMES, BROOKE
BY REQUEST OF THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

IN THE HOUSE

JANUARY 28, 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.
	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
FEBRUARY 19, 1993	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 20, 1993	ENGROSSING REPORT.
FEBRUARY 22, 1993	THIRD READING, PASSED. AYES, 95; NOES, 1.
FEBRUARY 23, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 1, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
MARCH 6, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 8, 1993	SECOND READING, CONCURRED IN.
MARCH 9, 1993	THIRD READING, CONCURRED IN. AYES, 43; NOES, 5.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 16, 1993	RECEIVED FROM SENATE.
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SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 380
2 INTRODUCED BY Sen. Foster Sen. J. Miller
3 BY REQUEST OF THE DEPARTMENT OF Health
4 HEALTH AND ENVIRONMENTAL SCIENCES

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE AIR
7 QUALITY PERMIT REQUIREMENTS FOR INCINERATORS; REQUIRING AN
8 AIR QUALITY PERMIT FOR BOILERS AND INDUSTRIAL FURNACES;
9 ELIMINATING AN EXEMPTION FOR INCINERATORS THAT BURN 200
10 POUNDS OR LESS PER HOUR; PROHIBITING THE DEPARTMENT OF
11 HEALTH AND ENVIRONMENTAL SCIENCES FROM ISSUING AN AIR
12 QUALITY PERMIT FOR INCINERATORS, BOILERS, AND INDUSTRIAL
13 FURNACES UNTIL JUNE 1, 1994; AMENDING SECTIONS 75-2-103 AND
14 75-2-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
15

16 STATEMENT OF INTENT

17 It is the intent of the legislature that the statutory
18 size cutoff for incinerators that burn 200 pounds or less
19 per hour, as provided for in 75-2-215, be eliminated and
20 that the requirements of 75-2-215 be extended to boilers and
21 industrial furnaces. As a result, the requirements of
22 75-2-215 would apply to all incinerators and all boilers and
23 industrial furnaces subject to 75-10-406, regardless of
24 size. In order to lessen the burden on the department of
25 health and environmental sciences, the board of health and

1 environmental sciences may provide by rule for general
2 permits that apply to classes or categories of sources
3 subject to the requirements of 75-2-215. The board shall use
4 this authority to the greatest extent possible, consistent
5 with its obligation to protect public health and the
6 environment.

7 It is also the intent of the legislature to clarify the
8 provisions of 75-2-215 by amending the definitions in
9 75-2-103. The definition of incinerator contains no
10 reference to end use or economic value of the feed, but
11 rather focuses on the process employed. The definition of
12 solid waste is intended to be more encompassing than the use
13 of that definition elsewhere in Title 75, and the reference
14 to "marketable byproducts" contained in other definitions is
15 intentionally omitted. The overriding purpose of this bill
16 is to protect air quality, public health, and the physical
17 environment, and the legislature does not believe it
18 appropriate to draw distinctions in applicability based upon
19 whether or not the incineration activity is, for example,
20 associated with waste disposal or volume reduction in
21 conjunction with recycling.

22 It is also the intent of the legislature that a
23 moratorium be placed upon the issuance of air quality
24 permits for incinerators, boilers, and industrial furnaces
25 subject to the requirements of 75-2-215 until June 1, 1994.

The purpose of the moratorium is to provide the board and department time to adopt rules to implement the requirements of 75-2-215.

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.

(3) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in a quantity and for a duration which 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) "Hazardous waste" means any material designated as hazardous waste pursuant to Title 75, chapter 10, part 4.

(8) (a) "Incinerator" means any single or multiple chambered combustion device that burns combustible material, alone or with a supplemental fuel or catalytic combustion assistance, primarily for the purpose of removal, destruction, disposal, or volume reduction of all or any portion of the input material.

(b) Incinerator does not include:

(i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;

(ii) space heaters burning used oil;

(iii) wood-fired boilers; or

(iv) wood waste burners, such as tepee, wigwam, truncated cone, or silo burners.

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

(10) (a) "Solid waste" means all putrescible and nonputrescible solid, semisolid, liquid, or gaseous wastes,

including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or industrial wastes; medical waste; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction, demolition, or salvage wastes; dead animals, dead animal parts, offal, animal droppings, or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts thereof; wood products or wood byproducts and inert materials; styrofoam and other plastics; rubber materials; asphalt shingles; tarpaper; electrical equipment, transformers, or insulated wire; oil or petroleum products or oil or petroleum products and inert materials; treated lumber and timbers; and pathogenic or infectious waste.

(b) Solid waste does not include municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, or slash and forest debris regulated under laws administered by the department of state lands."

Section 2. Section 75-2-215, MCA, is amended to read:

"75-2-215. Solid or hazardous waste incineration -- additional permit requirements. (1) A Until the department has issued an air quality permit pursuant to 75-2-211 that includes the conditions required by this section, a person

may not construct, modify, or operate a solid or hazardous waste incinerator or a boiler or industrial furnace subject to the provisions of 75-10-406. of any of the following categories until the department has issued an air quality permit pursuant to this chapter, including the conditions provided in this section:

(a) ~~a new solid or hazardous waste incinerator that is designed to burn more than 200 pounds an hour of solid or hazardous waste; or~~

(b)(2) an An existing or permitted solid or hazardous waste incinerator or a boiler or industrial furnace subject to the provisions of 75-10-406 is subject to the provisions of subsection (1) if: that is designed to burn more than 200 pounds an hour of solid or hazardous waste and that

(a) it incinerates or uses as fuel or would incinerate or use as fuel solid or hazardous waste in an amount, form, kind, or content different from its designed or permitted operation; or

(b) it that incinerates or uses as fuel or would incinerate or use as fuel any solid or hazardous waste that changes the nature, character, or composition of its emissions.

(2)(3) The department may not issue a permit to a facility described in subsection (1) until:

(a) the owner or operator has provided to the

department's satisfaction:

(i) a characterization of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from any existing incineration emission source at the facility; and

(ii) an estimate of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from the incineration of solid or hazardous waste or the use of hazardous waste as fuel for a boiler or industrial furnace, as proposed in the permit application or modification;

(b) the public has had an opportunity to review and comment on the permit application or modification; and

(c) the department has reached a determination that the projected emissions and ambient concentrations will constitute a negligible risk to the public health, safety, and welfare and to the environment.

~~(3)~~(4) The department shall require the application of air pollution control equipment, engineering, or other operating procedures as necessary to provide reductions of air pollutants, including hazardous air pollutants, equivalent to or more stringent than those achieved through the best available control technology.

(5) The board may by rule provide for general air quality permits under the provisions of 75-2-211 and this section. The rules must cover numerous similar classes or

categories of incinerators and boilers or industrial furnaces.

~~(4)~~(6) This section does not relieve an owner or operator of a solid or hazardous waste incinerator or a boiler or industrial furnace that is not included under subsection (1) from the obligation to obtain any permit otherwise required under this chapter or rules implementing this chapter."

NEW SECTION. Section 3. Moratorium on issuance of air quality permits for solid or hazardous waste incinerators and boilers or industrial furnaces until rules implementing 75-2-215 have been adopted. (1) The state of Montana recognizes the importance of providing for the incineration of solid or hazardous waste in a manner that protects Montana's public health, safety, welfare, and environment. The state of Montana is concerned that current state law does not provide adequate protection for the human and physical environment, including impacts to public health, safety, and welfare and property values, from the impacts of solid or hazardous waste incinerator facilities or other facilities that burn hazardous waste-derived fuels.

(2) The department may not issue an air quality permit to a solid or hazardous waste incinerator or boiler or industrial furnace subject to the requirements of 75-2-215 until June 1, 1994, except for:

1 (a) remedial actions pursuant to Title 75, chapter 10,
2 part 7; or

3 (b) corrective actions pursuant to 75-10-405(2)(c) or
4 75-10-416.

5 NEW SECTION. **Section 4. Codification instruction.**

6 [Section 3] is intended to be codified as an integral part
7 of Title 75, chapter 2, part 2, and the provisions of Title
8 75, chapter 2, part 2, apply to [section 3].

9 NEW SECTION. **Section 5. Severability.** If a part of
10 [this act] is invalid, all valid parts that are severable
11 from the invalid part remain in effect. If a part of [this
12 act] is invalid in one or more of its applications, the part
13 remains in effect in all valid applications that are
14 severable from the invalid applications.

15 NEW SECTION. **Section 6. Effective date.** [This act] is
16 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0380, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: This bill amends air quality permit requirements for incinerators, requiring an air quality permit for boilers and industrial furnaces; eliminating an exemption for incinerators that burn 200 pounds or less per hour, prohibiting the Department of Health and Environmental Sciences from issuing an air quality permit for incinerators, boilers, and industrial furnaces until June 1, 1994, and providing an immediate effective date.

ASSUMPTIONS:

1. Since permits will be issued only to new or altered incineration sources, the increase in facilities that will need permit review due to this legislation will be minor. The current compliance and permitting activities and procedures are adequate to handle the additional requirements.
2. While there will be an increase in the number of small facilities that will need permits under this legislation, the provision allowing the board to provide for general air quality permits for numerous similar classes or categories should shorten the amount of review that would be needed for these permits.
3. The Air Quality Bureau developed a detailed workload analysis for permitting activities (Montana Air Permit Fee Analysis). Based on the assumption that there will be no changes in the current compliance and permitting activities, the major activities associated with this legislation were figured into the growth plan. Therefore, there are no additional impacts associated with this legislation.

FISCAL IMPACT: There will be no fiscal impact as a result of this legislation.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES: Counties that currently administer air quality permitting programs will probably elect to permit incineration sources under this legislation. Again, the number of new sources that will need permits in each county will be minor.

David Lewis 2.2.93

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

David Ewer 2/2/93
DAVID EWER, PRIMARY SPONSOR DATE

Fiscal Note for HB0380, as introduced

HB 380

APPROVED BY COMM. ON
NATURAL RESOURCES

HOUSE BILL NO. 380

INTRODUCED BY EWER, FOSTER, GRIMES, BROOKE

BY REQUEST OF THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE AIR
QUALITY PERMIT REQUIREMENTS FOR INCINERATORS; REQUIRING AN
AIR QUALITY PERMIT FOR BOILERS AND INDUSTRIAL FURNACES;
ELIMINATING AN EXEMPTION FOR INCINERATORS THAT BURN 200
POUNDS OR LESS PER HOUR; ~~PROHIBITING--THE--DEPARTMENT--OF~~
~~HEALTH--AND--ENVIRONMENTAL--SCIENCES--FROM--ISSUING--AN--AIR~~
~~QUALITY--PERMIT--FOR--INCINERATORS,--BOILERS,--AND--INDUSTRIAL~~
~~FURNACES--UNTIL--JUNE--17--1994~~; AMENDING SECTIONS 75-2-103 AND
75-2-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

It is the intent of the legislature that the statutory
size cutoff for incinerators that burn 200 pounds or less
per hour, as provided for in 75-2-215, be eliminated and
that the requirements of 75-2-215 be extended to boilers and
industrial furnaces. As a result, the requirements of
75-2-215 would apply to all incinerators and all boilers and
industrial furnaces subject to 75-10-406, regardless of
size. In order to lessen the burden on the department of
health and environmental sciences, the board of health and

environmental sciences may provide by rule for general
permits that apply to classes or categories of sources
subject to the requirements of 75-2-215. The board shall use
this authority to the greatest extent possible, consistent
with its obligation to protect public health and the
environment.

It is also the intent of the legislature to clarify the
provisions of 75-2-215 by amending the definitions in
75-2-103. The definition of incinerator contains no
reference to end use or economic value of the feed, but
rather focuses on the process employed. The definition of
solid waste is intended to be more encompassing than the use
of that definition elsewhere in Title 75, and the reference
to "marketable byproducts" contained in other definitions is
intentionally omitted. The overriding purpose of this bill
is to protect air quality, public health, and the physical
environment, and the legislature does not believe it
appropriate to draw distinctions in applicability based upon
whether or not the incineration activity is, for example,
associated with waste disposal or volume reduction in
conjunction with recycling.

~~It--is--also--the--intent--of--the--legislature--that--a~~
~~moratorium--be--placed--upon--the--issuance--of--air-quality~~
~~permits--for--incinerators,--boilers,--and--industrial--furnaces~~
~~subject--to--the--requirements--of--75-2-215--until--June--17--1994.~~

~~The purpose of the moratorium is to provide the board and department time to adopt rules to implement the requirements of 75-2-215.~~

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.

(3) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in a quantity and for a duration which 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) "Hazardous waste" means any material designated as hazardous waste pursuant to Title 75, chapter 10, part 4.

(8) (a) "Incinerator" means any single or multiple chambered combustion device that burns combustible material, alone or with a supplemental fuel or catalytic combustion assistance, primarily for the purpose of removal, destruction, disposal, or volume reduction of all or any portion of the input material.

(b) Incinerator does not include:

(i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;

(ii) space heaters burning used oil;

(iii) wood-fired boilers; or

(iv) wood waste burners, such as tepee, wigwam, truncated cone, or silo burners.

(9) "MODIFY" MEANS ANY PHYSICAL CHANGE IN OR CHANGE IN THE METHOD OF OPERATION OF AN INCINERATOR THAT INCREASES THE AMOUNT OF ANY AIR POLLUTANT EMITTED BY THE SOURCE OR THAT RESULTS IN THE EMISSION OF ANY AIR POLLUTANT NOT PREVIOUSLY EMITTED.

~~(7)+(9)~~(10) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or private

corporation, a subdivision or agency of the state, a trust, an estate, or any other legal entity and includes persons resident in Canada.

~~(10)(11)~~ (a) "Solid waste" means all putrescible and nonputrescible solid, semisolid, liquid, or gaseous wastes, including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or industrial wastes; medical waste; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction, demolition, or salvage wastes; dead animals, dead animal parts, offal, animal droppings, or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts thereof; wood products or wood byproducts and inert materials; styrofoam and other plastics; rubber materials; asphalt shingles; tarpaper; electrical equipment, transformers, or insulated wire; oil or petroleum products or oil or petroleum products and inert materials; treated lumber and timbers; and pathogenic or infectious waste.

(b) Solid waste does not include municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, or slash and forest debris regulated under laws administered by the department of state lands."

Section 2. Section 75-2-215, MCA, is amended to read:

"75-2-215. Solid or hazardous waste incineration -- additional permit requirements. (1) Until the department has issued an air quality permit pursuant to 75-2-211 that includes the conditions required by this section, a person may not construct, OR modify,--or--operate a solid or hazardous waste incinerator or a boiler or industrial furnace subject to the provisions of 75-10-406. of--any--of the--following-categories-until--the-department-has-issued-an air-quality-permit-pursuant-to-this-chapter,--including--the conditions-provided-in-this-section:

~~(a)--a--new-solid-or-hazardous-waste-incinerator-that-is designed-to-burn-more-than-200-pounds-an-hour--of--solid--or hazardous-waste;--or~~

~~(b)(2) an An existing-or-permitted-solid-or-hazardous waste-incinerator or-a-boiler-or-industrial-furnace--subject to--the-provisions-of-75-10-406-is-subject-to-the-provisions of-subsection-(1)-if; that-is-designed-to-burn-more-than-200 pounds-an-hour-of-solid-or-hazardous-waste-and-that~~

~~(a)--it incinerates-or uses-as-fuel-or would--incinerate or--use-as-fuel solid-or-hazardous-waste-in-an-amount,--form, kind,--or-content-different-from-its--designed--or--permitted operation; or~~

~~(b)--it that--incinerates--or uses--as--fuel--or would incinerate or-use-as-fuel any-solid-or-hazardous-waste--that~~

changes---the--nature,--character,--or--composition--of--its
emissions.

~~(2)~~~~(3)~~(2) The department may not issue a permit to a
facility described in subsection (1) until:

(a) the owner or operator has provided to the
department's satisfaction:

(i) a characterization of emissions and ambient
concentrations of air pollutants, including hazardous air
pollutants, from any existing incineration emission source
at the facility; and

(ii) an estimate of emissions and ambient concentrations
of air pollutants, including hazardous air pollutants, from
the incineration of solid or hazardous waste or the use of
hazardous waste as fuel for a boiler or industrial furnace,
as proposed in the permit application or modification;

(b) the public has had an opportunity to review and
comment on the permit application or modification; and

(c) the department has reached a determination that the
projected emissions and ambient concentrations will
constitute a negligible risk to the public health, safety,
and welfare and to the environment.

~~(3)~~~~(4)~~(3) The department shall require the application
of air pollution control equipment, engineering, or other
operating procedures as necessary to provide reductions of
air pollutants, including hazardous air pollutants,

equivalent to or more stringent than those achieved through
the best available control technology.

~~(5)~~~~(4)~~ The board may by rule provide for general air
quality permits under the provisions of 75-2-211 and this
section. The rules must cover numerous similar classes or
categories of incinerators and boilers or industrial
furnaces.

~~(4)~~~~(5)~~(5) This section does not relieve an owner or
operator of a solid or hazardous waste incinerator or a
boiler or industrial furnace that is not included under
subsection (1) from the obligation to obtain any permit
otherwise required under this chapter or rules implementing
this chapter."

~~NEW-SECTION:--Section-3.--Moratorium--on-issuance-of-air~~
~~quality-permits-for-solid-or-hazardous--waste--incinerators~~
~~and--boilers-or-industrial-furnaces-until-rules-implementing~~
~~75-2-215--have--been--adopted--(i)--The--state--of--Montana~~
~~recognizes-the-importance-of-providing-for-the--incineration~~
~~of--solid--or--hazardous--waste--in--a--manner-that-protects~~
~~Montana's-public-health,safety,welfare--and--environment--~~
~~The--state--of--Montana--is-concerned-that-current-state-law~~
~~does-not-provide--adequate--protection--for--the--human--and~~
~~physical--environment,--including--impacts-to-public-health,~~
~~safety--and-welfare-and-property-values--from-the-impacts-of~~
~~solid-or-hazardous-waste--incinerator--facilities--or--other~~

1 facilities-that-burn-hazardous-waste-derived-fuels-
2 {2}--The--department-may-not-issue-an-air-quality-permit
3 to-a-solid-or--hazardous--waste--incinerator--or--boiler--or
4 industrial--furnace--subject-to-the-requirements-of-75-2-215
5 until-June-17-1994-except-for:
6 {a}--remedial-actions-pursuant-to-Title-757-chapter--10,
7 part-77-or
8 {b}--corrective--actions--pursuant-to-75-10-405{2}{c}-or
9 75-10-416-
10 NEW-SECTION:--Section-4--Codification-----instruction-
11 {Section-3}-is-intended-to-be-codified-as-an--integral--part
12 of--Title-757-chapter-27-part-27-and-the-provisions-of-Title
13 757-chapter-27-part-27-apply-to-{section-3}-
14 NEW SECTION. **Section 3.** Severability. If a part of
15 [this act] is invalid, all valid parts that are severable
16 from the invalid part remain in effect. If a part of [this
17 act] is invalid in one or more of its applications, the part
18 remains in effect in all valid applications that are
19 severable from the invalid applications.
20 NEW SECTION. **Section 4.** Effective date. [This act] is
21 effective on passage and approval.

-End-

1 HOUSE BILL NO. 380

2 INTRODUCED BY EWER, FOSTER, GRIMES, BROOKE

3 BY REQUEST OF THE DEPARTMENT OF

4 HEALTH AND ENVIRONMENTAL SCIENCES

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6 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE AIR
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18 size cutoff for incinerators that burn 200 pounds or less
19 per hour, as provided for in 75-2-215, be eliminated and
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21 industrial furnaces. As a result, the requirements of
22 75-2-215 would apply to all incinerators and all boilers and
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25 health and environmental sciences, the board of health and

1 environmental sciences may provide by rule for general
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10 reference to end use or economic value of the feed, but
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~~The purpose of the moratorium is to provide the board and department time to adopt rules to implement the requirements of 75-2-215.~~

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(b) Incinerator does not include:

(i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;

(ii) space heaters burning used oil;

(iii) wood-fired boilers; or

(iv) wood waste burners, such as tepee, wigwam, truncated cone, or silo burners.

~~{9}--"MODIFY"--MEANS ANY PHYSICAL CHANGE IN OR CHANGE IN THE METHOD OF OPERATION OF AN INCINERATOR THAT INCREASES THE AMOUNT OF ANY AIR POLLUTANT EMITTED BY THE SOURCE OR THAT RESULTS IN THE EMISSION OF ANY AIR POLLUTANT NOT PREVIOUSLY EMITTED.~~

~~{7}{9}{10}{9}~~ "Person" means an individual, a partnership, a firm, an association, a municipality, a

public or private corporation, a subdivision or agency of the state, a trust, an estate, or any other legal entity and includes persons resident in Canada.

~~(10)~~(10) (a) "Solid waste" means all putrescible and nonputrescible solid, semisolid, liquid, or gaseous wastes, including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or industrial wastes; medical waste; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction, demolition, or salvage wastes; dead animals, dead animal parts, offal, animal droppings, or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts thereof; wood products or wood byproducts and inert materials; styrofoam and other plastics; rubber materials; asphalt shingles; tarpaper; electrical equipment, transformers, or insulated wire; oil or petroleum products or oil or petroleum products and inert materials; treated lumber and timbers; and pathogenic or infectious waste.

(b) Solid waste does not include municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, or slash and forest debris regulated under laws administered by the department of state lands."

Section 2. Section 75-2-215, MCA, is amended to read:

"75-2-215. Solid or hazardous waste incineration -- additional permit requirements. (1) A Until the department has issued an air quality permit pursuant to 75-2-211 that includes the conditions required by this section, a person may not construct, INSTALL, ALTER, OR modify USE, or operate a solid or hazardous waste incinerator or a boiler or industrial furnace subject to the provisions of 75-10-406, EXCEPT AS PROVIDED IN SUBSECTION (2). of any of the following categories until the department has issued an air quality permit pursuant to this chapter, including the conditions provided in this section:

(a) a new solid or hazardous waste incinerator that is designed to burn more than 200 pounds an hour of solid or hazardous waste; or

(b) an existing or permitted solid or hazardous waste incinerator or a boiler or industrial furnace subject to the provisions of 75-10-406 is subject to the provisions of subsection (1) if: that is designed to burn more than 200 pounds an hour of solid or hazardous waste and that

(a) it incinerates or uses as fuel or would incinerate or use as fuel solid or hazardous waste in an amount, form, kind, or content different from its designed or permitted operation; or

(b) it that incinerates or uses as fuel or would

1 ~~incinerate or use as fuel any solid or hazardous waste that~~
 2 ~~changes the nature, character, or composition of its~~
 3 ~~emissions.~~

4 (2) AN EXISTING OR PERMITTED SOLID OR HAZARDOUS WASTE
 5 INCINERATOR OR A BOILER OR INDUSTRIAL FURNACE SUBJECT TO THE
 6 PROVISIONS OF 75-10-406 IS SUBJECT TO THE PROVISIONS OF
 7 SUBSECTION (1) ONLY IF IT INCINERATES OR USES AS FUEL OR
 8 WOULD INCINERATE OR USE AS FUEL SOLID OR HAZARDOUS WASTE IN
 9 AN AMOUNT, FORM, KIND, OR CONTENT THAT CHANGES THE NATURE,
 10 CHARACTER, OR COMPOSITION OF ITS EMISSIONS FROM ITS DESIGN
 11 OR PERMITTED OPERATION.

12 (2)(3)(2)(3) The department may not issue a permit to a
 13 facility described in subsection (1) until:

14 (a) the owner or operator has provided to the
 15 department's satisfaction:

16 (i) a characterization of emissions and ambient
 17 concentrations of air pollutants, including hazardous air
 18 pollutants, from any existing incineration emission source
 19 at the facility; and

20 (ii) an estimate of emissions and ambient concentrations
 21 of air pollutants, including hazardous air pollutants, from
 22 the incineration of solid or hazardous waste or the use of
 23 hazardous waste as fuel for a boiler or industrial furnace,
 24 as proposed in the permit application or modification;

25 (b) the public has had an opportunity to review and

1 comment on the permit application or modification; and

2 (c) the department has reached a determination that the
 3 projected emissions and ambient concentrations will
 4 constitute a negligible risk to the public health, safety,
 5 and welfare and to the environment.

6 (3)(4)(3)(4) The department shall require the
 7 application of air pollution control equipment, engineering,
 8 or other operating procedures as necessary to provide
 9 reductions of air pollutants, including hazardous air
 10 pollutants, equivalent to or more stringent than those
 11 achieved through the best available control technology.

12 (5)(4)(5) The board may by rule provide for general air
 13 quality permits under the provisions of 75-2-211 and this
 14 section. The rules must cover numerous similar classes or
 15 categories of incinerators and boilers or industrial
 16 furnaces.

17 (4)(6)(5)(6) This section does not relieve an owner or
 18 operator of a solid or hazardous waste incinerator or a
 19 boiler or industrial furnace that is not included under
 20 subsection (1) from the obligation to obtain any permit
 21 otherwise required under this chapter or rules implementing
 22 this chapter."

23 ~~NEW SECTION--Section 3--Moratorium on issuance of--air~~
 24 ~~quality--permits--for--solid or hazardous waste incinerators~~
 25 ~~and boilers or industrial furnaces until rules--implementing~~

75-2-215--have--been--adopted--{1}--The--state--of--Montana
 recognizes--the-importance-of-providing-for-the-incineration
 of-solid-or--hazardous--waste--in--a-manner--that--protects
 Montana's--public--health, safety, welfare, and environment.
 The-state-of-Montana-is-concerned--that--current--state--law
 does--not--provide--adequate--protection--for--the-human-and
 physical-environment, including impacts--to--public--health,
 safety, and welfare-and-property-values, from-the-impacts-of
 solid--or--hazardous--waste--incinerator-facilities-or-other
 facilities-that-burn-hazardous-waste-derived-fuels.

{2}--The-department-may-not-issue-an-air-quality--permit
 to--a--solid--or--hazardous--waste--incinerator-or-boiler-or
 industrial-furnace-subject-to-the-requirements--of--75-2-215
 until-June-1, 1994, except-for:

{a}--remedial--actions-pursuant-to-Title-75, chapter-10,
 part-7, or

{b}--corrective-actions-pursuant-to--75-10-405(2){c}--or
 75-10-416.

NEW SECTION. Section 4. Codification-----instruction:
 {Section--3}--is-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-{section-3}.

NEW SECTION. Section 3. 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 4. Effective date. [This act] is
 effective on passage and approval.

-End-

1 HOUSE BILL NO. 380

2 INTRODUCED BY EWER, FOSTER, GRIMES, BROOKE

3 BY REQUEST OF THE DEPARTMENT OF

4 HEALTH AND ENVIRONMENTAL SCIENCES

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE AIR
7 QUALITY PERMIT REQUIREMENTS FOR INCINERATORS; REQUIRING AN
8 AIR QUALITY PERMIT FOR BOILERS AND INDUSTRIAL FURNACES;
9 ELIMINATING AN EXEMPTION FOR INCINERATORS THAT BURN 200
10 POUNDS OR LESS PER HOUR; ~~PROHIBITING--THE--DEPARTMENT--OF~~
11 ~~HEALTH--AND--ENVIRONMENTAL--SCIENCES--FROM--ISSUING--AN--AIR~~
12 ~~QUALITY--PERMIT--FOR--INCINERATORS,--BOILERS,--AND--INDUSTRIAL~~
13 ~~FURNACES--UNTIL--JUNE--17--1994~~; AMENDING SECTIONS 75-2-103 AND
14 75-2-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

16 STATEMENT OF INTENT

17 It is the intent of the legislature that the statutory
18 size cutoff for incinerators that burn 200 pounds or less
19 per hour, as provided for in 75-2-215, be eliminated and
20 that the requirements of 75-2-215 be extended to boilers and
21 industrial furnaces. As a result, the requirements of
22 75-2-215 would apply to all incinerators and all boilers and
23 industrial furnaces subject to 75-10-406, regardless of
24 size. In order to lessen the burden on the department of
25 health and environmental sciences, the board of health and

1 environmental sciences may provide by rule for general
2 permits that apply to classes or categories of sources
3 subject to the requirements of 75-2-215. The board shall use
4 this authority to the greatest extent possible, consistent
5 with its obligation to protect public health and the
6 environment.

7 It is also the intent of the legislature to clarify the
8 provisions of 75-2-215 by amending the definitions in
9 75-2-103. The definition of incinerator contains no
10 reference to end use or economic value of the feed, but
11 rather focuses on the process employed. The definition of
12 solid waste is intended to be more encompassing than the use
13 of that definition elsewhere in Title 75, and the reference
14 to "marketable byproducts" contained in other definitions is
15 intentionally omitted. The overriding purpose of this bill
16 is to protect air quality, public health, and the physical
17 environment, and the legislature does not believe it
18 appropriate to draw distinctions in applicability based upon
19 whether or not the incineration activity is, for example,
20 associated with waste disposal or volume reduction in
21 conjunction with recycling.

22 ~~It--is--also--the--intent--of--the--legislature--that--a~~
23 ~~moratorium--be--placed--upon--the--issuance--of--air--quality~~
24 ~~permits--for--incinerators,--boilers,--and--industrial--furnaces~~
25 ~~subject--to--the--requirements--of--75-2-215--until--June--17--1994.~~

~~The purpose of the moratorium is to provide the board and department time to adopt rules to implement the requirements of 75-2-215.~~

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.

(3) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in a quantity and for a duration which 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) "Hazardous waste" means any material designated as hazardous waste pursuant to Title 75, chapter 10, part 4.

(8) (a) "Incinerator" means any single or multiple chambered combustion device that burns combustible material, alone or with a supplemental fuel or catalytic combustion assistance, primarily for the purpose of removal, destruction, disposal, or volume reduction of all or any portion of the input material.

(b) Incinerator does not include:

(i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;

(ii) space heaters burning used oil;

(iii) wood-fired boilers; or

(iv) wood waste burners, such as tepee, wigwam, truncated cone, or silo burners.

~~(9) "MODIFY" means any physical change in or change in the method of operation of an incinerator that increases the amount of any air pollutant emitted by the source or that results in the emission of any air pollutant not previously emitted.~~

~~(7)(9)(10)~~ (9) "Person" means an individual, a partnership, a firm, an association, a municipality, a

1 public or private corporation, a subdivision or agency of
 2 the state, a trust, an estate, or any other legal entity and
 3 includes persons resident in Canada.

4 ~~{10}{11}~~(10) (a) "Solid waste" means all putrescible and
 5 nonputrescible solid, semisolid, liquid, or gaseous wastes,
 6 including but not limited to garbage; rubbish; refuse;
 7 ashes; swill; food wastes; commercial or industrial wastes;
 8 medical waste; sludge from sewage treatment plants, water
 9 supply treatment plants, or air pollution control
 10 facilities; construction, demolition, or salvage wastes;
 11 dead animals, dead animal parts, offal, animal droppings, or
 12 litter; discarded home and industrial appliances; automobile
 13 bodies, tires, interiors, or parts thereof; wood products or
 14 wood byproducts and inert materials; styrofoam and other
 15 plastics; rubber materials; asphalt shingles; tarpaper;
 16 electrical equipment, transformers, or insulated wire; oil
 17 or petroleum products or oil or petroleum products and inert
 18 materials; treated lumber and timbers; and pathogenic or
 19 infectious waste.

20 (b) Solid waste does not include municipal sewage,
 21 industrial wastewater effluents, mining wastes regulated
 22 under the mining and reclamation laws administered by the
 23 department of state lands, or slash and forest debris
 24 regulated under laws administered by the department of state
 25 lands."

1 **Section 2.** Section 75-2-215, MCA, is amended to read:

2 "75-2-215. Solid or hazardous waste incineration --
 3 additional permit requirements. (1) Until the department
 4 has issued an air quality permit pursuant to 75-2-211 that
 5 includes the conditions required by this section, a person
 6 may not construct, INSTALL, ALTER, OR modify USE,--or
 7 operate a solid or hazardous waste incinerator or a boiler
 8 or industrial furnace subject to the provisions of
 9 75-10-406, EXCEPT AS PROVIDED IN SUBSECTION (2). of any of
 10 the following categories until the department has issued an
 11 air quality permit pursuant to this chapter, including the
 12 conditions provided in this section:

13 (a) ~~--a new solid or hazardous waste incinerator that is~~
 14 ~~designed to burn more than 200 pounds an hour of solid or~~
 15 ~~hazardous waste, or~~

16 (b) ~~{2}~~ an An existing or permitted solid or hazardous
 17 waste incinerator or a boiler or industrial furnace subject
 18 to the provisions of 75-10-406 is subject to the provisions
 19 of subsection (1) if, that is designed to burn more than 200
 20 pounds an hour of solid or hazardous waste and that

21 (a) ~~--it incinerates or uses as fuel or would incinerate~~
 22 ~~or use as fuel solid or hazardous waste in an amount, form,~~
 23 ~~kind, or content different from its designed or permitted~~
 24 ~~operation; or~~

25 (b) ~~--it that incinerates or uses as fuel or would~~

~~incinerate or use as fuel any solid or hazardous waste that changes the nature, character, or composition of its emissions.~~

(2) AN EXISTING OR PERMITTED SOLID OR HAZARDOUS WASTE INCINERATOR OR A BOILER OR INDUSTRIAL FURNACE SUBJECT TO THE PROVISIONS OF 75-10-406 IS SUBJECT TO THE PROVISIONS OF SUBSECTION (1) ONLY IF IT INCINERATES OR USES AS FUEL OR WOULD INCINERATE OR USE AS FUEL SOLID OR HAZARDOUS WASTE IN AN AMOUNT, FORM, KIND, OR CONTENT THAT CHANGES THE NATURE, CHARACTER, OR COMPOSITION OF ITS EMISSIONS FROM ITS DESIGN OR PERMITTED OPERATION.

~~(2)(3)(2)(3)~~ The department may not issue a permit to a facility described in subsection (1) until:

(a) the owner or operator has provided to the department's satisfaction:

(i) a characterization of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from any existing incineration emission source at the facility; and

(ii) an estimate of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from the incineration of solid or hazardous waste or the use of hazardous waste as fuel for a boiler or industrial furnace, as proposed in the permit application or modification;

(b) the public has had an opportunity to review and

comment on the permit application or modification; and

(c) the department has reached a determination that the projected emissions and ambient concentrations will constitute a negligible risk to the public health, safety, and welfare and to the environment.

~~(3)(4)(3)(4)~~ The department shall require the application of air pollution control equipment, engineering, or other operating procedures as necessary to provide reductions of air pollutants, including hazardous air pollutants, equivalent to or more stringent than those achieved through the best available control technology.

~~(5)(4)(5)~~ The board may by rule provide for general air quality permits under the provisions of 75-2-211 and this section. The rules must cover numerous similar classes or categories of incinerators and boilers or industrial furnaces.

~~(4)(6)(5)(6)~~ This section does not relieve an owner or operator of a solid or hazardous waste incinerator or a boiler or industrial furnace that is not included under subsection (1) from the obligation to obtain any permit otherwise required under this chapter or rules implementing this chapter."

~~NEW SECTION--Section 3--Moratorium on issuance of air quality permits for solid or hazardous waste incinerators and boilers or industrial furnaces until rules implementing~~

1 75-2-215--have--been--adopted--{1}--The--state--of--Montana
 2 recognizes--the-importance-of-providing-for-the-incineration
 3 of-solid-or--hazardous--waste--in--a--manner--that--protects
 4 Montana's--public--health,-safety,-welfare-and-environment.
 5 The-state-of-Montana-is-concerned--that--current--state--law
 6 does--not--provide--adequate--protection--for--the-human-and
 7 physical-environment,-including-impacts--to--public--health,
 8 safety,-and-welfare-and-property-values,-from-the-impacts-of
 9 solid--or--hazardous--waste--incinerator-facilities-or-other
 10 facilities-that-burn-hazardous-waste-derived-fuels.

11 {2}--The-department-may-not-issue-an-air-quality--permit
 12 to--a--solid--or--hazardous--waste--incinerator-or-boiler-or
 13 industrial-furnace-subject-to-the-requirements--of--75-2-215
 14 until-June-1,-1994,-except-for:

15 {a}--remedial-actions-pursuant-to-Title-75,-chapter-10,
 16 part-7,-or

17 {b}--corrective-actions-pursuant-to--75-10-405{2}{c}--or
 18 75-10-416.

19 NEW-SECTION--Section-4--Codification-----instruction:
 20 {Section--3}--is-intended-to-be-codified-as-an-integral-part
 21 of-Title-75,-chapter-2,-part-2,-and-the-provisions-of--Title
 22 75,-chapter-2,-part-2,-apply-to-{section-3}.

23 NEW SECTION. Section 3. Severability. If a part of
 24 [this act] is invalid, all valid parts that are severable
 25 from the invalid part remain in effect. If a part of [this

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

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

-End-